

'Hargreaves' Consultation on Copyright Questions

The full consultation document is available at the [IPO website](#). This is the full list of questions asked.

1. Does the initial impact assessment capture the costs and benefits of creating a system enabling the use of individual orphan works alone, as distinct from the costs and benefits of introducing extended

The Government is particularly interested in the scale of holdings you suspect to be orphaned in any collections you are responsible for. Would you expect your organisation to make use of this proposed system for the use of individual orphan works? How much of the archive is your organisation likely to undertake diligent searches for under this proposed system?

What would you like to do with orphan works under a scheme to authorise use of individual orphan works? collective licensing? Please provide reasons and evidence about any under or over-estimates or any missing costs and benefits?

2. Please provide any estimates for the cost of storing and preserving works that you may not be able to use because they are/could be orphan works. Please explain how you arrived at these estimates.

3. Please describe any experiences you have of using orphan works (perhaps abroad). What worked well and what could be improved? What was the end result? What lessons are there for the UK?

4. What do you consider are the constraints on the UK authorising the use of UK orphan works outside the UK? How advantageous would it be for the UK to authorise the use of such works outside the UK?

5. What do you consider are the constraints on the UK authorising the use of orphan works in the possession of an organisation/individual in the UK but appearing to originate from outside the UK:

for use in the UK only

for use outside the UK?

How advantageous would it be for the UK to authorise the use of such works in the UK and elsewhere?

6. If the UK scheme to authorise the use of orphan works does not include provision for circumstances when copyright status is unclear, what proportion of works in your sector (please specify) do you estimate would remain unusable? Would you prefer the UK scheme to cover these works? Please give reasons for your answer.

7. If the UK's orphan works' scheme only included published/broadcast work what proportion of orphan works do you estimate would remain unusable? If the scheme was limited to published/broadcast works how would you define these terms?

8. What would be the pros and cons of limiting the term of copyright in unpublished and in anonymous and in pseudonymous literary, dramatic and musical works to the life of the author plus 70 years or to 70 years from the date of creation, rather than to 2039 at the earliest?

9. In your view, what would be the effects of limiting an orphan works' provision to non-commercial uses? How would this affect the Government's agenda for economic growth?
10. Please provide any evidence you have about the potential effects of introducing an orphan works provision on competition in particular markets. Which works are substitutable and which are not (depending on circumstances of use)?
11. Who should authorise use of orphan works and why? What costs would be involved and how should they be funded?
12. In your view what should constitute a diligent search? Should there be mandatory elements and if so what and why?
13. Do you see merit in the authorising body offering a service to conduct diligent searches? Why/why not?
14. Are there circumstances in which you think that a diligent search could be dispensed with for the licensing of individual orphan works, such as by publishing an awaiting claim list on a central, public database?
15. Once a work is on an orphan works registry, following a diligent search, to what extent can that search be relied upon for further uses? Would this vary according to the type of work, the type of use etc? If so, why?
16. Are there circumstances in which market rate remuneration would not be appropriate? If so, why?
17. How should the authorising body determine what a market rate is for any particular work and use (if the upfront payment system is introduced)?
18. Do you favour an upfront payment system with an escrow account or a delayed payment system if and when a reventant copyright holder appears? Why?
19. What are your views about attribution in relation to use of orphan works?
20. What are your views about protecting the owners of moral rights in orphan works from derogatory treatment?
21. What are your views about what a user of orphan works can do with that work in terms of duration of the authorisation?

Extended collective licensing

22. What aspects of the current collective licensing system work well for users and rights holders and what are the areas for improvement? Please give reasons for your answers.
23. In the Impact Assessment which accompanies this consultation, it has been estimated that the efficiencies generated by ECL could reduce administrative costs within collecting societies by 2-5%. What level of cost savings do you think might be generated by the efficiency gains from ECL? What do you think the cost savings might be for businesses seeking to negotiate licences for content in comparison to the current system?
24. Should the savings be applied elsewhere e.g. to reduce the cost of a licence? Please provide reasons and evidence for your answers.
25. The Government assumes in the impact assessment for these proposals that the cost of a licence will remain the same if a collecting society operates in extended mode. Do you think

that increased repertoire could or should lead to an increase in the price of the licence?
Please provide reasons for your answers.

26. If you are a collecting society, can you say what proportion of rights holders you currently represent in your sector?

27. Would your collecting society consider operating in extended licensing mode, and in which circumstances? If so, what benefits do you think it would offer to your members and to your licensees?

28. If you do not intend to operate in extended licensing mode, can you say why?

29. Who else do you think might be affected by the introduction of extended collective licensing? What would the impact be on those parties? Please provide reasons and evidence to support your arguments.

30. What criteria do you think should be used to demonstrate that a collecting society is "representative"? Please provide reasons for your answer.

31. Do you think that it is necessary for a collecting society to obtain the consent of its members to apply for an ECL authorisation? What should qualify as consent- for example, would the collecting society need to show that a simple majority of its members have agreed to the application being made?

32. Apart from securing the consent of its members and showing that it is representative, are there other criteria that you think a collecting society should meet before it can approach the Government for an ECL authorisation? Please give reasons for your answer.

33. When, if ever, would a collecting society have reasonable grounds to treat members and nonmember rights holders differently? Please give reasons and provide evidence to support your response.

34. Do you have any specific concerns about any additional powers that could accrue to a collecting society under an ECL scheme? If so, please say what these are and what checks and balances you think are necessary to counter them? Please also give reasons and evidence for your concerns.

35. Are there any other conditions you think a collecting society should commit to adhering to or other factors which the Government should be required to consider, before an ECL authorisation could be granted? Please say what these additional conditions would help achieve?

36. What are the best ways of ensuring that non-member rights holders are made aware of the introduction of an ECL scheme and that as many as possible have the opportunity to opt out, should they wish to?

37. What type of collecting society should be required to advertise in national media? For example, should it need to be a certain size, have a certain number of members, or collect a certain amount of money?

38. What would you suggest are the least onerous ways for a rights holder to opt out of a proposed extended licensing scheme?

39. Should a collecting society be required to show that it has taken account of all opt out notifications? If so, how should it do so? Please provide reasons for your answers.

40. Are there any groups of rights-holders who are at a higher risk of not receiving information about the introduction of an ECL scheme, or for whom the opt-out process may be more difficult? What steps could be taken to alleviate these risks?

41. What measures should a collecting society take to find a non-member or missing rights owner after the distribution notice fails to bring them forward?

42. How long should a collecting society allow for a non-member rights holder to come forward?

Codes of conduct for collecting societies

43. Aside from retention by the collecting society or redistribution to other rights holders in the sector, in what other ways might unclaimed funds be used? Please state why you think so?

44. What do collecting societies do well under the current system? Who benefits from the way they operate? Please explain your response and provide evidence for it.

45. What are the areas for improvement in the way that collecting societies operate at present? Who would benefit from these improvements, and what current costs (if any) could be avoided? Please give reasons and provide evidence for your response.

46. Do you agree with the analysis contained in the impact assessment of the costs and benefits for collecting societies and their users? Are there additional costs and benefits which have not been included, or which you are able to quantify? Please provide reasons and evidence for your response.

47. Who else do you think would be affected by a requirement for collecting societies to adhere to codes of conduct? What would the impact be on them? Please provide reasons and evidence for your response.

48. Is one year a sufficient period of time for collecting societies to put in place a code of conduct? Please provide reasons for why you agree or disagree? Please also provide evidence to show what a workable timeline would be?

49. What other benefits or rewards could accrue to a collecting society for putting in place a voluntary code? Please provide evidence for your answer.

50. In your view, does it make a difference whether there is a single code, one joint code, or several joint codes? Please give reasons for your answer.

51. Are there any other areas that you think should be covered in the minimum standards, or areas which you think should be excluded? Please give reasons for your response, including evidence of alternative means of securing protection in relation to any areas you propose should be excluded from the minimum standard.

52. Are there any additional undertakings that a collecting society should give with regard to its members and the manner in which it represents them? Should any of the proposed minimum standards about members be excluded? Please provide reasons and evidence to support your response

53. Are there any additional undertakings that a collecting society should give with regard to its licensees, or should any of the proposed minimum standards be excluded? Please give reasons and evidence for your response, included why you consider any standards which you propose should be excluded to be unnecessary.

54. Are there any additional expectations for licensees that should be set out by a collecting society in its code, or should any of those listed be excluded? Please give reasons why.

55. Are there any additional measures that a collecting society should put in place to ensure proper control of the conduct of its employees, agents, and representatives? Should any of the proposed standards be excluded? Please say what these are and provide evidence to support your response.

56. Are there any additional provisions that you believe would enhance the transparency of collecting societies? Should any of the proposed provisions be excluded? Please give reasons and evidence to support your response.

57. Are there any other criteria that a collecting society should report against? Should any of the proposed criteria be excluded? Please give full reasons and evidence for your answer, describing what impact it would have and on whom

58. Are these criteria sufficient for the creation of a complaints procedure that is regarded as fair and reasonable by the members and users of collecting societies? Should any proposed criteria be excluded? Please provide reasons and evidence to support your response.

59. Please indicate whether you think a joint ombudsman or individual ombudsmen would work better. Please say why you would prefer one over the other?

60. Is the ombudsman the right person to review the codes of conduct? Please give reasons for your answer, and propose alternatives if think the ombudsman is not best placed to be the code reviewer.

61. What do you think about the intervals for review? Are they too frequent or too far apart? Please provide reasons for your answers.

62. What initiatives should the Government bring forward to provide recognition of high performance against voluntary codes of conduct? Please give reasons and evidence for your response.

63. What do you consider the process and threshold for non-compliance should be? For example, should Government test compliance on a regular basis (say by following Ombudsman's reports) or on an ad-hoc basis? What evidence would be appropriate to demonstrate non-compliance? Please give reasons for your response.

64. What, in your view, are suitable penalties for non-compliance with a statutory code of practice? For example, are financial penalties appropriate, and, if so, what order of magnitude would be suitable? Please give reasons and provide evidence for your answer.

65. Do you agree that the imposition of a statutory code should be subject to review? How long should such a code be in place before it is reviewed? Please give reasons for your response.

66. If you are a collecting society which may qualify as a micro-business, would you be likely to introduce a voluntary code? If you are a user of collecting societies, what do you believe the Government should do to encourage good practice in any collecting societies which are exempt from the power to introduce a statutory code? Please give reasons for your response.

Exceptions to copyright

Private copying

67. Do you agree that a private copying exception should not permit copying of content that the copier does not own?

68. Should the private copying exception allow copying of legally-owned content for use within a domestic circle, such as a family or household? What would be the costs and benefits of such an exception?

69. Should a private copying exception be limited so that it only allows copying of legally-owned content for personal use? Would an exception limited in this way cause minimal harm to copyright owners, or would further restrictions be required? What would be the costs and benefits of such an exception?

70. Should a private copying exception be explicitly limited so that it only applies when harm caused by copying is minimal? Is this sufficient limitation by itself, or should it be applied in combination with other measures? What are the costs and benefits of this option?

71. Should the current mechanism allowing beneficiaries of exceptions to access works protected by technological measures be extended to cover a private copying exception? What would be the costs and benefits of doing this?

Preservation by Libraries and Archives

72. Should the preservation exception be extended:

to include more types of work?

to allow multiple copies to be made?

to apply to more types of cultural organisations, such as museums?

How might this be done, and what would be the costs and benefits of doing it?

73. Is there a case for simplifying the designation process which is part of Section 75? How might this be done and what would be the costs and benefits of doing it?

74. Should any other changes be made to the current exceptions relating to libraries and archives, and what would be their costs and benefits?

Research and private study

75. Would extending the copyright exception for research and private study to include sound recordings, film and broadcasts achieve the aims described above? Can you provide evidence of its costs and benefits?

76. Should the copyright exception for research and private study permit educational establishments, libraries, archives or museums to make works available for research or private study on their premises by electronic means? What would be the costs and benefits of doing this?

Text and data mining for research

77. Would an exception for text and data mining that is limited to non-commercial research be capable of delivering the intended benefits? Can you provide evidence of the costs and benefits of this measure? Are there any alternative solutions that could support the growth of text and data mining technologies and access to them?

Parody, caricature and pastiche

78. Do you agree that a parody exception could create new opportunities for economic growth?

79. What is the value of the market for parody works in the UK and globally?

80. How might a parody exception impact on creators of original works and creators of parodies? What would be the costs and benefits of such an exception?

81. When introducing an exception for parody, caricature and pastiche, will it be necessary to define these terms? If so, how should this be done?

82. How should an exception for parody, caricature and pastiche be framed in order to mitigate some of the potential costs described above?

83. Would making this a “fair dealing” exception sufficiently minimise negative impacts to copyright owners, or would more specific measures need to be taken?

84. Are you able to provide evidence of the costs and benefits of such an exception?

Use of works for education

85. How should the Government extend the education exceptions to cover more types of work? Can you provide evidence of the costs and benefits of doing this?

86. Would provision of “fair dealing” exceptions for reprographic copying by educational establishments provide the greater flexibility that is intended? Can you provide evidence of the costs and benefits of such an exception?

87. What is the best way to allow the transmission of copyright works used in teaching to distance learners? What types of work should be covered under such an exception? Should on-demand as well as traditional broadcasts be covered? What would be the costs and benefits of such an exception?

88. Should these exceptions be amended so that more types of educational body can benefit from them? How should an “educational establishment” be defined? Can you provide evidence of the costs and benefits of doing this?

89. Is there a case for removing or restricting the licensing schemes that currently apply to the educational exceptions for recording broadcasts and reprographic copying? Can you provide evidence of the costs and benefits of doing this, in particular financial implications and impacts on educational provision and incentives to creators?

Copyright exceptions for people with disabilities

90. How should the current disability exceptions be amended so that more people are able to benefit from them? Can you provide evidence of the costs and benefits of doing this?

91. How should the disability exceptions be expanded so that they apply to more types of work? Is there a case for treating certain works differently to others? What would be the costs and benefits of amending the exceptions in this way?

92. What are the costs and benefits of the current licensing arrangements for the disability exceptions, and is there a case for amending or removing them?

93. How should this exception be modified in order to simplify its operation?

Use of works for quotation and reporting current events

94. Should the current exception for criticism and review be amended so that it covers more uses of quotations? If so, should it be extended to cover any quotation, or only cover specific categories of use? Can you provide evidence of the costs or benefits of amending this exception?

95. Is there a need to amend or clarify the exception for reporting current events? Could this be done as part of a quotation exception, or would a separate measure be needed? What would be the costs and benefits of doing this?

96. Is there a need to amend the existing provisions relating to speeches and lectures, and what would be the costs and benefits of doing so? Should these provisions be combined within a quotations exception?

97. Would there be additional benefits if all three types of exception examined by this section were combined?

Use of works for public administration and reporting

98. How should the current exceptions for use by public bodies be amended to support greater transparency? How could such exceptions be limited to ensure that incentives to copyright owners are not undermined? Can you provide evidence of costs or benefits of doing this?

Other exceptions allowed by the Copyright Directive

99. Should a new exception for time-shifting of broadcasts by social institutions be introduced? What would be the costs and benefits of doing this?

100. Should a new exception for use during religious celebrations or official celebrations organised by public authorities be introduced? What would be the costs and benefits of doing this?

101. Should our current exceptions be expanded to cover use for public exhibition or sale of artistic works on the internet? What would be the costs and benefits of doing this?

102. Should our current exceptions for the demonstration and repair of equipment be expanded? What would be the costs and benefits of doing this?

Protecting copyright exceptions from override by contract

103. What are the advantages and disadvantages of allowing copyright exceptions to be overridden by contracts? Can you provide evidence of the costs or benefits of introducing a contract-override clause of the type described above?

Copyright notices

104. Are there specific and or general areas of practical uncertainty in relation to copyright which you think would benefit from clarification from the IPO? What has been the consequence to you or your organisation of this lack of clarity?

105. Who do you think would benefit from this sort of clarification? Should it be reserved for SMEs as the group likely to produce the greatest benefit in economic growth terms?

106. Have you experienced a copyright dispute over the last 5 years? If so, did you consult lawyers and how much did this cost?

107. Do you think that it would be helpful for the IPO to publish its own interpretation of problem areas which may have general interest and relevance? What sources should it rely on in doing so?

108. Do you agree that it would be helpful to formalise the arrangements for these Notices through legislation? Please explain your reasons.

109. How do you think that the IPO should prioritise which areas to cover in these Notices?

110. Does there need to be a legal obligation on the Courts to have regard to these Notices? Please explain your answer.

111. Are there other ways in which you think that the IPO can help clarify areas where the law is misunderstood? How would these work?

112. Do you think it would be helpful for the IPO to provide (for a fee) a non-binding dispute resolution service for specific disputes relating to copyright? Who would benefit and how? Are there any disadvantages of IPO operating such a service?

113. What would you be prepared to pay for a dispute resolution service provided by the IPO? Please explain your answer, for example by comparison with the time and financial cost of other means of redress.

114. Which would you find more useful: general Notices on the interpretation of the law (free) or advice on your specific dispute (for which there would be a charge)? Please explain your answer.