

IPO CONSULTATION

SoA RESPONSE TO THE CLA'S APPLICATION FOR AN EXTENDED COLLECTIVE LICENSING SCHEME



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The Society of Authors exists to protect the rights and further the interests of authors. It has more than 10,000 members writing in all areas of the profession including authors, illustrators, screen writers, novelists, academics, poets, translators, illustrators and photographers.

Consultation:

<https://www.gov.uk/government/consultations/application-to-operate-an-ecl-scheme>

Executive Summary

The SoA supports the principle of ECL and does not oppose this application.

The Copyright Licensing Agency (CLA) has operated blanket licensing schemes for more than 30 years providing significant revenues to our members. We are confident that it is in the best interests of our members for the ECL to be granted to allow pragmatic licensing solutions which ensure that this essential form of revenue can continue.

We urge that the CLA's search processes be continually reviewed and made more user friendly for rights holders as well as for licensees.

We suggest that the CLA works with all interested parties to develop and agree a universal system of unique identifiers for all relevant works (not just books but articles and photos too). These could then be embedded in metadata which would allow for more accurate search and identification of use.

We note that the Regulations ensure that any application does not set precedents and authorisations are time-limited so as to ensure a review of ECL schemes.

We also continue to support a robust and transparent intellectual property regime within the UK and opposed the introduction of broad exceptions and 'fair use' style schemes which would undermine the creative professions underpinning our global creative industries. The Creative Industries are worth more than £92 billion a year to the UK economy and create three million jobs (one in 11).

Comments

The Copyright Licensing Agency (CLA) has operated blanket licensing schemes for more than 30 years. These schemes allow secondary use of works, such as photocopying a chapter of a book or an article from a journal for internal use by educational establishments, government departments or businesses. Given the scale of use involved, such licences have proved to be a pragmatic means for enabling access to copyright works on terms that provide recompense to rightsholders.

Our understanding is that, in effect, the CLA blanket licences already operate as extended collective licences, as works are generally assumed to be included in the licences unless the rightsholder has excluded them by notice to the CLA, and that one of the reasons for the 2014 ECL regulations was to formalise the legal position of 'unrepresented rightsholders' under such blanket licences. This has proved effective and remunerative for our members. We therefore support this application.

Concerns to Note

The CLA database is designed to be user-facing and can be difficult for rightsholders to negotiate to check whether their works appear or have been licensed. There are also some concerns about accuracy. Improvements need to be made in relation to this function of identifying works and making it as easy as possible for creators to opt-out of an ECL scheme if they so wish and if they are entitled to under the terms of any agreement with a primary publisher.

The difficulty of search is particularly acute for items which do not have the unique identifier of the ISBN system. These can include illustrations, articles and photographs. As such items are often embedded in other works such as books and magazines, it is highly likely that they will be used without the rightsholders permission or that their use will not be paid for under the scheme.

It is at present almost impossible to search for such works. We strongly recommend that the CLA works with all interested parties to develop and agree a universal system of unique identifiers for all relevant works (not just books but articles and photos too). These could then be embedded in metadata which would allow for more accurate search and identification of use.

A plan to address the database, searchability, gaps and registration of works is needed and progress could be reported on when an ECL scheme is due for renewal.

Conclusion

Provided that the process for identifying, registering and opt-outing works is clear, workable and efficiently operated and that all reasonable measures are taken to ensure that unrepresented authors whose works have accrued fees under the licences are paid and that a plan is made for improved searchability, we support the CLA's application.

If you have any queries or need further information please contact Nicola Solomon:
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