

Draft secondary legislation to regulate collecting societies consultation – response from LACA

About LACA

The Libraries and Archives Copyright Alliance (LACA)¹ lobbies in the UK and Europe about copyright and related rights on behalf of its member organisations and UK users of copyright works through library, archive and information services.

Question 1: Does the proposed definition correctly capture the type of body on which we consulted? Is it too narrow or too broad? What, if any impact, will this definition have on the various entities that are currently operating in the collective licensing market? Please give reasons for your answer?

LACA believes that the proposed definition does correctly capture the type of body on which the Government consulted.

We welcome the fact that this definition will allow the Secretary of State to intervene and impose sanctions for non-compliance on non-members of the British Copyright Council, as well as on its members. However we are concerned that there are entities carrying out licensing activities that fall outside the scope of this definition, such as some commercial libraries and private agents. The expansion of the definition to bring such entities within its scope would be an important step towards promoting and ensuring good practice throughout the licensing system.

Question 2: Are there any other circumstances in which you think that the Secretary of State may need to exercise the power to appoint an Ombudsman and/or Code Reviewer? Please describe what these are and give reasons for your answer.

LACA cannot think of any other circumstances in which the Secretary of State may need to exercise the power to appoint an Ombudsman and/or Code Reviewer.

Question 3: The Secretary of State must leave at least 28 days for the relevant licensing body to adopt a code of practice once it has been directed to do so. Is this a sufficient period of time for the licensing body to adopt such a code? If so, please say why. If not, please explain why not and make a case for a different period of time.

Licensing bodies would have the most pertinent evidence of the feasibility of the proposed time period, but from the perspective of the user community a period of 28 days seems sufficient.

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Question 4: Do the steps described between the Direction in Regulation 3 to the Imposition of a Code of practice in Regulation 5 make it sufficiently clear what process must be followed? If not, please say where you think the gaps are and how they might be filled.

LACA thinks that the steps are sufficiently clear.

Question 5: What should be the principal features that determine whether a Code Reviewer and/or an Ombudsman is “suitably qualified” for their statutory roles?

Both the Ombudsman and Code Reviewer need to be independent, impartial and effective.

We welcome the proposal in 6 (2) to consult with persons representing the interests of licensees, as well as with the representatives of other bodies, before a Code Reviewer is appointed.

Question 6: Do you consider the proposals for applying a graduated scale to financial penalties will provide a proportionate response to reflect the respective severity of the breach? Do you consider the proposed difference in the quantum of the penalties is appropriate? If not, please explain your reasons.

While a graduated scale does provide a more proportionate response, we find it difficult to support financial penalties for non-compliance without assurances that costs will not be passed on to licensees.

Question 7: Do you think that the General Regulatory Chamber is the correct route of appeal? If not could you please say why and suggest an alternative appeal route.

Yes, we think that the General Regulatory Chamber is the correct route of appeal.

Question 8: (Asked on behalf of the Tribunal Procedure Committee):
If you believe that the standard rules of procedure need to be supplemented to deal with appeals arising from these regulations, please explain why this is the case.

No comment

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