

## **The Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014**

### **A Short Briefing by the Libraries and Archives Copyright Alliance (LACA)**

#### **The story so far**

The Libraries and Archives Copyright Alliance (LACA)<sup>1</sup> 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.

LACA is convened by CILIP (the Chartered Institute of Library and Information Professionals) and both LACA and CILIP have strongly supported the Government's reform to copyright laws, and we are delighted that the majority of these became law on 1 June 2014. We also supported the government in implementing primary legislation around Extended Collective Licensing (ECL) as part of the Enterprise and Regulatory Reform Act. However we are concerned that despite mass digitisation of this country's rich historical library and archive collections being cited by government in its impact assessment as one of the benefits of ECL, the structure of the secondary legislation currently in parliament will not allow this.

**We urge MPS and Peers to support the principle of Extended Collective Licensing but ask for a comprehensive review by Government of whether it has enabled any mass digitisation by libraries and archives within 12 months of its implementation.**

#### **Summary**

Germany, France and Scandinavia have enabling laws that allow libraries to digitise their older and commercially unavailable collections and put them on the web. LACA believe that the economic, cultural and social benefits of this speak for themselves. It will return some money to authors who currently receive none, enhance research and learning, and will democratise access to the collections of this country's great libraries.

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<sup>1</sup> [www.cilip.org.uk/laca](http://www.cilip.org.uk/laca)

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Unless authors opt-out digitised works will be available to anyone via the internet and not just to those who live in proximity to Britain's largest research libraries. As has been recently re-highlighted by the government, there is a massive imbalance between London and the regions; democratising access to research and learning irrespective of where citizens live should support this extremely important economic agenda.

## **The Issue**

### **Significant Investment for Insignificant Certainty**

A collecting society is only being allowed to operate an extended licence for a period of 5 years. Mass digitisation is a significant investment and therefore costly and very time consuming, often taking many years. Investment in such projects is unlikely to happen if the only business and legal certainty that a collecting society can give, because of the law, is for five years. We recognise that a licence may be extended after 5 years – but equally it may not be extended making the investment for such a short period of time no more than a gamble. Given the large benefits of mass digitisation we do not believe that it should be treated this way.

We note that in Germany laws allow the mass digitisation of pre 1966, commercially unavailable, text based works and give libraries the right to make digitised items available in perpetuity in return for a one off payment to collecting societies. (Works have to be removed if retrospectively requested by the author). Why can the UK not benefit via ECL from similar provisions?

### ***Authorisation to operate an Extended Collective Licensing Scheme***

*4. (6) An authorisation continues in force until the earlier of the expiration of **five years** from the date of the grant of the authorisation or until revocation or cancellation in accordance with regulation 14 or 15.*

### **Non-Members**

The reason that LACA and other UK libraries and universities supported primary legislation for Extended Collective Licensing was because if framed correctly, as is the case in Scandinavia where book digitisations are based on ECL, they will lawfully give access to huge collections that otherwise could never be digitised. The reason for this is that any digitisation project of any size will include not only members of collecting societies but non-members also. By libraries negotiating a licence fee for mass digitisation we reduce the amount of money we have to spend on searching for rights holders – money that instead is given via collecting societies to rightsholders. We also receive a licence that is 100% legally sound as it covers all the works digitised – members and non-members of collecting societies alike.

As highlighted above, a licence for 5 years will result in little if any digitisation of this country's rich and important historical collections – much of which is currently commercially unavailable. ECL could, if structured correctly, radically democratise access to knowledge and return royalties to authors where currently none are being received. These two goals are the absolute essence of copyright law – and yet the

way the SI is currently framed will, we believe, result in little if any digitisation of library and archive collections.

***Licensing of works or rights under an Extended Collective Licensing Scheme***

***17. (1) A relevant licensing body may only grant, under an Extended Collective Licensing Scheme, a licence in respect of a relevant work owned by a non-member right holder which—***

*(a) permits non-exclusive use of the relevant work;*

*(b) has effect as if granted by the right holder in the relevant work;*

***(c) terminates on or before the expiration, revocation or cancellation of the authorisation of the relevant licensing body;***

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