

Consultation on reducing the duration of copyright in unpublished (“2039”) works

Response from The Libraries and Archives Copyright Alliance (LACA)

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About LACA

The Libraries and Archives Copyright Alliance (LACA) is a UK umbrella group convened by CILIP (Chartered Institute of Library and Information Professionals). LACA brings together the UK’s major professional organisations and experts representing librarians and archivists to lobby in the UK and Europe about copyright issues which impact delivery of access to knowledge and information by libraries, archives and information services in the digital age¹.

LACA has submitted a large body of evidence to all the UK reviews of Intellectual Property and to EU consultations on copyright over the years to highlight and communicate to policy makers the deficiencies in the current copyright framework in relation to the organisations that it represents.

Free Our History campaign (www.cilip.org.uk/freeourhistory)

The Free Our History campaign calls on government to reduce the term of copyright protection in unpublished text based works from 2039 to the author’s lifetime plus 70 years to enable our museums, libraries and cultural organisations to display certain protected materials during the First World War Centenary.

Museums and libraries around the country that are being prevented from displaying powerful WW1 diaries and letters in their collections by the current law are being encouraged to display a blank page to highlight how it restricts and distorts how we tell UK history.

“We are asking everyone who cares about our history, everyone who cares about telling our collective story without restrictions, to join the campaign” – Diane Lees, Chair of the National Museum Directors’ Council and Director-General of Imperial War Museums.

¹ <http://www.cilip.org.uk/laca>

Led by LACA and The Chartered Institute of Library and Information Professionals (CILIP), the campaign is supported by Imperial War Museums, National Library of Scotland, University of Leeds, the Collections Trust and numerous other UK institutions. Since its launch in late October, the “Free our History” web page has been viewed almost 6000 times and over 1000 people have signed a petition backing the reform.² The campaign has been covered nationally and internationally, with reports in the Guardian, the Independent, National Law Review, Bloomberg, BBC Scotland and Radio New Zealand.³

Q1 Do you own any works subject to the 2039 rule or hold any in your collection? If so, how many?

LACA itself does not own any 2039 works or have a collection. However, LACA represents some large libraries and archives as well as organisations whose members work in libraries and archives throughout the UK, many of which hold many thousands of 2039 works. An individual producible item in an archive or in a library special collection (such as a box or volume) will rarely contain a single copyright work and could contain several hundred, in the form for instance of individual letters.

Q2 N/A

Q3 N/A

Q4 N/A

Q5. Having regard to the enabling power, do you agree with the Government's Proposed approach?

The Government's preferred solution, to replace the 2039 terms with the standard terms from commencement of the implementing regulations, is the right one. A transitional period will simply repeat the mistake made in 1988, since the 50-year term from 1989 was itself a transitional period. By applying the standard rules, the Government will bring the UK more closely into line with the rest of the EU. The purpose of the Term Directive was harmonisation of copyright term in Europe. The UK is obstructing that harmonisation, creating complications for UK academics and publishers as well as for librarians and archivists. The delay in implementing the removal of 2039 terms will already create significant anomalies under the Orphan Works Directive, since UK institutions will have to conduct and register diligent searches for rights owners in works that elsewhere in Europe are free for use.

Q6 If you consider that the copyright in affected works should expire a fixed period after commencement of the regulations, how long should that period be?

There should be no transitional period at all. If one is forced upon the Government it should be measured in months, not years.

² <https://www.change.org/p/lucy-neville-rolfe-free-our-history-reduce-the-term-of-copyright-protection-in-unpublished-texts-to-the-author-s-lifetime-plus-70-years>

³ <http://www.cilip.org.uk/cilip/about/cilip-news>

Q7 Are you aware of any other works subject to the 2039 rule because of the 1775 Act, and have you any objection to abolishing these rights?

No

Q8 Do you consider that this policy would encourage or facilitate the publication of previously unpublished works?

Undoubtedly. It will remove barriers and administrative burdens. Digitisation of library and archival materials is an expensive business, but one to which the entire library and archive community in the UK is committed. It is easier, though, to concentrate on materials that pose no costly copyright problems, with the result that desirable projects have been shelved. Doubts about the legality of publication will be removed. Digitisation projects, whether by archives themselves or by commercial partners, will proliferate because the need for expensive rights clearance will have been removed.

It is not merely online publication by libraries and archives that will be assisted. Currently, no library or archive in the UK may make and supply a copy of an unpublished literary, dramatic or musical work, even if it dates from the early 19th century and before, unless it first receives from the researcher a declaration. This declaration restricts the user to non-commercial research or private study. The librarian or archivist would himself or herself infringe by providing a copy in the knowledge that the purpose was publication. Thus, the publication by academics of centuries-old works will cease to be constrained when the 2039 terms are removed. At the same time, the administrative burden will be removed from librarians and archivists of requiring a declaration before making a copy even of a very old work.

Q9 Have you any plans to publish previously unpublished works following the implementation of this policy? If so, how many?

Apart from key dates associated with the First World War, such as the Battle of Jutland in 1916, and the Battle of the Somme in 1916, there are also a number of important anniversaries in the next few years, in which Libraries and Archives may consider appropriate publications and also display of original works. The protection of these until the end of the year 2039, will present unnecessary costs and risks. These include:

- Liberation of Auschwitz 1945 (70th Year Anniversary)
- Battle of Britain 1940 (75th Year Anniversary)
- Partition of Ireland 1920 (100th Anniversary)
- Votes for Women 1918 (100th Anniversary)
- Easter Uprising 1916 (100th Anniversary)
- Alice in Wonderland published (150th anniversary)
- Battle of Waterloo 1815 (200th Year anniversary)
- Launch of HMS Victory 1765 (250th Year Anniversary)
- Jacobite Rebellion 1715 (300th Year Anniversary)
- Battle of Agincourt 1415 (600th Year anniversary)
- Signing of the Magna Carta 1215 (800th Year Anniversary)

- Battle of Hastings 1066 (950th Year Anniversary)

Q10 N/A

Q11 Do you consider there to be any issues involving privacy or confidentiality in the content of works which were previously protected by copyright until 2039 but fall out of copyright as a result of this policy?

If there are real privacy and confidentiality issues they can be protected under the law of confidence. Data Protection is unlikely to be an issue. Any such issues will have to be faced in 25 years come what may.

Q12 Do you consider that transitional provisions are required in respect of works subject to the 2039 rule but published after 1989?

No. If publishers have issued editions of works that are affected by the 2029 rule they are likely in very many cases to have infringed by doing so. Anyone who has infringed should not be given special protection by the law. In any event, there is no good reason why a lawful publisher, who has already enjoyed some years of privileged use of very old material, should not be put in the same position as publishers of other works of the same age.

Q13 Should these regulations apply to unpublished sound recordings? (Please give reasons for your answer.)

Yes, clarity and consistency should prevail for these works as for others. Copyright in older sound recordings is hindering their availability through sound archives and libraries. Also, even though the library and archive exceptions have been applied to such works, their use by researchers is limited to non-commercial research and private study. The same barriers and burdens as were discussed under Q8 will be removed.

Given the Hargreaves Review and its implementation by government focussed on making access to copyright works format neutral, reflecting that research is format neutral, we would view the exclusion of sound recordings from these amendments as extremely inconsistent in terms of policy formation.

Q14 Are you the owner of relevant sound recordings, or the copyright in them? If so, are you able to share information about the present state of the market for unpublished sound recordings?

As stated above, LACA itself does not own any 2039 works or have a collection. However, we refer you to the response made by our colleagues at the British Library. A significant proportion of the national sound archive is unpublished sound recordings. The British Library believes, from its experience as the national sound archive, that the majority of unpublished sound recordings that remain unpublished for a length of time are unlikely ever to be published. The fact that a recording remains unpublished for a long time usually in itself indicates there is very little market value in it.

Q15 Do you agree that the likely impact of this policy in respect of sound recordings is minimal (whether as a benefit or as a cost)?

No, not entirely. It is not true that all sound recordings are of literary and musical works. They may, for instance, be of birdsong or steam trains. Also, sound recordings can be of actors reading 19th century poetry or Shakespeare's plays or of orchestras playing 18th century music, works that are not protected by copyright.

The impact will be a considerable reduction in costs to libraries and archives trying to clear rights for academic publication, and cost reduction for academics and lifelong learners not having to get physical on site access by travelling to sound archives and libraries.

We believe there will be no impact on revenue to copyright holders or publishers given the nature and age of unpublished sound recordings.

Naomi Korn
Chair
Libraries and Archives Copyright Alliance
naomi@naomikorn.com