

**Response from IAML (UK&Irl) to the consultation on reducing the duration of copyright in unpublished (“2039”) works in accordance with the section 170(2) of the Copyright, Designs and Patents Act 1988**

**About IAML (UK & Irl)**

IAML (UK&Irl) is the UK and Ireland branch of the International Association of Music Libraries, Archives and Documentation Centres. It exists to represent and promote the interests of music librarians and libraries, music-related archives and music information providers throughout the United Kingdom and Ireland.

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

IAML (UK&Irl) itself doesn't own any works subject to the 2039 rule, however it represents over 100 music libraries in the UK across a variety of sectors, which between them will hold many thousands of 2039 works. This will range from a handful of music manuscripts in some libraries, to enormous collections in others. In many instances a single archival fond could constitute several hundred individual items subject to the 2039 rule e.g. collections of composers letters.

**Q2 If you hold copyright works in your collection, please describe the rights clearance process at your institution, along with cost estimates if possible.**

N/A

**Q3 Does the 2039 rule impact on this process, and if so, how?**

N/A

**Q4 If you are the copyright owner of a work subject to the 2039 rule, do you agree with this policy as outlined in this consultation document?**

N/A

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

Yes, to be implemented as soon as possible.

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

We believe that copyright in affected works should expire immediately on commencement of the regulations. There is no benefit to a transitional period, which, among other things, would prolong the anomaly created through the implementation of the EU Orphan Works Directive in UK legislation in October 2014, whereby, diligent searches for 2039 works are having to be registered despite the fact that they are not in copyright in other EU countries.

**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?**

Certainly. Many libraries engage in digitization projects, but difficulties in clearing copyright mean that projects to digitize materials which might otherwise have been a priority (e.g. historic manuscripts) are often shelved in favour of alternative projects without these complications.

It is also the case that repealing the 2039 rule would mean that library users will be able to request that libraries supply them with a copy of historic unpublished works without having to declare that the copy is for the purpose of non-commercial research or private study. Thus this will also stimulate the publication of unpublished works by academics.

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

N/A

**Q10 Are you affected by or aware of a situation where copyright works have been deposited with a third party on the belief that the 2039 provisions would remain in place to protect the work, and if so what is the likely impact to you of the policy?**

No.

**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, these same issues would anyway have arisen in 2039.

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

No. If works subject to the 2039 rule were published after 1989 this will either have happened with the permission of the rights holder (in which case any applicable licence will have been dealt with at the time of publication) or else the publication will have been an infringing act. If the latter, the law shouldn't provide special protection for this circumstance.

**Q13 Should these regulations apply to unpublished sound recordings?**

Yes. The recent changes in UK copyright legislation following on from the Hargreaves review have sought to harmonise legislation across formats as far as possible, and this should be no exception. Section 43 of the Copyright, Designs and Patents Act now allows librarians or archivists to copy unpublished sound recordings for users, but this is limited to non-commercial research and private study. Applying these regulations to unpublished sound recordings would remove a barrier to the use of older sound recordings and their commercial publication.

**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?**

Some member libraries of IAML (UK&Irl) hold unpublished sound recordings. Our opinion is that, for the most part, unpublished sound recordings held in libraries and archives will primarily be of research value, and are likely to have little commercial market value.

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

We think an erroneous assumption has been made in saying that “most sound recordings falling within the 2039 rule... will contain works which will remain protected by copyright in the literary and musical works under the general rule”. This fails to take account of a significant quantity of material comprising “modern” performances of works which could be centuries old (e.g. Mozart symphonies) whereby the musical work will not be in copyright. It is also worth noting that sound archives include all manner of material which may not be a literary or musical work (e.g. sounds of nature).

The impact on libraries and archives of this policy will be to significantly reduce the costs associated with rights clearance.