**Arts Council England**

**Response to the consultation on reducing the duration of copyright in unpublished (“2039”) works in accordance with section 170(2) of the Copyright, Designs and Patents Act 1988**

**12th December 2014**

Arts Council England is the national development agency for the arts, museums and libraries in England. Our mission is 'great art and culture for everyone' and we work to achieve this by championing, developing and investing in arts and cultural experiences that enrich people's lives.

Between 2011 and 2015, we will invest £1.4 billion of public money from government and an estimated £1 billion from the National Lottery in order to make the arts, and the wider culture of museums and libraries, an integral part of everyday public life, accessible to all, and understood as essential to the national economy and to the health and happiness of society.

**Our response**

**Q1-4. Do you own any works subject to the 2039 rule or hold any in your collection? If so, how many?**The Arts Council collection consists only of published works. The 2039 rule does not impact on our rights clearance process as a result. Where we need to work within copyright guidelines (e.g. around supplying material for a researcher) there is a negligible cost, estimated as similar to one hour of work per week.

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

In our strategy *Great art and Culture for everyone* we state that intellectual property rights should be considered carefully to ensure they work for our sector, not against it[[1]](#footnote-1). We recognise that copyright exists ultimately to better serve the public with access to great culture. Copyright law should therefore only extend as far as necessary to achieve this aim. This is a timely and much-desired reform. This change will have significant benefit for museums, galleries, archives and libraries that will, for the first time, be free to publish, exhibit and digitise vast quantities of unpublished works of national importance for public benefit without existing time-consuming rights clearing procedures.

This change will ensure that the UK’s museums, galleries, libraries and archives are as competitive as their European counterparts. This move to harmonise the copyright legislation surrounding unpublished works will lead to an almost immediate increase[[2]](#footnote-2) in the publication and dissemination of works of immense cultural, social and economic value.

One of our five goals in *Great art and culture for everyone* is to ensure that ‘everyone has the opportunity to experience and be inspired by the arts, museums and libraries’[[3]](#footnote-3). We firmly believe that this reform will open up a wealth of unseen material that could be enjoyed immediately by audiences. This is particularly important in light of forthcoming significant centenaries and bicentenaries, including WW1 (as noted in the introduction to this consultation), the Battle of Waterloo and the introduction of the vote for women.

There is significant value in being able to increase the physical and digital offer of England’s museums, archives, galleries and libraries. We strongly believe that digitisation projects, whether by institutions or by commercial partners, will proliferate because of reduced administrative demands.

We welcome this effort to standardise the copyright terms across published and unpublished works. We expect that this standardisation will lead to a coherent and better understood copyright situation where museum, gallery, archive and library practitioners run less of a risk of accidentally infringing outmoded copyright legislation.

**We note, however, that there is a significant risk that this legislative reform will not be made before the forthcoming purdah period. We have heard this concern from across the sector and so we urge the Intellectual Property Office to do all in their power to ensure that the reform is pushed through the current Parliament.**

**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?**

This is a much desired reform across the museums, libraries, archives and galleries sectors. We therefore recommend that this change is implemented immediately or with only a minimum period of transition.

**Q. 7 -12 N/A**

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

We believe that these changes should apply to unpublished sound recordings. There is no rationale to have a special case in place for sound recordings, particularly when the copyright contained in them (for example, literary rights) will now be made accessible by the removal of the 2039 ruling.

We believe there is a small risk that the change could undermine the supplementary payments for session musicians (the ‘session fund’) that accompanied the extension of the term of copyright in sound recordings from 50 to 70 years. After the change is implemented, unpublished recordings could be released that would displace use of existing recordings of the same work from which session musicians receive income. However, we are confident that this nominal risk is greatly outweighed by the positive impact of opening up an unheard archive of creative material to inspire new and existing generations of musicians. The British Library, for example, suggests that their earliest sound recording that could be made freely accessible as a result of this change dates from 1874.

We are confident that existing copyright (e.g. for music performance rights and literary rights) will protect content creators featured in unpublished sound recordings and so do not recommend a period of transition for this reform.

**Q.14-15 N/A**

**For more information please contact:**

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1. <http://www.artscouncil.org.uk/media/uploads/Great_art_and_culture_for_everyone.pdf> pg 16 [↑](#footnote-ref-1)
2. Depending on when the reform was implemented [↑](#footnote-ref-2)
3. <http://www.artscouncil.org.uk/media/uploads/Great_art_and_culture_for_everyone.pdf> pg 46 [↑](#footnote-ref-3)