UK: Extended Collective Licensing

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The scheme is intended to deliver a number of benefits. The Hargreaves Review recommended the implementation of ECL in the UK in 2011, noting that a streamlined licensing regime would be "good for creators by providing legal certainty, good for creators because it achieves remuneration, and good for consumers because it reduces access to works."

Instead of engaging in time-consuming rights clearance, users will be able to obtain free, non-exclusive licenses directly from collecting societies to access a range of works, and rightsholders will be assured of remuneration for their works.

Under the auspices of the UK scheme, permission to operate an ECL scheme is granted subject to safeguards. The collecting society must be able to demonstrate "significant" representation for the particular type of work which is to be licensed, and must show the level of representation will be maintained through a Code of Practice. This sets out the requirements for representing rightsholders, including how the rightsholders are to be identified, and the level of representation they will be able to demonstrate over the duration of the scheme.

Supporters of ECL include cultural heritage organisations including the Wellcome Trust, British library, and British Film Institute, although it is important to note that with the legislation in its current form, archives, museums and libraries may rely on ECL to secure coverage for particular types of material. For example, archives collect large volumes of copyright works but these are works for which collecting societies cannot claim any representation. Correspondingly, the trade union Equity believes ECL may allow a small number of unions to negotiate a blanket license for their members. The scheme must ensure that any such license is fair and reasonable. Some levels of representation required for a collecting society to successfully apply for ECL scheme authorization is the evidence required, and the review process for the renewal of ECL scheme authorizations, making sure that the opt-out option for non-members is viable, clarifying how unclaimed fees can be handled and the proposed three-year variation of the scheme exploration period, which some licensees worry may be too short.

The UK Intellectual Property Office (UKIPO) conducted a consultation process to develop the legislation during 2013, and a number of issues have been raised about the scheme by rightsholders, collecting societies and potential licensees. The main concerns expressed included determining and evidencing the threshold of representation required for a collecting society to successfully apply for ECL scheme authorization, the evidence required, and the review process for the renewal of ECL scheme authorizations. ECL is based on the idea that the "educational and cultural benefit" of the scheme were primary drivers for the legislation.

From the consultation, it would appear that in this case, the primary drivers for the legislation are regulating the collecting societies, and protecting and ensuring remuneration for rightsholders. It is also important to note that ECL schemes have the potential to simplify the process for users, allowing for a more efficient and cost-effective process for users seeking to use works. The main concerns expressed included determining and evidencing the threshold of representation required for a collecting society to successfully apply for ECL scheme authorization, the evidence required, and the review process for the renewal of ECL scheme authorizations.