



Copyright in Europe Intellectual Property Office Call for Views

The Alliance for Intellectual Property (the Alliance) welcomes the opportunity to help the Intellectual Property Office develop its thinking as to what the UK's approach should be to the debate on copyright policy taking place at European level.

As individual members of the Alliance are contributing to the Licenses for Europe process via their membership of the working groups, they are better placed to comment on the progress being made in these forums and the specific questions posed in the Call for Views document. Our comments, as requested by the IPO in the roundtable table meeting on 9th September 2013, are focused on 'horizon-scanning'; the wider debate and future direction of EU copyright policy and what position the UK should take in that debate to ensure IP rights can be nurtured and developed.

Our main recommendation is that the UK Government maintains a focus on activity and initiatives designed to reduce online copyright infringement. The devaluing of creative content because of unauthorised distribution on the internet remains a huge and unresolved issue. The creative industries are addressing this using a variety of methods from the development of compelling legal services and easier licensing, to education and enforcement activity. We urge policymakers in the UK and EU to support these activities as the best way to find a lasting solution to this question.

Opening remarks

We welcome the request for views but would also welcome greater clarity as to how it will impact on the existing support the Government has expressed for the reform of European copyright policy proposed in the Hargreaves Report.

Professor Hargreaves recommended that "The UK should also promote at EU level an exception to support text and data analytics. The UK should give a lead at EU level to develop a further copyright exception designed to build into the EU framework adaptability of works in ways which do not directly trade on the underlying creative and expressive purpose of the work"¹.

The Government was most fulsome in its acceptance of these recommendations stating that "In the Review's judgment and the Government's there is a need for a wider set of exceptions at EU level" and that "The Government will aim to secure further flexibilities at EU level that enable greater adaptability to new technologies including use of data for research"².

As successful implementation of these recommendations are dependent on the Copyright Directive being reopened (something we hear the UK has already been pressing for in Brussels) we would hope that the outcome of this consultation has not been predetermined and the Government is willing to reconsider its existing support for reform at an EU level.

¹ <http://www.ipo.gov.uk/ipreview-finalreport.pdf> p.51

² <http://www.ipo.gov.uk/ipresponse-full.pdf>

We would also hope that the Government undertakes impact assessments of any proposals for reform so that the economic impact on the UK of any proposals can be properly assessed³.

We welcomed the comments made by the UK Representative at the EU Competitiveness Council in May that the UK needs to better understand the consequences of proposals for reform, that stronger evidence of specific benefits stemming from future changes to copyright was required and that any changes should be tech neutral and not undermine necessary protection for creators⁴.

Working for UK businesses and creators

The position the UK takes in the European copyright debate should be based on a simple logic. Proposals from other member states and the Commission must be judged against whether they are of benefit to UK businesses and creators or whether they would damage our creative industries and those who depend on copyright to make a living. Proactively, the UK should shamelessly seek to shape EU copyright policy in a way which benefits UK copyright businesses.

The UK's creative industries are incredibly important to the country in terms of delivering economic growth, providing and creating jobs, and supporting a vibrant cultural sector. They are worth £36 billion a year and are responsible for employing 1.5 million people in the UK. The Department for Business, Innovation and Skills list them as the third biggest export industry for the UK.

In addition:

- The UK Games Industry, which is the largest in Europe, is responsible for creating some of the most recognisable games in the world, including the Tomb Raider and Grand Theft Auto series, Moshi Monsters, and Football Manager.⁵
- In 2011, UK took 17% of all global cinema takings, and is the second largest exporter of television in the world by hours behind the US.⁶ Film & television tourism is worth an estimated £1 billion a year to the UK.⁷
- The UK is home to some of the world's biggest publishing companies, representing some of the most well-known creating writing talent in the world. The estimated value of the entire UK publishing industry is £19 billion⁸, with 40% of book sales coming from exports.⁹
- The Premier League is the one of the most successful sporting leagues in the world, with a global television audience of 4.7 billion.¹⁰
- The UK Music industry generates around £4 billion globally and employs 130,000 people every year.¹¹ It is the largest global exporter of music behind the United States.¹²

³ The Hargreaves Review contains no evidence on the cost or benefits to the UK of either recommendation. They are '**not quantified**'

⁴ <http://video.consilium.europa.eu/webcast.aspx?ticket=775-979-12982>

⁵ UK Trade and Investment – 'Video Games'

<http://www.ukti.gov.uk/export/sectors/creativemedia/videogames.html>

⁶ British Film Institute Statistical Yearbook 2012 <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-statistical-yearbook-2012.pdf>

⁷ BFI & Oxford Economics – 'The Economic Impact of the UK Film Industry'

http://industry.bfi.org.uk/media/pdf/j/i/The_Economic_Impact_of_the_UK_Film_Industry_-_June_2010.pdf

⁸ UK Trade and Investment – 'Publishing'

<http://www.ukti.gov.uk/export/sectors/creativemedia/item/281480.html>

⁹ Publishers Association – Statistics Yearbook 2012

¹⁰ Premier League - <http://www.premierleague.com/en-gb/about/the-worlds-most-watched-league.html>

¹¹ UK Music <http://www.ukmusic.org/policy>

¹² BPI Annual Yearbook 2011

Simply put, we in the UK excel at creating high quality creative content which is sought after globally. This level of success is not accidental and should not be taken for granted. That global success story relies on a strong copyright framework and its enforcement. Weakening of the copyright framework threatens that success and must only be undertaken following proper impact assessments.

Former Minister and UK Music Ambassador Sion Simon recently equated a situation where the UK did not back these industries as being as bizarre as a German government failing to back the German automotive industry. Others in Europe may well wish to see a more relaxed copyright framework, one which sees the ability of creators to control how their work is used reduced with them required to allow others to use and monetise their creativity and investment for no payment, but these are often countries without a strong content sector to protect.

Investment in creative businesses requires a stable legal framework which allows rights to be protected, providing for a return on the investment. Business and creators flourish in countries which provide that stability and protection. The UK Government priority should be to ensure that the UK, and Europe, is a market in which creators thrive.

Working for consumers

The debate around copyright reform in Europe has become synonymous with the debate around completion of the Digital Single Market. Reform of EU copyright law has been cast as necessary to achieving this.

However, as demonstrated by initiatives such as the UK's Copyright Hub, the Global Repertoire Database and UltraViolet the market is working faster to address changing business and consumer needs than any legislation possibly could. We understand and agree with the desire for the EU to have a copyright framework which is flexible and technologically neutral but do not see anything in the current framework which prevents that from occurring.

Problems which are cited as reasons to reopen the Directive, and which are supposedly hindering a Digital Single Market, need to be carefully analysed to assess whether non-legislative solutions can be found that are effective whilst not endangering investment by creating uncertainty, and indeed whether they are actually flaws in the copyright framework at all. The majority of issues that are attributed to copyright can be solved through changes in contract licensing terms or a greater appreciation of cultural differences. For example, for industry sectors where it makes sense, financially and culturally, a digital single market already exists. The music industry license pan-European, and even global, services, with companies like Spotify, Deezer or iTunes allowing their customers access to their music outside their home countries. As the BPI has highlighted, if any problems exist they lie more in the different, and often high, mobile roaming costs associated with accessing this content in a different member state. This is not a copyright issue, neither are issues around pricing. People often advocate reform of copyright in the belief this will result in reduced prices when in reality they simply do not want to pay the price the owner of the copyright has placed on their work. This argument in particular should be approached with caution.

Sports broadcasters and the film and TV industry do not always license in such a pan-European way for a number of non-copyright-related reasons. Member states have heritage in different sports and therefore it would not make commercial sense for, for example, the England and Wales Cricket Board to be required to sell a pan-European licence.

Even for football, pan-European licensing doesn't necessarily work. In past calls for tender, the Premier League offered a pan-European licence but has never received a single bid. If the Premier

League was legally required to only sell in such a manner numerous single country broadcasters could not afford to buy this leading UK content, leading to a reduction in consumer choice in these countries and most likely to an increase in price for many consumers (at present the Premier League is able to sell rights to certain matches to a broadcaster in a country which has a small potential audience for a lot less than they sell the rights to, say, Sky or BT in the UK).

Film and television programmes have similar cultural differences across Europe resulting in different audience levels dependent on the country and the film or TV show. A single European licence for such content would simply not work and would not be in the consumer's interest.

How the Commission could assist copyright industries

The Call for Views refers to the European Commission's communication 'A Single Market for Intellectual Property' and references certain proposals and initiatives that are already underway. These include the Licenses for Europe Dialogue, the Orphan Works and Collective Rights Management Directives and the review into private copying levies. While these are all completed or near completion there are other, non-legislative, initiatives that the Commission could usefully undertake which would enhance the Digital Single Market and support EU consumers, creators and businesses.

- **Enforcement**

The ease with which people can find and access illegal content online remains a huge problem for rights holders and legal online services. Enforcement issues are raised within the EU's Communication and we believe there is a valuable role for the EU to play in ensuring the online environment is one which is safe for consumers and fair for businesses. Consumers continue to be directed to illegal services via search results, are presented with advertising for well-known companies on these sites and, where relevant, able to pay for counterfeit and pirated material using their credit card or other online payment system. The Commission should facilitate the creation of frameworks under which all intermediaries have a responsibility, and ensure that all players in the digital economy have a responsibility in making the online environment safe and fair.

- **Trade relations**

The EU negotiates many trade agreements with other countries on behalf of its Members. Insisting that each of these Agreements includes a statement committing those countries to ensuring they have in place IP regimes which nurture and develop rights would deliver significant benefits to the UK and all Member States.

- **Promotion of Hub initiatives**

One of the positive outcomes of the Hargreaves Review has been the creation of the Copyright Hub. It is a gateway to information about copyright in the UK pointing interested parties in the right direction whether they want to learn about copyright, get permission to use somebody else's work or find out about protecting their work. This initiative has the potential to be rolled out as best practice across the EU and we urge the Commission to monitor its progress and investigate whether there are similar, non-legislative, solutions available.

ABOUT THE ALLIANCE

Established in 1998, the Alliance for Intellectual Property is a UK-based coalition of 24 trade associations concerned with ensuring that intellectual property rights are valued in the UK and that a legislative regime exists which enables the value and contribution of these rights to be fully realised. Our members include representatives of the audiovisual, music, games and business software, and sports industries, branded manufactured goods, publishers, retailers and designers.

ALLIANCE MEMBERS

Anti-Copying in Design
Anti-Counterfeiting Group
Association of Learned and Professional Society Publishers
Authors' Licensing and Collecting Society
British Brands Group
BPI (British Recorded Music Industry)
British Video Association
Business Software Alliance
Cinema Exhibitors Association
Copyright Licensing Agency
Design and Artists Copyright Society
Educational Recording Agency
Entertainment Retailers Association
Federation Against Copyright Theft
Film Distributors Association
Motion Picture Association
Premier League
PRS for Music
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Publishers Licensing Society
UK Interactive Entertainment
UK Music

Supporters:

British Allied Trades Federation
Video Standards Council

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