



**ALLIANCE**  
FOR INTELLECTUAL PROPERTY

## **Culture, Media and Sport Select Committee Inquiry into Support for the Creative Economy**

### **Submission from the Alliance for Intellectual Property**

The Alliance for Intellectual Property (the new name for the Alliance Against IP Theft) warmly welcomes the Culture, Media and Sport Select Committee's inquiry into support for the creative economy.

The creative industries and businesses which depend on IP rights are major contributors to and drivers of economic growth, accounting for significant investment in the UK. Recent Government figures suggest that the creative industries represent £36 billion GVA to the UK economy (Department of Culture, Media and Sport, *Creative Industries Economic Estimates*, 2011), with IP serving as the basis of the £16 billion invested in the UK economy building brands (NESTA, *Driving Economic Growth*, 2011).

As governments look for ways in which to maximise economic growth, they will increasingly look at sectors which are proven to support jobs and growth, such as creative, technological and science, design and manufacturing industries, which rely on IP rights. To achieve growth in these sectors there needs to be a greater understanding of the economics behind IP, how it drives investment and why it needs to be protected.

#### **1. How best to develop the legacy from the Olympics and Paralympics of the display of UK talent in the creative industries in both Opening and Closing ceremonies and more generally in the design of the Games**

1.1 This summer saw the UK cement its position on the world stage as leaders in sporting excellence and creative talent. Alongside the success of Team GB and Paralympics GB, the opening and closing ceremonies of both games provided a global showcase for the UK's rich cultural heritage and the development of new creative talent.

1.2 Being able to demonstrate that the UK had robust measures in place to protect the Olympic brand and sponsors' investments was also crucial to London's success. The UK Government even went so far as to pass special legislation giving law enforcement additional powers and responsibilities in relationship to protecting the IP which surrounded the Games.

1.3 Therefore, the role IP played in first delivering the Games to London and then contributing to its success must not be forgotten.

1.4 This commitment to protecting IP should not be lost. There should be an ongoing duty to tackle IP theft via increased resources for trading standards, greater acknowledgement within the police of links between IP theft and other criminal activity, and a commitment to ensuring UK IP can be protected internationally. In addition, there should be greater acknowledgement from the Treasury of its importance, particularly on the back of the 2012 Q3 GDP figures released on 25th October which showed growth primarily linked to the Olympics.

**2. Barriers to growth in the creative industries – such as difficulties in accessing private finance – and the ways in which Government policy should address them. Whether lack of co-ordination between government departments inhibits this sector**

2.1 There are many different levers that can promote growth in the creative industries, such as the availability of capital, tax incentives, the size of the domestic market, employment legislation and broadband speeds. None of these will have an impact, however, unless the underlying ability to monetise creativity is present. A strong commitment to promoting and protecting IP is vital across all of the creative industries.

2.2 The Alliance believes that a lack of co-ordination amongst Government departments in relation to IP is inhibiting growth by creating uncertainty for those wishing to invest in the creative industries.

2.3 There is also a lack of consistency with regards to what sectors are defined as being part of the 'creative industries' which in our view leads to confusion as to the contribution such industries make. In addition its limited application to sectors such as film, music, and video games means that the contribution made by creative sectors such as design and branded goods is under represented and ignored in policy deliberations.

2.4 While the Alliance seeks to engage with a variety of government departments and agencies, it is of particular disappointment that we have experienced difficulty in focusing the Treasury on IP, its contribution to the economy and its actual and potential role in delivering economic growth. We believe this is because there is a culture within government which sees IP policy as the sole responsibility of the Intellectual Property Office and the Minister for Intellectual Property. This is very concerning, particularly in light of the Chief Executive of the IPO's comments to the All Party Group on IP on the 21<sup>st</sup> May 2012. When pressed by Parliamentarians on what he saw the IPO's role as being, John Alty refused to be drawn on whether its role included championing IP and those who rely on it to make a living. This means that there is no-one within government looking at how these incredibly successful businesses can be protected and helped to grow.

2.5 This silo approach to policy making can also lead to implementation log-jams and inconsistencies in policy development and focus. For example, one area in which the IPO has been making good progress is in relation to design rights and the inconsistency between the levels of protection afforded to unregistered design rights as opposed to that enjoyed by copyright. However, a sticking point in addressing this is the Ministry of Justice who refuse to countenance the introduction of similar criminal offences for unregistered design infringement as exist for copyright.

2.6 This inconsistency is further evidenced within BIS itself. While one part of the department is leading on cyber security issues and concerned with the potential for foreign competitors to steal UK ideas and innovation – UK IP, another part (the IPO) is focused on reducing the control rights holders have over who accesses its IP, how and when.

2.6 Greater co-ordination between Government departments, a Minister who was able to act as a true 'IP Champion' and a Cabinet Committee on IP would go a long way to ensuring the UK's IP framework properly supported UK businesses, enabling them to grow domestically and

internationally. The need for such a ‘champion’ is supported by the recent report from the All Party IP Group’s inquiry into the Role of Government in Promoting and Protecting IP<sup>1</sup>.

### **3. The impact on the creative industries of the Independent Hargreaves Review of Intellectual Property and Growth and the Government’s Response to it**

3.1 The Alliance was disappointed at the Hargreaves Review’s starting assumption that the current intellectual property framework was a barrier to growth. Not only was this assertion not challenged by the Review Team but it led to other potential barriers receiving no consideration. The Review and the Government’s response have caused great uncertainty within the creative industries which can only be damaging to those looking to invest in them.

3.2 With regards to the specific recommendations, we need to separate those that relate to expanding copyright exceptions from those which dealt with making licensing, and the protection of rights, easier. With regards to the latter, Hargreaves’ recommendations have been useful. We are pleased that the concept of a Digital Copyright Exchange to facilitate licensing of copyright material is now, following the work undertaken by Richard Hooper, turning into a reality. This is supported by Alliance members. In addition, we welcome the introduction of a Small Claims Track which will make it easier and cheaper for smaller rights holders to protect their rights.

3.3 However, when attention is turned to the recommendation that the UK ‘max out’ the exceptions permitted under EU law, and even press for new exceptions in Brussels, we must firmly distance ourselves from Professor Hargreaves and the Government.

3.4 Given the flimsy nature of the economic justification for what was proposed in Hargreaves, we were surprised at the speed at which the Government accepted all the recommendation and disappointed that a more robust evaluation was not undertaken prior to the Copyright Consultation being issued.

3.5 We are strongly of the opinion that the impact assessments conducted by the Hargreaves Review and those which accompanied the Government’s Copyright Consultation are flawed. This view has been supported by Oxford Economics who, in their analysis of these assessments, identified three main issues, which, in their view, provide serious questions that need to be asked of the proposed recommendations:

1. A balanced economic framework must take into account the interests of both the users of goods and services (the “consumer”) and the producers of goods and services (the “producer”). Oxford Economics identifies that while much attention has been spent understanding and quantifying consumer surplus (the benefit those who use the good or service derive from it), little effort has been put into a similar understanding and evaluation of producer surplus. It has mistakenly been assumed that taking from the producer and giving to the user a) does not affect the producer surplus and the economic ‘benefit’ this contributes and b) will automatically lead to an increase in economic output. It has not been taken into account that an increase in consumer surplus may not lead to increased economic activity.
2. There is a distinct lack of neutrality in the application of the IAs with the tone and emphasis of the Consultation appearing strongly inclined to overturning the existing status quo.

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<sup>1</sup><http://www.allpartyipgroup.org.uk/pdfs/The%20role%20of%20Government%20in%20promoting%20and%20protecting%20IP.pdf>

Oxford Economics states that while arguments in favour of changing existing legislation are often given lengthy consideration, arguments for the preservation of the status quo are typically given only short discussion. There is no intrinsic reason why this should be the case which leads to serious questions over the neutrality of the Consultation exercise. If the economic benefits and costs cannot be quantified or justified for policy reasons then any proposal should be in favour of retaining the status quo.

3. Connected to the above point is the assumption that the current framework is somehow economically inefficient. In fact, this appears to be the starting point of the Consultation and, according to Oxford Economics, is a fundamental flaw. The fact that the economic inefficiency of current copyright law is *presumed* as opposed to *demonstrated* led to inaccurate assumptions being applied.

Please find comments on a number of the specific recommendations in Appendix 1.

3.6 Overall, it has been difficult to overcome the feeling that the Government is more interested in creating policy which will be of benefit to US based global tech companies than that which is fundamental to UK creators and businesses.

#### **4. The impact of the failure, as yet to implement the Digital Economy Act, which was intended to strengthen copyright enforcement**

4.1 The length of time it is taking to implement even the Initial Obligations section of the Digital Economy Act is a cause of concern. Parliament identified in 2010 that measures needed to be put in place to alert and educate people on copyright infringement. The current timetable does not see even letters being sent to those people whose accounts have been identified as being used to conduct illegal activity until 2014. Parliament cannot have envisaged that it would have taken so long for their will to be acted on.

4.2 The impact of the failure to implement the Act is clear – illegal filesharing is continuing and a growing number of sectors are affected. In addition, the fact that we are still over a year away from letters being sent means a huge opportunity to communicate and educate about the harm such activity inflicts is being missed.

#### **5. The impact of proposals to change copyright law without recourse to primary legislation (under the Enterprise and Regulatory Reform Bill currently before Parliament)**

5.1 The Alliance acknowledges the role which secondary legislation has to play in the UK legislative process. However, we were surprised at the recent inclusion of Clause 66 (originally Clause 56) of the Enterprise and Regulatory Reform Bill. While we supported the stated intent behind the Clause, it was originally too widely drafted. We are pleased that the Government listened to our concerns and has now re-drafted this Clause.

5.2 However, our support should not be read as support for the introduction via secondary legislation of the exceptions proposed in the recent Copyright Consultation. Given the potential negative consequences of these proposals, they should ideally be introduced via primary legislation allowing parliamentarians' full and proper scrutiny. **At the very least, they must be accompanied by individual impact assessment and introduced in separate SIs.** Parliamentarians should not be presented with such impactful proposals 'bundled' in a 'take all or leave all' fashion.

**6. The extent to which taxation supports the growth of the creative economy including whether it would be desirable to extend the tax reliefs target and certain sectors in the 2012 Budget**

6.1 Please see the individual response from Alliance members.

**7. Ways to establish a string skills base to support the creative economy, including the role of further and higher education in this**

7.1 Please see the individual responses from Alliance members.

**8. The importance of “clusters” and “hubs” in facilitating innovation and growth in the creative sector. Whether there is too much focus on hubs at the expense of encouraging a greater geographical spread of companies through effective universal communication**

8.1 Evidence points to the fact that the ability of like-minded industries to group in ‘clusters’ or ‘hubs’ facilitates innovation and growth. From Soho in London, home to world-leading businesses in video and film post-production facilitated by investment in a super-fast broadband network, to Dundee in Scotland where computer software developers have coalesced and Cambridge, home to world-leading technology companies, the UK is home to a number of such ‘hubs’. Delegates at the Conservative Party Conference in October in Birmingham visited Fazeley Studios, a creative hub, and heard directly from businesses based there how they found working in close proximity to other companies beneficial.

8.2 From this, we do not believe there has been too-much focus on hubs although we have been puzzled with the Government’s obsession with creating a Silicon Valley in the UK in East London – ‘Silicon Roundabout’ – and question, given the natural development of such hubs, Government intervention is actually required.

**9. The work of the Creative Industries Council and other public bodies responsible for supporting the sector**

9.1 The Alliance supports the Creative Industries Council and we view it as a useful and important vehicle through which the creative industries can come together and engage directly with Ministers on issue affecting a range of sectors.

However, there is a feeling amongst members that it has perhaps not been as useful as it could be. To address this we recommend that:

1. The frequency of meetings is increased. Having only two meetings per year means there are large gaps between them. While working groups do meet more frequently, these are topic specific and, therefore, the opportunities to discuss broader issues are few and far between.
2. IP and copyright policy issues are brought within the remit of the CIC. These are the biggest concerns facing the creative industries, yet discussion on this was ruled out at the first meeting. It has meant that the whole debate around last year’s Hargreaves Review and Copyright Consultation was perversely not addressed at the CIC. These issues should have a central, standing place on the agenda.

9.2 Some Alliance members have also questioned the membership of the CIC – namely the inclusion of companies such as Google and Amazon. It is questionable whether these organisations are ‘creative industries’. They do not generate creative / copyright content and,

on many policy issues, Google in particular is opposed to measures which would support the UK's creative businesses.

Please contact Susie Winter if you require further information.

[Susie@allianceforip.co.uk](mailto:Susie@allianceforip.co.uk)

020 7803 1324

## **About the Alliance**

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Established in 1998, the Alliance for Intellectual Property is a UK-based coalition of trade associations concerned with ensuring that intellectual property rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected. With a combined turnover of over £250 billion, our members include representatives of the audiovisual, music, games and business software, and sports industries, branded manufactured goods, publishers, retailers and designers.

## **Alliance members**

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Anti-Copying in Design  
Anti-Counterfeiting Group  
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  
Publishers Association  
Publishers Licensing Society  
UK Interactive Entertainment  
UK Music

### **Supporters:**

British Jewellery, Giftware & Finishing Federation  
Video Standards Council

## APPENDIX 1

### Comments on Specific Recommendations

#### ***Private copying***

The Hargreaves Review drew attention to the fact that most people are routinely transferring the content of the CDs onto portable devices – something which is technically unlawful in most instances. While this has never been a real world problems – in that no-one has ever had legal action taken against them for such an act – we acknowledge that having a law in place which no-one abides by is not an ideal state of affairs (although the level of which this activity is prevalent across non-music content is unclear and not examined in any great detail in either set of Impact Assessments).

Where Hargreaves, and subsequently the Government, sees the solution purely in the heavy hand of regulation, we submit that a better solution is found in greater transparency, education and licensing agreements between content owners and distributors.

This is evidenced by the existence of licenses which allow content to be legally format shifted across a variety of devices offering consumers ever greater choice and convenience. This can be seen, for example, in the inbuilt licence to copy content onto ten devices which exists with purchases of music on iTunes, the ability to transfer onto an unlimited amount of devices with music purchases from Amazon and in the subscription models of streaming services such as Spotify where accounts can be accessed across different devices.

Such innovations are also seen in the film/TV and video market. The advent of double and triple play, where consumers can purchase the DVD and Blu-ray and the DVD, Blu-ray and digital file of a film (alongside the numerous video on demand and digital home rental services), gives consumers unprecedented choice in the video entertainment market. Crucially, it creates a market structure where people only have to pay for the level of access and flexibility they desire.

The introduction this year of UltraViolet<sup>2</sup> has taken this choice and access to another level again. UltraViolet is a digital locker service which allows a user to access his or her content how, where and whenever he or she wants to, including downloading or streaming content on up to 12 devices. A user can also share access to that content with up to 6 members of his / her household. UltraViolet-enabled content has already been released in the UK.

Given the developments underway, driven by consumer demand and commercial market forces, we strongly question the value of, and need for, Government regulatory intervention which could, in fact, distort the market and lead to less choice, higher prices and reduced quality for consumers.

#### ***Research and private study***

The Alliance is concerned about the Government's recommendation to extend the current 'fair dealing' exception applying to literary, dramatic, musical or artistic works to include sound recordings, films and broadcasts. We believe that given the high quality of film and sound recordings such an extension would bring with it the opportunity for misuse.

Existing provisions satisfy demands from educational establishments, libraries and archives. Allowing what could equate to unlimited access to high value content of a significant entertainment nature via a right to private study, with the accompanying difficulties in monitoring its lawful

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<sup>2</sup> [www.uvvu.com](http://www.uvvu.com)

application, runs the risk of creating significant opportunity for infringing activity with little in the way of safeguards to protect against this.

### ***Text and data mining***

As with a number of the proposed amendments to the system of copyright exceptions, the recommendation to introduce an exception to allow for non-commercial text and data mining (TDM) ignores developments in the market.

It also appears to have stemmed from a lack of understanding as to how TDM works, and why licensing is required to manage the relationship between publishers and content miners. This proposal ignores the significant investment made by the publishing community in technology and infrastructure to support this activity and does not take account of risks or “costs” associated with this proposal.

Licensing models which are highly sensitive to the needs of users are already in place and publishers strongly support those seeking to access data for research purpose. The Publishers Association cites a survey of publishers which found that 90% of respondents routinely permit content mining, with 60% doing so in all cases. Only 12% of requests are turned down, on the basis of questionable credentials of the applicant. Similarly, in response to researchers’ frustrations, the industry is in the final stages of evolving a model TDM licence that individual publishers are able to adopt and adapt on a voluntary basis<sup>3</sup>.

Publishers are also investing in the technology necessary to support TDM, such as converting content to a format which can be understood by mining tools and maintaining the platforms and providing on-going support to content miners. Understandably, they can and will only continue to do so if there is value in it for them.

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<sup>3</sup> [www.stm-assoc.org/2012\\_03\\_15\\_Sample\\_Licence\\_Text\\_Data\\_Mining.pdf](http://www.stm-assoc.org/2012_03_15_Sample_Licence_Text_Data_Mining.pdf)