

Copyright Policy in Europe: Call for Views
Submission from The Publishers Association

Introduction

The Publishers Association (The PA) is the representative body for book, journal, audio and electronic publishers in the UK. Our 110 members span the trade, academic and education publishing sectors and contribute £5bn per annum to the UK economy, £4bn of which comes from the sale of books and over £1bn from the sale on journals.

The PA welcomes the opportunity to respond to this consultation. In recent years we have consistently made the case that the IPO should consult widely with stakeholders in order to develop its stance on copyright policy in Europe. We see this call for views as an important and welcome first step in that process.

We note that at the recent EU Council informal discussion of intellectual property at Vilnius the UK representatives made clear that the government's position is reserved pending the outcome of this consultation. We greatly welcome this statement and see it as a significant shift from the situation of recent years in which – rightly or wrongly – the European Commission perceived the UK government as being in the vanguard of those seeking to reopen the Information Society (hereafter “Copyright”) Directive.

The stakeholder meeting around this consultation has been very useful in highlighting the wider nature of the copyright policy review, with officials discussing a longer term “horizon scanning” review, above and beyond the more limited topics covered by the consultation. Therefore, to ensure our contribution to this call for views is as valuable as possible, we offer the following wider observations.

1. The Role of Copyright in the British Economy

As the IPO notes in its introductory remarks to this consultation document

“The UK is a net exporter of copyright content and the government needs to ensure that our industries have the right European framework to thrive. Equally, the UK wants to ensure that the copyright framework is supportive of growth for the UK economy as a whole at a time of rapid technological change and business innovation.”

This is the crucial starting point for any discussion about UK government policy with respect to European policy. Analysis must surely always begin from the perspective of what is best for Britain, its consumers, companies and economy. Only once the answer to this question is established should discussion move on to how this is best engineered at a European level.

From the economic perspective, the current copyright framework plays a critical role in providing the basis upon which business activity – be it sales, licensing or product development – can take place. Some figures from the publishing sector demonstrate this strength, including:

- £3.3bn of books sold in 2012, of which 41% is export revenue;

- £1.5bn of revenue generated through the publication of academic journals;
- 6% of global academic output is published by the UK;
- Sales of consumer ebooks grew by 134% in 2012;
- digital revenues grew by 313% between 2008 and 2012 and are now 13% of total revenue;
- Direct employment of 27,000 people;

Consumers benefit hugely from the success of the publishing sector. According to a recent report from the International Publishers Association, the UK produces more new titles and re-editions for every one million inhabitants than any other country in the world. On this measure, we score 2,459 compared with the next largest Spain (1,692) and South Korea (1,257). The US achieves 1,080. Not only that, but the UK has one of the strongest developing ebook markets in the world with a range of ebook devices and platforms operating with fully licensed publisher content. Researchers (who can be seen as the consumers of the academic publishing world) similarly benefit from British publishers leading the world in the development of Open Access journals – some 76% of all journals now have some form of gold open access (i.e. instant universal access of published content in return for the payment of an Article Publishing Charge).

The copyright regime at the European and UK level provides the framework within which these business and consumer benefits arise. In light of this it is somewhat baffling that the IPO continues to see economic growth and the creative industries as, if not in conflict, then at least requiring some sort of balancing act. In the statement from its introduction, quoted above, the Government uses the word “equally” to conjoin its view of what is good for the creative industries to its view of what is good for the economy generally. This choice of term is indicative of a belief that there is a potential disconnect between creative industry success and that of the wider economy and it implies that there is a balance to be struck across the equation. Evidence from the real world demonstrates precisely the opposite.

Other British creative industries have successfully developed in similar ways. All have done so precisely because of and not in spite of the copyright framework. There is no evidence to suggest that publishing and creative industries growth could or would have been stronger with a weaker copyright regime. To those who in counterpoint would claim that such success could exist even without the copyright framework or indeed that success could be greater, the challenge must always be to go beyond mere assertion.

The Evidence Gap

It is vital that the UK government enters into the discussions underway at the European Commission with regards to the future of copyright with a full and comprehensive understanding of the impact of any proposals - either those of the Commission or its own - on the British economy. Unfortunately, for the two years since the Government's acceptance of the recommendations of the Hargreaves Review of Intellectual Property in May 2011, this has not been the case. Hargreaves recommended that the UK push for copyright reforms at EU level but failed to provide any evidential backing that such a proposal would be beneficial. Nor was any such analysis conducted by Government before giving these recommendations its approval.

The Hargreaves Review purported to provide some of the required evidence, but its findings do not do the job, for a number of reasons we and others have set out on numerous occasions to the IPO. However, it is worth repeating two of these in particular:

(i) Document EE of the Hargreaves Review lists his 22 recommendations. Of these six are “not quantified in terms of cost saving (including DTM and new technologies); four are “not quantified” for growth impact”. Five use the vague term “social innovation” to describe benefits. Given that these items imply changes to the EU Copyright Directive it is immediately clear that Hargreaves has nothing to say about the economic impact of changes to European law.

(ii) The bulk of the envisaged economic benefit of the Hargreaves report (£2.8bn of the suggested £7.8bn in estimated growth impact) were predicted to come from the development of a Digital Copyright Exchange – a proposal which does not involve any change in copyright law at all. In fact, as we have consistently argued, the best way to achieve anything like this benefit from the Copyright Hub would be to keep the present copyright framework in place. We make a further recommendation regarding UK IP policy in Europe and the Copyright Hub below.

In any event, Hargreaves himself has disavowed much of the economic analysis in his own report and the various estimates of the impact of his recommendations have been rapidly brought downwards in ensuing months. In January 2013 he told the House of Commons Culture, Media & Sport Select Committee “we acknowledge the high degree of uncertainty inherent in projections of this sort” and he acknowledged that the economic forecasts based upon the proposals for reform were not “incontestable”. However, the Government has nevertheless proceeded to advocate copyright reform by relying heavily on the very optimistic forecasts of economic benefit. At the same time it has not conducted any further rigorous economic analysis of its own which could either bolster or repudiate the Hargreaves figures.

Therefore it is difficult to see how the Hargreaves Review and its flawed economic analysis can continue to be the basis upon which Government IP policy is formulated.

It is for those making the case for copyright reform to adumbrate clearly what it is that they cannot presently do which would (a) be made possible by a change in the Directive; and (b) would inexorably lead to a positive impact on economic growth. Yet very often in discussions with stakeholders in the EU it has proven impossible to have these arguments articulated. Proponents of new exceptions for user-generated content, for example, are unable to describe in what meaningful ways a “consumer-user” is not undermining the business and moral rights of an original producer; nor can they explain why they should be, or need to be, treated any differently from a creator in the current system. Another common assertion made by those who wish to reform copyright is that it prevents researchers accessing scientific and technical research. In actuality the biggest barriers to data and text mining are technical (it is difficult to do, and different publishers use different technologies). A copyright exception would not overcome this hurdle. By working with publishers to develop common ontologies and model licences, researchers in all disciplines will be able to access material to further their work. Publishers have developed a number of initiatives, in spite of researcher non participation, which have been articulated during the Licences for Europe process and will be done so again during the November plenary session.

Discussions around improvement of the operation of the copyright regime need not and indeed should not develop into pressure to re-open the Copyright Directive. What the creative economy requires is a continued focus and development of the following areas:

- A clear recognition of moral rights;
- Robust and clearly defined exclusive rights;
- Well defined exceptions;
- A body of case law to remedy any arising ambiguities;
- Flexibility to permit amendments as and when appropriate;
- Flexibility to allow member states to implement the framework in a way most appropriate for the legal and moral rights regime in their respective member states.

2. Licensing

One of the main ways in which the Copyright Directive facilitates the exploitation of works for the benefit of creators and consumers is through licensing.

However, we recognise that the licensing system is not perfect and could be streamlined to increase its efficiency, making it easier for consumers and would-be creators to licence content centrally and seamlessly. To this end the creative industries continue to support - and have put both time and money into - the Copyright Hub. As the Copyright Licensing Steering Group report, *Streamlining Copyright Licensing for the Digital Age*, published in September, shows, over 100 people from across the creative industries have come together around six work streams, to deliver a number of successes including the launch of a pilot phase of the Copyright Hub itself.

We urge the UK in its discussions with Commission officials to focus on licensing and to promote the example of the UK and its work on the Copyright Hub, which may have potential for further development on a European scale.

It should also be reinforced that technology and licences move quicker than legislation and provide the best 'fix' to any identified areas where users and consumers seek access to content in new ways. Rightsholders have always shown themselves to be open to such discussion and action, as is clear from our ongoing participation in the Licences for Europe process. In the area of data and text mining in particular, a number of licence-based solutions have continued to evolve. Rightsholders are also in the business of commercially exploiting their works, so want to make licences available to meet demand.

3. Enforcement

The other side of the coin to the role copyright framework plays in driving economic growth is its role in enforcing rights and protecting rightsholders from infringement. This is a clear area where UK businesses and consumers would benefit from harmonization in Europe. We believe that the UK and the IPO can lead the way in this area, championing the success of a number of initiatives and encouraging others to develop similar practices.

The Commission's focus on new technologies and how these may alter consumer and business practices should extend to the practices of internet intermediaries and the increasing incidence of infringement in the online market. Whilst the Enforcement Directive and e-Commerce Directive made great strides towards addressing this there is clearly room for improvement, as acknowledged by the Commission's own consultation on Notice and Action last year, and its consultation on civil enforcement. Regrettably we are yet to see the results of these or to see any articulation of further work the Commission may undertake to improve enforcement process.

We urge the UK to advocate for the continuation and completion of this work as quickly as possible.

In the meantime the UK is well placed to showcase examples of best practice collaboration between businesses, that could be replicated in Europe to ensure that online commerce is safe and secure for consumers and allows legitimate businesses to thrive. These initiatives include the IP Crime Unit, funded by the IPO and coordinated by the City of London Police - a very welcome development, and one which will bring together a number of important enforcement strands of activity, each of which could be pursued on a pan-European basis and would be much the stronger for being so.

4. Metadata and discoverability

Interoperability, universal metadata standards, data management, identifiers, and the linking of data underlying content are likely to be areas of future focus both at a business and political level. As consumers search for content and publishers look to improve the discoverability of works the importance of standardised robust metadata grows.

A framework of open standards to provide commonality and interoperability will facilitate the use and reuse of licensed works, in particular the aggregation of data from multiple sources. Such work also complements the linking of data required for the full functioning of initiatives such as The Copyright Hub. With this in mind, the UK should explore, at EU level, the potential for engagement and activity in improving metadata standards and interoperability.

Such work is already being explored by the Linked Content Coalition, and will be particularly important in helping the Commission achieve its objectives, for example in regards to Open Education Resources and in the Licences for Europe interoperability working group. Such activity may also prove useful in further developing The Copyright Hub.

In Conclusion

Along with our colleagues in other copyright sectors, The PA believes that it is of fundamental importance that the current copyright framework remains in place in order that it continues to provide the clear basis from which British creative businesses can develop successful businesses and continue to meet consumer needs.

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