



INTELLECTUAL
PROPERTY OFFICE



the Future

DEVELOPING A COPYRIGHT
AGENDA FOR THE 21st CENTURY



Department for
**Innovation,
Universities &
Skills**

Intellectual Property Office is an operating name of the Patent Office



FOREWORD BY DAVID LAMMY

The value of the UK's creative industries, both economically and culturally, is significant. According to figures from UK Trade & Investment in 2007, they generated 8.2% of the UK GDP, and are growing at twice the rate of the economy as a whole – averaging 5 per cent a year between 1997 and 2004. The creative sector also accounted for over 1.9 million jobs in 2006.

The copyright system is of fundamental importance to the future health and prosperity of our creative industries and our economy. It is the framework through which we reward and recognise creative endeavour, incentivising people to create and innovate. It is also the backdrop against which decisions on investment and jobs are made in these important sectors.

Of course their value is not just economic. They enrich our lives, entertaining and educating us all. Our performers and creators are key to this. We must ensure that our system supports their creativity – recognising and celebrating the role that they play in the cultural life of this country.

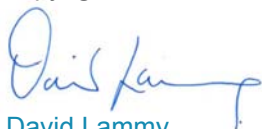
The Gowers Review of Intellectual Property reported in 2006 and recommended a number of changes to help meet the challenges of the digital age. We continue to take this important work forward. However the technological and commercial landscape of the creative industries is changing all the time and we must keep pace.

The number of households with domestic internet access rose to over 15 million in 2007, 61% of the UK total. Higher broadband speeds make the delivery of content quicker and easier. Sites like MySpace and You Tube continue to grow year on year while over the last year we have seen the launch of the BBC iPlayer and mainstream electronic book readers. Consumer expectations about accessing and using content are changing and they are increasingly becoming creators themselves. In many instances their views on access and the value of works appear to contrast with industry views.

Digitisation and the internet aid the creation and dissemination of content and open up new markets. They also bring challenges. Copying has been made much easier. Research studies estimate that around 25% of UK internet users engaged in online music 'piracy' in 2007. New business models are of key importance, but can our industries successfully compete with 'free'? The action being led by BERR on unlawful P2P file sharing is an important piece of work but further action may be needed. Looking forward we need to make sure that value can be appropriately extracted from content by our creative interests.

We believe that there is scope to build on the Gowers Review and consider a wider range of issues in relation to copyright. It is vital that we have a system that supports creativity, investment and jobs and which inspires the confidence of businesses and users. The new Strategic Advisory Board for IP (SABIP) will have an important role in this work and I look forward to receiving their advice.

In building a long term vision for our copyright system we need to look internationally as well as within our own borders. Debates on how our systems may need to evolve are already starting and the UK has an important opportunity to lead the way. The future of content is global. The future of copyright must also be global.



David Lammy,

Minister of State for Higher Education and Intellectual Property.



Developing a future agenda

Our objective is to ensure that the UK's copyright system properly supports creativity, promotes investment and jobs while also inspiring the confidence of businesses and of users (as being appropriate, fair and reasonable).

The recently launched Digital Britain initiative identified intellectual property as a key issue for the UK's digital economy and made clear our intention to take further action in this area. This is the start of that work. Our examination is not however confined to issues relating to digitisation and the internet. Wider issues such as the rights given to creators, rights clearance processes and the enforcement framework need to be considered.

This paper does not contain answers, nor is it a formal consultation. It simply sets out a number of questions that we need to consider in determining what our future agenda on copyright should be. The questions we are asking are deliberately general as their purpose is to start a debate. Other questions are likely to emerge as our work progresses.

Alongside this paper we are arranging a series of meetings and events with interested parties to debate the key issues and possible solutions. We are particularly keen to engage directly with creators, SMEs and consumers who are often not directly engaged in the copyright debate. Following this initial period of debate we will publish a 'Discussion Paper' early in 2009 setting out our initial thinking. We aim to conclude this work in spring 2009.

The UK copyright system does not exist in a vacuum. International and European rules set the boundaries of copyright. However if we are to build a long term vision for our copyright system we need to 'think outside the box' and not constrain our thinking by focussing too much on the existing boundaries

Background

The landscape has changed dramatically in the past ten years. Technological change has brought a notable shift in consumer behaviour - consumers are now able to create and copy for themselves in ways not previously possible. This has led to phenomena like file sharing, and also to a situation where consumers see the near-zero cost of digital reproduction and are reluctant to pay more.

Many consumers and SMEs appear to have clear expectations about how content should be accessed and used and its value. The existing system can often be seen as too restrictive by users— preventing use of works for education, enjoyment and follow-on creativity.

Meanwhile the online world has raised issues for rights holders seeking to exploit their works. The emergence of open access models such as 'Creative Commons' provide valuable choice for creators but it is important that those who seek financial incentives for creation should be able to access them.

Levels of online piracy and a perceived lack of clarity regarding existing rules, in particular regarding the 're-use' of content over the internet, are impacting on rights holders' ability to determine and extract value from online activities. This puts investment in current content and future innovation at risk and affects both creative artists and commercial rights holders.

A perceived lack of clarity over the boundaries of the system, for example in areas relating to exceptions, also raises issues. The UK copyright system creates strong rights, punctuated by exceptions which allow for certain limited use without permission. Consumers (private and business) are often unaware of these boundaries, which sometimes fail to reflect the realities of life for many people. The classic example of this is in so-called "format shifting", where contrary to popular belief, it is illegal to move otherwise lawfully acquired material from one digital format to another, even for use by the same consumer.

Some of these issues (including format shifting) were addressed in the recommendations made by the 2006 Gowers Review of Intellectual Property and we continue to take these forward. Changes have also been made to the copyright system at European and international levels by the European Commission and the World Intellectual Property Organisation. However it is important in such a fast-changing environment that we keep the copyright



system under review. The time is right to take a broad look at our copyright system to set a clear copyright agenda for the future.

It is important that rights holders are able to enforce their rights effectively. We continue to take steps to deliver an effective enforcement framework at UK and EU levels and to ensure that appropriate importance is attached to the issue of IP crime. At the same time, if the availability of creative works to the public is to be maximised, users (including those interested in using creative material in other legitimate products) should be able to negotiate fair and reasonable terms of access. Against this backdrop we must ensure that the rights that we seek to enforce remain effective, taking account of technological change and the varying interests of creators, creative industries, intermediaries and users. We must further ensure that the mechanisms for mediation, adjudication or other forms of civil redress are accessible and are able to provide robust support to the copyright system.

The Issues

Recognising creative input

Our current system of copyright focuses on economic rights for creative artists, with a more limited set of moral rights. Creators are an essential part of the picture and it is important that our copyright system recognises and acknowledges their creative endeavour.

Typically creators assign their rights to commercial rights holders in return for a fee or a percentage of ongoing profits. The boundaries of how this works are largely left to the law of contract. Such arrangements provide certainty for commercial rights holders and aid future rights clearance. But many creators would argue that they wish to be able to control how their work is used – for example to prevent it being used in a way that was never intended or perhaps to support a cause that the creator does not agree with.

Q. Does the current system provide the right balance between commercial certainty and the rights of creators and creative artist? Are creative artists sufficiently rewarded/protected through their existing rights?

Access to works

The copyright system should maximise the availability of creative works to the public, ensuring that creative endeavour is rewarded while users can enjoy what has been created, on fair and reasonable terms. If the system is to work properly, it must hold the confidence of users.

The system is complex, but is it unnecessarily complex?

The boundaries of many copyright exceptions are unclear – creating uncertainty for both users and rights holders. The practical operation of exceptions can often cause confusion, with technological measures and contractual terms on digital content sometimes over-riding statutory exceptions. These exceptions are an important mechanism for balancing the interests of rights holders and the wider public interest and so we need to make sure they remain relevant and effective.

The process of rights clearance is important. Clearance can be a long and complicated process with limited scope for action where the terms offered are not appropriate. As content moves increasingly across borders other issues regarding clearance are likely to emerge. Questions are also being raised about the balance of interests in relation to the onward licensing of rights by licensing bodies.

There are perceptions that the existing rules may be stifling new markets for content and weakening creativity. For example the growing online culture of mash-ups of music is a clear example of an area where frustrations over the boundaries of the law are growing. This may damage the credibility of copyright law and encourage infringement. Does the system need to change to remain relevant? If so, how can exceptions and/or improved action on rights clearance play a role?

We must also ensure that we have a strong legal framework for addressing unauthorised use. Rights holders must be able to enforce their rights effectively and efficiently. As well as identifying and addressing grey areas in the law we need to consider whether rights holders (and in particular SMEs) have the rights tools to enable them to take appropriate action.

Q. Is our current system too complex, in particular in relation to the licensing of rights, rights clearance and copyright exceptions? Does the legal enforcement framework work in the digital age?



Incentivising investment and creativity

The copyright system must enable creators and the creative industries to extract appropriate value from their works, while also protecting the interests of users. Innovation in business models is essential, but if the copyright system is not able to secure sufficient remuneration for online use then we put investment and jobs at risk. We also risk distortions, with non-networked consumers funding online use.

Q. Does the current copyright system provide the right incentives to sustain investment and support creativity? Is this true for both creative artists and commercial rights holders? Is this true for physical and online exploitation? Are those who gain value from content paying for it (on fair and reasonable terms)?

Authenticating and protecting works

In the digital age, identical or near perfect copies of original works are easy to make. Users need to be able to identify genuine works and locate the owner of those works while creators must be able to distinguish their works from the works of others. Is there more that should be done to help users and creators here?

The copyright system does not require registration. Nor does it require that works are of a certain quality or are commercial in nature. In the online environment content is easily created, shared and disseminated. A personal blog attracts the same protection as the works of a best selling author. Does this approach continue to provide the best framework for copyright in the digital age?

Q. What action, if any, is needed to address issues related to authentication? In considering the rights of creative artists and other rights holders is there a case for differentiation? If so, how might we avoid introducing a further complication in an already complicated world?

Responses

We would welcome comments from interested parties on the above questions and on other questions that are considered relevant to this work. We are particularly interested to include evidence (including financial information where relevant) in support of your views as this will assist us in assessing the impact of the proposed changes.

Please send responses by 6 February 2009 to:

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We intend to publish the responses that we receive on the Intellectual Property Office's website. In addition it is possible that requests for information contained in responses may be made in accordance with legislation relating to freedom of information. If you do not want your response to be disclosed in response to such requests for information, you should identify the information that you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding.



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