

Supporting Document R

Copyright Licensing *Call for Evidence* Responses

In Chapter 5 of the Report the Review makes a recommendation to develop a Digital Copyright Exchange.

The Review recognises that in order to develop a functioning Digital Copyright Exchange, it will be necessary to resolve a number of issues. It will be important to learn from existing systems, and in particular to learn where some have hit limits and obstacles, and why. Responses to the Review have stated that the Automated Content Access Protocol (ACAP) system has run into problems because search engines have not participated. The system will need to establish sufficient incentives for all participants, but also cannot favour incumbents over entrants, large players over small, and must be flexible enough to feed a very wide range of business models. Given the importance of markets for advertising in proximity to copyright works, that aspect may also need to be considered. All the problems attendant on orphan works solutions (false identification of authorship, challenge to rights ownership assertion, questions about remuneration) will be present for automatic rights clearance.

It will also be essential to recognise and avoid potential adverse effects from automated licensing, for instance any negative effects on the exercise of copyright exceptions. It will also be necessary to learn from the history of digital rights management (DRMs), which consumers have decisively rejected on music and may yet do in other sectors. It may also emerge that it is easier, at least initially, to grow a functioning system in some sectors than others.

A large number of respondents commented on various aspects of copyright licensing, both as it is and as it might be, including on systems and aspects of systems to support the licensing system. Below is a sample of comments taken from the 247 submissions which related to copyright. The responses to the *Call for Evidence* used in this document are intended to be illustrative of views represented in these submissions rather than an exhaustive inventory.

“...ERA [*Educational Recording Agency*] has launched a licensing scheme known as ERA Plus (particularly targeted as assisting distance learning). Developments in the application of copyright exceptions in this way can promote and support access to copyright works, whilst providing fair compensation to rights owners and certainty for users over the scope of licences. ITV is very open to discussions with government and other industry players and rights holders around possible non-legislative initiatives that would make copyright clearance and exploitation easier and more transparent. The critical principle for ITV is that such initiatives will work if they go with the grain of the incentives of rights holders and exploiters of content and give them opportunities which offer genuine commercial advantage.” *ITV submission*

“The Answer to the Machine...is in the Machine. The European Publishers Council is developing a proposal designed to deal with the complexity of licensing. It centres around the thesis that whilst copyright law is entirely fit for the digital environment, traditional copyright practice for the management of rights is looking outdated for automated processes and licensing. A solution would work with the grain of technology and create machine readable copyright permissions, which would have the effect of rendering the complexities of licensing invisible to the user/consumer, but would nevertheless ensure the functioning of the system of incentives and rewards which underpin copyright. A technological solution would perform the essential tasks of managing data (which would need to be well-structured and standardised) and use it to automate the processes surrounding rights and permissions.” *The Publishers Association Limited submission*

“Taking due account of the markets for the creation of copyright works intended for use by students, teachers or others in educational establishments form an important part of the overall marketplace for copyright course materials and many books, films, audiobooks, schools radio and educational television programmes created or published in the UK. Growth in such markets will be stunted if the owners of rights are constantly arguing with users over whether they can “get something for nothing” rather than applying transparent and easily accessed licence terms. Within markets for educational use of copyright works, permitting specified exceptions that meet the standards of international rules (particularly the three step test), to continue to evolve, without removing commercial opportunities for growth. In this context, the ERA and the ERA Plus Licences provide “flexible certainty” for “educational establishments”. ERA licences permit licensed educational establishments to develop and maintain libraries of sound recordings and films made from radio and television broadcasts to suit the needs of students and teachers within that establishment.” *Educational Recording Agency Limited submission*

“Rights management organisations like DACS can play an ongoing role in the gathering of evidence and data on the impact of royalties on visual artists which is not available elsewhere. In general, the Copyright Design & Patents Act 1988 (CPDA), does strike the right balance between the rights of copyright owners and the ability of copyright users to access copyright protected works: through established licensing schemes; under exceptions to the exclusivity of copyright; or through individual permission of the rights owner. However, the UK’s copyright system could be improved to support innovation and growth more effectively. Extended Collected Licensing or levy systems like in the Nordic Countries and Germany could serve as valuable examples of how to strike the right balance between the introduction of a private copying exception whilst safeguarding fair remuneration for rights owners...

...Cross-border licences provide rights necessary for uses on web sites, including scanning/ reproducing, digitising and storing reproductions of a work, the right of communication to the public and the right of making available. National laws or language barriers are overcome by the service provided by the collecting societies in their respective territories, all experts in the licensing of copyright protected works. By licensing back the pooled rights in its repertoire to the national rightsholder organisations, OLA brings considerable efficiencies and a practical solution to the legal complexities of licensing national and foreign repertoire in one country for worldwide communication to the public. OLA members also share a common server where all licences are registered, from the first request for a use and ending with the transfer of royalties to the rightsholders.” *Design and Artists Copyright Society submission*

“There can be a perception that by engaging with social media channels and in particular publishing content over them, that publishers “lose the conversation” and lose control over the manner in which their content is distributed. FT [*Financial Times*] disagrees with this perception. The business models of Twitter, Facebook, Quora and even to a limited degree LinkedIn are built on the principles of copyright licensing. These third party services – widely recognised as amongst the most innovative businesses in the world at this time – are built on the foundations of copyright licensing. They provide a platform on which the user may grant others a licence to use their content within the parameters set by the platform owners. The business models of these services appear to operate equally effectively in the United Kingdom as they do in other countries, including the United States. FT has published content on its Facebook fan page since 2008 and currently has over 135,000 Facebook fans.”
Pearson submission

“We risk being left behind by these countries by the UK’s more regressive approach to the detriment of the UK’s education sector’s contribution to innovation and growth. In this submission, we have identified a number of areas where the law as it currently stands presents unnecessary barriers to the use of copyright works for the benefit of society.

Key Principles

1. We need a simpler, quicker and more transparent way to obtain licenses to use copyrighted material in the UK and across Europe.
2. Copyright laws that stimulate learning, R&D and long term business growth.
3. Making copyright laws technology neutral to cope with the future. Contracts should not create barriers to the use of copyrighted works.” *JISC submission*

“I do not think the licences of photographic rights themselves can be made simpler, as rights required can be very complex, however the process of agreeing these transactions could be greatly simplified by the wider adoption of the new Plus licensing system (<http://www.useplus.com>) now used in the UK by, amongst others, the British Library.” *Andrew Wiard submission*

“For example, the ARROW Project (Accessible Registries of Rights Information and Orphan Works) which aims to support the European Commission’s i2010 Digital Library Project by finding ways to identify rightholders and clarify the rights status of a work, whether it is orphan or out of print. This may require considerable investment, but the technology is there to do this. ONIX and the Automated Content Access Protocol (ACAP) already provide computer expression of rights. Publishers have welcomed these initiatives and are supporting them. ACAP is also free to use. Search engines and content aggregators have (as yet) declined the adoption of ACAP and have preferred not to engage with rights holders with regards to this streamlined way to communicate the rights available for use of their online content.” *Association of Learned and Professional Society Publishers submission*

“Industry initiatives that remove such uncertainty are in our view to be supported. Such examples include ACAP or PLUS systems. Collective management solutions are looking towards clearing digital licenses, and potentially towards licenses on a multi territory basis; we believe that this remit should not extend into areas that hinder existing and historical commercial agreements, and between individual rights holders and their clients and damage a proven licensing framework which remunerates rights holders in direct proportion to the use of their works.” *British Association of Picture Libraries and Agencies submission*

“Much work has been, and is still being done by creators to simplify the licensing process. The PLUS coalition is one such example (<http://www.useplus.com>) and has been in use for some time. Its mission statement is “To simplify and facilitate the communication and management of image rights.” It is a system for defining licensing language and managing image rights and it works very well.” *Nick Dunmur submission*

“Past attempts to do so, through projects such as the Automated Content Access Protocol – a well-constructed industry-wide effort to make copyright work properly online – have hitherto been aggressively rejected by those who simultaneously claim to support the principles of copyright but reject attempts to make it functional. This makes it hard to avoid the conclusion that Government needs to provide some assistance. The will also show how the existing technical infrastructure would allow these to be delivered using structured approaches to expressing rights/permissions include some of the following: ACAP, Creative Commons, ODRL, Open Government Licence, ONIX-PL, PLUS and existing linking technologies: HTTP, Handle and existing repositories: ARROW, CMOs, GRD, Book Rights Registry.” *European Publisher’s Council submission*

“The core elements are standards-based machine readable expressions (such as Creative Commons, ACAP and ONIX), Online registries, including the ARROW project and the Book Rights Registry, and persistent content identifiers such as ISBN, ISWC and DOI and then linking all of this to payment solutions.” *Laurence Kaye Solicitors submission*

““Negotiating terms – using existing and developing machine-readable protocols such as the Automated Content Access Protocol (ACAP) the user, having contacted the relevant rightholder, would tell them – via their server – what use they want to make of the content...”

...It is vital to note that the development and implementation of these standards is dependent upon engaging stakeholders from across the value chain: creators, rightsholders, service providers, data registries, standards organisations, rights users, collecting societies. The ACAP project, a standard developed to communicate copyright permissions in machinereadable language, has reached an impasse due to a lack of support from Google, in spite of attempts by the project board to work with them to define and overcome specific technical difficulties which Google have publicly claimed exist but not fully explained...

...The ARROW project, which concludes shortly, aims to establish a Rights Information Infrastructure for books published in the EU, an interoperable distributed network of rights databases and the tools needed to contact rightsholders to seek clearance. ARROW will thus enable the identification of books still in copyright as ‘in print’ (commercially available), ‘out of print’ (not currently commercially available), or, by elimination, as an ‘orphan work’ (i.e. no rightsholder, as neither author nor publisher can be traced).” *News Corporation submission*

“The NLA contributes major funding and technical expertise to the development of Automated Control Access Protocol (ACAP), a new open communications tool that enables online content providers to communicate their copyright permissions information in a machine-readable language. ACAP is an excellent example of how the newspaper industry has responded collectively to the need to publish through new digital distribution networks, while maintaining adequate controls over forms of use of copyrighted material. The intention of ACAP is to enable new business models to be easily implemented online, by largely automating the process of seeking and granting permissions – something that has proved hard to achieve over the last 20 years of digital development...

...In our view, ACAP (see <http://www.the-acap.org/>) illustrates very well some of the wider issues around the ethics of content distribution. The protocol has been adopted widely by the news industry (the ACAP website has 36 pages listing current titles which have implemented ACAP on their news sites). However, the major search engines and content aggregators have declined to adopt ACAP or to positively engage with implementing or steering ACAP - after initially contributing to its technical design. So although publishers have overwhelmingly engaged with the issues of content in the digital age - and many online aggregators talk publicly about their support for copyright - the reality seems to be that many aggregators prefer the status quo...

...The NLA supports the development of ACAP, both financially and with technical expertise, to facilitate ‘machine to machine’ licensing that will be more efficient for all businesses in the media monitoring ‘chain’. We believe it is a critical innovation and we are using it to create the next generation of NLA digital services. The failure of the major search engines to engage with ACAP is a disappointment to publishers and the NLA because we believe it would facilitate much greater availability of content, more entrepreneurialism and innovation and ultimately increase the market by reducing the cost and administrative overhead of “micro” licensing between individual publishers and companies....

...ACAP was conceived as a response to the unwieldy and inefficient licensing practices of the offline world, specifically to promote growth and innovation. The absence of effective and widely supported protocols like ACAP acts as a barrier to online commerce. The opposition of major search engines has never been adequately explained by them: it is difficult for publishers to understand why they would not support the development of simple and low cost automated licensing. We would encourage the Review panel to investigate the reasons why the major search engines have not adopted ACAP and to the extent that it has a technical remit, to encourage its adoption as a joint industry standard.”

Newspaper Licensing Agency submission

“PLS works closely with CLA in bringing together the views and needs of publishers and licensees in order to develop new areas of licensing and so keep the collective licensing scheme relevant to developing technology and changing practices. More recent developments have included digital licensing, licensing UK headquartered multinational businesses and overseas licensing, as more fully set out in CLA’s response.

PLS has been leading the ARROW (Accessible Registries of Rights Information and Orphan Works) project in the UK along with CLA and ALCS and in collaboration with the British Library. ARROW is a European funded project being delivered by an alliance of national libraries, authors’ organisations, publishers’ organisations and collective management organisations around Europe and in the UK. ARROW is a tool designed to enable a diligent search process, an essential first step in identifying and tracing the owners of the copyright in a particular work. It is only once a diligent search fails to reveal the whereabouts or identity of a copyright owner that a work can be treated as an orphan work. The pilot stage of the ARROW project is nearing completion and the results will be delivered to the European Commission at the end of March 2011.

PLS and ALCS are collaborating with the Wellcome Trust’s Library in their project to create a digital library based on the theme of ‘Modern Genetics and its Foundations’. They are interested in using ARROW to assist with identifying the rights owners of the books. The Library will then seek the necessary permissions from the identified rights owners to digitise any works that are currently in copyright. This project will provide both an important service to the Wellcome Library and an important opportunity to apply the ARROW tool to a live situation and to test and refine it.” *Publishers Licensing Society submission*

“CLA (along with ALCS and PLS) is the UK copyright owner-facing member of the ARROW project, part of the EU-funded initiative to develop a registry of rights information and orphan works leading towards Europeana (the European Digital Library). This system is currently in a pilot phase and is intended to enable users to conduct a diligent search to identify the copyright owner” *The Copyright Licensing Agency submission*

“ACAP (automated content access protocol)

“On the assumption that a substantial proportion of the demand for reproduction rights online is for small value licences (for example, for use on amateur blogs), the market can only be addressed via large scale and low cost licensing technologies. Some of them, such as ACAP, are already under development and some need to emerge (such as businesses which can offer microlicensing and authentication services to content owners and licensees)...

...It is disappointing that attempts to do so via projects such as ACAP - a well-intentioned effort to make copyright easier to operate online - have been regressively ignored by the major search engines and other content intermediaries. ACAP was introduced in 2007 in response to the unwieldy licensing practices of the offline world in order to enable people to convey more nuanced permissions, not simply a yes or no: see <http://www.the-acap.org> Phase 2 of the ACAP project, focusing on the communication of usage terms in news syndication, is expected to be completed shortly.” *The Newspaper Society Submission*

“ACAP (Automated Content Access Protocol: www.the-acap.org) a format for the communication of much simpler permissions expressions to manage online business-to-business transactions (including, for example, news aggregation). In the visual arts, we have the work of the PLUS Coalition (<http://www.useplus.com/index.asp>), an organisation which has made substantial progress in the development of standards to support the automated processing of the licensing of photographs and graphic arts.

In Europe, the ARROW project (<http://www.arrow-net.eu/news/>) has been established to facilitate the licensing of digitisation of library collections; this ambitious project has at its heart the concept of a distributed registry of rights information, linked by a switchboard. Other registries planned include a pan-European music rights registry and a registry of photographic rights planned by the PLUS Coalition.” *The Publishers Association Limited Submission*