



**Developing a Copyright Agenda for the 21<sup>st</sup>  
Century**

**A report on the IPO stakeholder event 12<sup>th</sup>  
February 2009**

## Table of contents

1	Introduction .....	3
2	Key findings.....	3
3	Initial reactions .....	4
4	Towards a vision for copyright .....	6
4.1.	Who is affected by copyright? .....	6
4.2.	Who has benefitted? .....	6
4.3.	Who has lost out? .....	7
4.4.	What are the drivers for change? .....	7
4.5.	Which words belong in a vision statement? .....	8
5	Access.....	9
5.1.	Pen portrait discussions .....	9
5.2.	Linking availability to use? .....	10
6	Incentivisation .....	11
6.1.	Industry discussion .....	11
6.2.	The realm of copyright.....	12
7	Ministerial discussion.....	13

## 1 Introduction

This document provides a top level summary of the issues to emerge from the IPO stakeholder event on Thursday 12th February. The structure of the document follows the format of the day and looks at the ideas which came out of each discussion.

This event provided an opportunity for stakeholders to come together and discuss a range of issues in a semi-structured way. Attendance at the event was mixed, and not all viewpoints were represented in each group. These discussion groups were also deliberately mixed to ensure that as far as possible participants had the opportunity to hear and debate a range of different viewpoints.

Many of the issues discussed are controversial and the aim of the event was not to seek a consensus opinion, but rather to allow different issues to be surfaced and to capture the opinions that were expressed by participants. The views recorded in this report are therefore those of individuals who attended this event and unless specifically stated do not represent the consensus opinion of all participants. This report summarises the discussions at the event to provide a broad overview of some of the key issues that were discussed.

The event was attended by 22 participants from a range of different sectors including publishing, journalism, music, software/ games, internet search companies, broadcasting, users, and libraries. The table below gives a breakdown of participants by industry and stakeholder type. Participants were in small mixed table groups and the day consisted of facilitated table discussions and plenary sessions.

Industry breakdown	No	Stakeholder type	No
Academic/ Legal	1	Collecting Societies/ Umbrella Orgs	3
Artistic/ Performers	1	Commercial Rights Holders	6
Film/ Broadcast	3	Creator/ Performers	4
Games/ IT	1	Intermediary	1
Libraries/ Archives/ Museums	1	User/ Consumer	2
Literary	3	Other	6
Music	4		
Technology/ Software	4		
Other	4		
<b>Total</b>	<b>22</b>	<b>Total</b>	<b>22</b>

## 2 Key findings

A number of key issues recurred throughout the discussions on the day although it should be noted that these were not necessarily points of consensus. These were:

- The widely held belief that the principles underlying the copyright system remain valid and relevant, and as such, copyright itself is not ‘broken’
- A strong challenge to the copyright system was perceived, posed by rapid – and for some unprecedented - changes to the technological, economic and social environment in which copyright works

- For many participants, the challenges faced by the creative industries centre on the need for business models to change to respond to this new technological, economic and social climate
- There was agreement that better education is required to ensure that ‘users’ in wider society understand the reasons for copyright, thereby strengthening the deterrent against breaching copyright law and licensing agreements
- There was a strong feeling that the process of rights management was in need of simplification. Infringement, rather than being a result of a lack of willingness to pay, was seen by several participants as due to the complexity of the rights clearance process. A system of non-compulsory registration was proposed as a potential solution to this problem.

### 3 Initial reactions

During the first discussion of the day, participants were asked for their initial thoughts and reactions to the issues paper, © The Future: An Agenda For Copyright in the 21<sup>st</sup> Century.

A question was raised about the number of consultations currently being carried out on the topic and participants were keen to understand the link between this discussion and Digital Britain. However, participants appreciated the opportunity to discuss the copyright agenda in this form and one participant said that he and his colleagues were pleasantly surprised at the openness with which stakeholders were being engaged.

During discussions the overall message from participants was that the principles of copyright remain valid today, and continue to make an essential contribution to the health and vitality of the UK’s creativity, innovation and creative industries. As such, participants made it clear that they do not see the copyright system as ‘broken.’

Some need for adjustments to the system were identified but the overriding sense was that it is not in need of wholesale change. One participant felt that rather than underselling the magnitude of the task, the issues paper over sells it. That said, representatives from the music industry and also from the film industry were more inclined to feel that the system is in need of review.

Many participants agreed with the link between the current pressure on businesses that relied upon the copyright model, and rapid technological and social change. They saw it as vital that the discussion being held currently should “stand the test of time” and that any changes made today must retain a focus on ensuring that the copyright system will still be fit for purpose in the face of further and accelerated technological change.

Much of the pressure on business models was felt to come from the “copy and paste world” in which we live. A sense of entitlement such that people would question why they had to pay for using copy and paste was seen by many as posing a major threat to the social legitimacy of the copyright system.

The difficulty of operating across international boundaries and navigating different copyright regimes was noted. This was seen as a particular issue for broadcasters who are not recognised as legitimate owners of copyright in the some countries.

A theme which recurred across all discussions was the need for education about copyright and the issues surrounding it. Such an education programme was seen as likely to make a significant contribution to reducing problems of illegitimate use. During one discussion it was noted that people only tend to perceive the rights they enjoy to their own work, and are less clear about the rights of those whose work they use. In many cases, therefore, unlicensed use could be seen more as a problem of lack of understanding rather than anything else.

This initial top of mind discussion raised two additional points of interest:

- The question of what the IP regime should look like in a world of universal access to next generation broadband?
- The technological infrastructure that would be needed if the public are wholesale participants in user-led publication and direct involvement in the creation of content?

Some industry specific points were also raised. One participant from the journalist community felt that the issues paper does not tackle the problem of protecting the rights of freelancers against companies. Another participant from the picture industry pointed out that the paper mentions the assignment of rights whereas common practice is licensing individual rights to use individual images.

## 4 Towards a vision for copyright

The first substantive discussion was aimed at understanding what a vision for copyright should look like in the 21<sup>st</sup> century. The session explored this by focusing on the following questions:

- Who is affected by copyright?
- Who has benefited and lost out?
- What are the key drivers for change?
- What a vision for copyright should look like?

### 4.1. Who is affected by copyright?

It was felt that everyone is affected by copyright, particularly with the growth in the creative industries as a percentage of GDP, which has had a positive effect on the economy. With continuing technological advances and the accelerating shift from analogue to digital this was seen as something that was likely to continue.

These technological changes were seen as strongly linked to social change. We are living in an age where, increasingly, people both consume and create – ‘ordinary people’ are increasingly empowered to create and distribute content. The rise of the “user / creator” was therefore seen as another reason why copyright has come to touch the whole of society.

Notwithstanding this ‘blurring’ of traditional categories, specific groups identified as being affected by copyright included:

- Consumers – users of music, software, information
- Creators – musicians, lyricists, film makers, producers, script writers, retailers, photographers, authors, broadcasters
- Software programmers, coders
- Distributors
- Companies producing or supplying the means of delivering content such as mobile phone manufacturers or ISPs
- Diffusers and managers, who they play an important role in providing organised structures in which creatives can operate.

Although a distinction was drawn on one table between the amateur and professional creator, this was seen by the vast majority as a false dichotomy, since professional and amateurs are increasingly doing the same job and should be given the opportunity to charge for it.

### 4.2. Who has benefited?

Given that copyright helps to drive the pursuit of excellence and therefore increases the choice and quality of the goods available, consumers were seen as one of the major beneficiaries of the system.

Copyright holders were seen as benefitting not always from the copyright itself but often from the services, such as consultancy, that they are able to provide off the back of their work.

One participant also argued that copyright is not that important in terms of protecting revenue. Instead it is more about the reputational enhancement which leads to other ancillary work.

Some participants also debated what actually constitutes benefit. Opinion was divided over whether this should be a monetary concept or whether it was broader than this and should include social and reputational benefits but there was no clear division.

### **4.3. Who has lost out?**

Seen as not faring so well were those whose content has been made widely available through digitalisation and who have been unable to monetise their products and services in this new environment. The music industry was cited as an example, although it was noted by one music representative that this is a result of poor choices about business models, such as focussing too much on the reselling of rights. There was concern that this situation could be replicated in the film and print industries if some lessons were not learned from what had happened.

Industries such as the newspaper industry were also seen as losing out but again this was seen more as an issue of business models than of copyright.

Some participants felt that rights holders had been detrimentally affected by the copyright regime. This was seen to have a strong negative effect on our cultural heritage and thus on wider society.

### **4.4. What are the drivers for change?**

#### **Business**

Business was seen as a key driver. It was felt by some that copyright is ultimately about reward and that traditionally, business models have been built around distribution of a physical product. Digitisation has therefore disrupted the monetisation of the product making remuneration more difficult, and creating a significant driver for change.

The laws of supply and demand were seen as playing a crucial role in driving change. However there was disagreement across the groups about whether the changes have been supply or demand led. On one hand it was argued that technological developments have led to the ability to distribute widely, increasing the supply of information. This is coupled with a rapidly growing number of 'producers' in the market, some of whom do not function as businesses and therefore do not seek –

initially at least – to monetise their products. On the other hand it was argued that demand is the key driver as in the developed world people have more time and ability to consume and create. This is coupled with a greater public consciousness and need for information in the ‘knowledge economy’.

### **Cultural/ social**

The fact that copying is not perceived to be a problem by consumers and users was seen as a very significant factor. The reasons presented for this were twofold. Firstly, it was felt that copyright infringement is viewed as only a minor crime. Secondly, it was felt that there is a lack of education about copyright among user / creators who are increasingly encountering the world of copyright in ways that in the past they perhaps did not. The complexity of the system, as well as the diversity – and sometimes the even contradictory nature – of the international system, were seen to make it difficult to communicate what is and is not legal to content users.

### **Technology**

Technological change was seen as underlying much of the above. However the following technological advances were specifically identified as drivers for change and as having led to a situation where access has run ahead of both legal structures and wider knowledge about the copyright system. Firstly, digitalisation and the ability to distribute widely were seen as dramatically increasing the availability of information. In particular the development of peer to peer sharing communities was seen as having enabled users to become distributors, representing a paradigm shift. Secondly, the development of broadband and ‘always on’ internet.

## **4.5. Which words belong in a vision statement?**

When asked what should be included in a vision or aspiration statement for copyright, the following were seen as important with rewarding creativity and the creator at the heart:

- Education
- Access - works need to be usable
- Authenticating rights
- Opportunity
- Balance of rights
- Rewarding creativity
- Balancing economic reward with social value
- Jobs
- Citizens
- Culture
- Freedom of speech
- Enable/ facilitate
- The commons
- Exceptions

One table felt that words such as punishment and restriction should be excluded while another felt it was important to include the word sanction.

## 5 Access

This section outlines the main issues which emerged from discussions on access. The purpose of this discussion was to explore the issue of access from a range of different perspectives, and to encourage participants to explore the range of different views on access that can exist, in order to establish:

- What kind of access is helpful and required
- What are the impacts of greater or looser restrictions on a person's use
- Whether access to works should be linked to what they're used for?

To broaden the debate and consider a wide range of scenarios and perspectives, each table was presented with two pen portraits from a selection of student, journalist, producer, researcher, publisher or composer and was asked to discuss the following questions from the perspective of the sector concerned:

- How are they affected by copyright?
- What would be the impact of allowing them greater or lesser access to copyrighted work?

### 5.1. Pen portrait discussions

There was a perceived need for both education on why copyright is important, and also for transparency about how licensing works. A lack of awareness about infringement was identified although it was also felt that a lot of usage is in fact legal. However the key point is that this distinction is often invisible to the user. For example, universities pay for a copying licence, but students are probably unaware that some money goes back to the creator through this process.

One participant felt that the common assumption that people will infringe rights if they can get away with it is a false one. It was suggested that if they know how to pay and are given an easy means to do so, they will, and it was further argued that it is the complexity of rights clearance rather than a lack of will to pay on the part of users that leads to infringement. Ultimately, if people are being made to struggle to access works legally then it is likely that at least some of the will go elsewhere.

The need for a simple, standardised system of licensing and permission was therefore a theme which came up several times. It was felt that works are generally available/created to be read/seen/heard and so on, and so there is a will by most creators to make things available. Making legal access easy through a simple, standardised system of licensing and ease of permission was therefore seen as vital. Some participants also felt that mechanisms making it possible to easily identify and contact the creator of a work would help eliminate orphan works. Technology was seen as having an important role to play here.

One group raised the issue that there is no small claims process dealing with infringements of copyright. Many creators cannot therefore pursue their grievances

for fear of heavy legal costs over small sums of money. Participants believed that this further reinforces the need to widen the moral imperative not to break copyright through education.

A conflict between the commercial and social value of work was seen to exist in some cases. For example, a publisher may see no commercial value in putting something online, but there may be a wider social/ cultural value to making this work available. In this context the rights holder can block something because there is no value to them, regardless of whether there is wider value to others/ society. This tension was borne out in the discussion on greater or lesser access. Essentially, greater access was seen as likely to decrease the value of the work to the individual right holder but might increase the value to society.

Indeed, opinion was highly polarised on the merits of greater or lesser access to content. Some felt that more open access would increase demand and lead to more opportunity and ultimately more money. Others, however, felt that protection of rights is vitally important, in particular the right to privacy.

Whether reduced access would lead to reduced choice was an area of debate in one group, with some supporting this argument while others felt that there was no strong link between the two, arguing that in fact restrictions can stimulate creativity clearly distinguishing between what access is legal and what is not legal. Some examples of how greater access can be incorporated into business models were discussed, notably the case of Monty Python where, in response to the high numbers of illegal downloads of their material, they made all their videos on line for free and included advertising for their DVD products. This coincided with a sharp increase in DVD sales.

## **5.2. Linking availability to use?**

On the question of whether access should be linked to what the work is going to be used for it was felt that the choice already exists through systems such as Creative Commons. There was support for the idea that people should be able to give broad permissions but that equally they should be able to identify what they cannot be used for. It was felt that access should be the creator's choice and they should be able to monetise their product if they want to or be more open with their rights, for example for the public good. Some participants also linked this issue specifically to a perceived need for creators to enjoy greater moral rights over their work

## 6 Incentivisation

The aim of the final discussion session was to explore the different actors involved in a particular creative sector ('the value chain') and the extent to which the copyright system is incentivising or disincentivising each of them. Tables were given a specific sector to discuss (music, publishing or software and games) and were asked to map the different players involved and discuss what is incentivising them to invest/ create/ innovate/ distribute or otherwise get involved and what disincentives there are as well. They were also asked to consider what should be in and out of the realm of copyright. This section outlines the key themes to emerge from the two main elements of the debate, exploring the value chain and also the things that fall inside or outside the realm of copyright.

### 6.1. Industry discussion

Copyright was seen as providing a range of incentives for different players throughout the value chain to invest in, create or consume creative works.

- For creators incentives to create were seen to include both monetary and reputational benefits.
- For investors, copyright was viewed as providing reward for investment in unknown talent, which then leads to a wider societal benefit.
- From the perspective of the end user, it was felt they benefitted from copyright in a number of ways including avoiding the need for patronage and therefore providing a wider choice, professionalisation and enhanced quality.

In this light one group saw copyright as driving the pursuit of excellence. Another table stressed that the copyright mechanism itself provides a secure basis and incentive for investment in the product all the way through its life. The presumption of ownership is the anchor which sets up the whole system. This flows through to the value chain so each party can extract value and without it, it was questioned whether many products would exist at all.

Furthermore, lots of actors in the copyright value chain were seen to be demonstrably thriving at the present time. In order for this to continue, it was felt that the system needed to remain flexible and pragmatic. In particular, some suggested that a "one size fits all" system may not be appropriate, because the delivery mechanisms and access via the business models of different industries is varied.

The software industry was seen as a good example of an effective hybrid or multiple licensing systems and this industry was by and large seen as providing a good model of copyright functioning effectively. Enforcement mechanisms such as naming and shaming exist in instances where open source software is abused. Furthermore, abuse of copyright in the industry such often leads to larger companies buying out those who are infringing so there is little point in abusing the system. However piracy does pose an issue for the software industry and participants from that industry did not feel that current enforcement mechanisms are strong enough. A further problem

was identified, namely other creators making something very similar to work which already exists but doing in a slightly different way as this is difficult to challenge under copyright. A point was also raised about the flexible licensing approach adopted in software.

In terms of disincentives, it was argued that any part of the system could be seen to disincentivise people downstream of the originator/ publisher but that this is a matter for the business model to resolve, not of copyright. Registration was seen as a potentially useful addition to current processes to help with identification of creators/owners but it was strongly argued that registration should not come to be seen as a pre-condition of rights. The view was that there should be a continued automatic right to copyright protection for all created works so that there is no erosion of current rights. It was felt that there should be an optional registration scheme which would be for those creators who wanted to be more proactive in providing a way to authenticate their work and ease the process for obtaining permission.

Some concerns were also expressed over orphan works. Being unable to identify the owner of a work and therefore being unable to use it was seen as detrimental.

## **6.2. The realm of copyright**

As outlined elsewhere, a common view expressed throughout this event was that many of the challenges faced by the creative industries today are a result of business models, rather than flaws in the copyright system itself. The challenges were seen by many participants as commercial issues, many of which revolve around relative ability of different actors to negotiate a solution that makes 'business sense' to them.

There was strong disagreement with any suggestion that copyright should be linked to the level of creativity involved in the products. A number of reasons were given for this including:

- In the current context, traditional categories of professionals and non-professionals are breaking down and in many cases they are now doing the same job and should therefore be remunerated accordingly
- An artist's childhood work might be of a poor standard but can assume value later on
- A valuable principle of copyright was seen to be the fact that it is a democratic process that is agnostic about quality
- Problems of decision-making were also highlighted - if a system of relative value like this were to be introduced, participants questioned who would make decisions. It was felt that any such process would be highly subjective and would only serve to drive much more traffic towards the courts.

## 7 Ministerial discussion

During the ministerial discussion a number of pertinent questions and issues were raised. From those representing the legal profession there was nervousness about wholesale change to the system. One participant felt that copyright had evolved over 300 years and reflected the complexities of the needs it is designed to serve. Changes to just a small part could, consequently, have a seismic impact on the rest of system. It was a question of fine tuning not a fundamental re-write.

One participant picked on a thread which ran throughout the day's discussion, namely the fact that many of the issues industries are currently facing are a result of business models not copyright. They asked the question of whether this was a matter for legislation or something industries will have to resolve on their own.

A further line of discussion was around what is at the core of copyright. It was argued that copyright is about more than just the economy and incorporates a social dimension as well as democratic freedoms. Following on from this the importance of exceptions was underlined although this was challenged by another participant who felt that the system of permissions meant there was no need for exceptions.

There was a perceived need to better protect creators in the digital world where content can be stripped out of images, for example. Ensuring both reward and recognition for creators was seen as key. Linked to this it was felt there needed to be better flagging of what you are and are not allowed to do with works on the internet. Participants thought that the technology to do this was already available and should be exploited to this effect.

Finally, there was a discussion about the challenges that arise from internet businesses and their role in the dissemination of works.