



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

**A report on the Intellectual Property Office  
Stakeholder Event 24<sup>th</sup> February 2009**

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## 1 Introduction

This document provides a top level summary of the issues to emerge from the Intellectual Property Office stakeholder event on Tuesday 24th 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 19 participants from a range of different sectors including new media, literary, consumer groups, government, film, gaming, technology and software, artist/ performance and libraries. The table below provides a breakdown of participants by industry and stakeholder type. Participants were in small mixed table groups and the day consisted of facilitated table discussions, presentations and plenary sessions. The day closed with David Lammy, Minister for Higher Education and Intellectual Property, taking comments from the floor.

Industry breakdown	No	Stakeholder type	No
Academic/ Legal	1	Collecting Societies/ Umbrella Orgs	3
Artistic/ Performers	3	Commercial Rights Holders	5
Film/ Broadcast	1	Creator/ Performers	1
Games/ IT	3	Intermediary	2
Government	3	User/ Consumer	3
Libraries/ Archives/ Museums	1	Other	5
Literary	3		
New Media/ Advertising	2		
Technology/ Software	1		
Other	1		
<b>Total</b>	<b>19</b>	<b>Total</b>	<b>19</b>

## 2 Key themes

During the course of the day, a number of themes emerged from the discussion although it should be noted that these were not necessarily points of consensus. Among these were as follows:

- The copyright system was not seen as broken but it was felt that it needs to evolve to accommodate the changes brought about by digitalisation
- There was a perceived need for improvement of the tools that facilitate clearance and payment for use of copyrighted material
- Some participants felt that creators are not getting adequate protection and that they are currently being exploited. The overriding need was seen to be to protect creators
- A lack of effective mechanisms for redress led some to question whether a right is in fact a right if it cannot be enforced
- There is a tension between the international and national caused by globalisation and in particular digitalisation. As a result of the borderless nature of the internet it was felt that the national realm of copyright is becoming less relevant and there were calls for greater international harmonisation
- Concern was expressed that the complexity of rights clearance processes is almost encouraging illegal use of content by ensuring that those who use works without seeking clearance tend to be the first to market
- For some there was a concern that the compression of space and time driven by new technologies has led government to make quick or even rushed decisions as a response to lobbying by different parties, rather than making balanced decisions based on comprehensive investigation of the issues
- The sense that awareness raising is needed about the nature, role and importance of intellectual property among business, creatives and the general public

## 3 Initial reactions

### 3.1. General points

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. As well as providing an opportunity to feedback on the issues paper specifically, the discussion also provided a spring board to talk about copyright more broadly.

Overall there was a feeling that the copyright system is not “broken” and that the principles of copyright are sound. However, participants from a range of sectors also observed that elements of how copyright works in practice do need to change to meet the challenges of the digital age. Issues particularly identified as needing to be addressed included licensing, the distribution of reward across the value chain and the lack of awareness about copyright.

Complexities surrounding the issue of licensing were seen as aggravated by the increasing need to operate in international markets. Licensing arrangements within the European Union were seen to be getting tougher and tougher.

Licensing was also seen as a particular issue for those operating in the digital world. One participant, a major company in the software industry, had found the experience of obtaining multiple licences for music and AV so difficult that they questioned whether “if we knew then what we know now, would [we] even have tried [to gain clearance]?”

There was also a perceived need to ensure that the value chain is rewarding those who actually add value, as some felt that currently this is not always the case. The example cited was distribution vehicles such as search engines, which were seen by some to be benefitting disproportionately from creative works.

Although it was recognised that contractual arrangements between creators and rights holders are not themselves the domain of the Government to address, creators’ lack of copyright knowledge was felt to diminish their ability to successfully negotiate good contractual arrangements with rights buyers.

One role that it was suggested the Intellectual Property Office could usefully play would be to help provide more clarity and education for creators about copyright and the rights that they enjoy. This was seen as likely to help ensure that creators, in particular at the smaller scale, as well as non-commercial users such as universities, are protected against the risk of exploitation by more powerful interests.

### 3.2. Discussing the issues paper

In terms of the issues paper itself, there were mixed feelings about its purpose and value. On one hand, it was seen as “reassuring that lots of people in government are

thinking about this and asking questions because copyright is a critical part of business.” It was seen as successfully bringing together the important issues into a single document, and as striking a good balance between general and specific points. One participant noted that there had been too much focus on creators in the past and was pleased to see that it takes an equal look at both sides.

On the other hand, several questions were raised about the need for this work, arguing that many of the questions being raised had already been answered elsewhere. Participants explained that consultations take time and effort to respond to and there was a feeling that this was “consultation overkill”.

Some participants also expressed concern that Government may be raising questions about the fundamental principles of copyright.

The fact that the end point to the consultation process was not set out also caused some debate. One participant expressed the concern that this was because the Intellectual Property Office already knew what it wanted to say and that the consultation was therefore not a genuine one. Another objected to the fact that the issues document was so open ended and did not provide any proposed solutions to the questions it posed.

Finally, the absence in the issues document of any discussion around peer to peer file-sharing issues was raised as an omission one participant while another expressed approval that it did not appear as an issue in its own right. It was also felt that the issues paper focussed too much on commercial value to the exclusion of wider societal factors.

## 4 Towards a vision for copyright

The next discussion was aimed at understanding what a vision for copyright should look like. Following a short presentation from the Intellectual Property Office, the session explored the following questions:

- Who has copyright affected in the past?
- Who has benefited and lost out?
- What are the key drivers for changes?
- Left unchecked where will these changes take us?

### 4.1. Who has benefitted?

It was argued that everyone in society benefits from copyright, in particular creators, consumers, users, publishers and distributors. It was also stressed that, because of digital technology, in the modern world everybody is a user and many are also creators.

A further distinction was drawn between the creator and the rights holder, and it was stressed that these are not always the same person. One participant representing creators also argued that thinking about who might lose out in the future might be more pertinent than conducting an historic review of who has lost out in the past.

The notion of what constitutes benefit or loss was discussed. In this context copyright was seen as having several components. Some participants felt that money and financial reward were the key elements of the copyright system, and it was argued in this context that there is a need to reassess the value chain in order to ensure that those involved are receiving adequate compensation. In this view, theft was seen as theft whether it takes the form of a stolen wallet or a video game downloaded illegally from the internet.

Other participants highlighted the wider societal aspects of copyright, recognising the broader benefits offered by copyright than simply monetary reward. Providing an incentive for people to create was seen by some as the primary societal benefit, although there was disagreement here with others arguing that copyright does not have any bearing on inspiration. These participants argued that even without the financial incentive provided by copyright, individuals would still be inspired to create.

Although not directly a function of the copyright system, ISPs were seen by one participant to have benefitted from the changes in technology which have led to an increase in internet traffic. In the absence of measures to tackle illegal file-sharing and other breaches of copyright, the point was raised that those who have benefitted from such increases in traffic are not necessarily doing anything to pass the benefits they receive on to those who create content.

## 4.2. Who has lost out?

Participants representing a broad range of industries argued that creators are currently losing out, the reasons for this being manifold:

- Widespread confusion amongst creators about the rights they enjoy, which can lead to unfair exploitation
- Even where people are aware of their rights, they may lack either the influence or the infrastructure to initiate redress when rights are being infringed. This raised the question of whether a right is in fact a right if one can not afford to take action in the face of infringement
- The lack of protection for creators. One participant raised the issue that honing many creative skills and crafts can take years and these were seen as being under attack. For example, in the software industry it was felt that weak protection in the digital environment for creators means they are not getting just reward.

It was noted that rather than asking who has lost out, this question might be broadened to ask how the UK as a whole would lose out if people are not incentivised to create. Although this point was disputed, it was largely agreed that if return on investment is threatened, the level of subsequent investment is reduced which would ultimately lead to a decline in quality and choice for everyone.

Another way in which wider society was seen to have lost out was that copyright has gone from being something which worked invisibly in the background to something which all consumers increasingly have to confront and take responsibility for in their everyday lives. Not only does this mean more work for the consumer, but also increases the burden on Government and rights holders to ensure that copyright is something that everyone, not merely a small group of experts, can engage with.

Finally, a user from the new media industry felt that the length of time it takes to acquire rights meant that they were losing out, a sentiment echoed in earlier discussions by the gaming and music software industries.

## 4.3. What are the drivers for change?

### Technology

Technology was seen as one of the primary factors driving the need for change.

One element of this was around globalisation. It was felt that the huge increase in the availability of works via digital technology and the internet has led to a conflict between global access to works and territorial rights, which means content is not being made available, and also creates a very confusing picture of different rights in different places. This led some to express a desire for standardisation.

The strides being made in technology were seen as having exacerbated the cultural acceptability of illicit file-sharing. The fact that the technology facilitates illegal

downloading was perceived as reinforcing the idea that it is legitimate, and participants felt that cultural norms are being driven by what is technologically possible rather than legally or even morally correct. One participant also raised the question of how technology is positioned in this debate, asking whether the role of copyright was in fact to facilitate the economic exploitation of technology.

On a more positive note, it was also suggested that with the increase in available content on the internet, copyright can also play an important role in ensuring and rewarding quality as it can assist in validating trusted sources.

### **Cultural/ social**

Linked to this, the on demand culture and the expectation of “for free”, particularly amongst the younger generation, were seen as key drivers. A need for education was perceived in order to start to shift these cultural norms. Faced with high consumer expectations about what should be available in very short timescales, one respondent expressed frustration at the difficulty of being able to respond to customer demands legally due to the complexity and length of time it takes to pay rights holders. The concern was expressed that the complexity of rights clearance processes is therefore almost encouraging illegal use of content by ensuring that those who simply use without seeking clearance are going to be first to market.

### **Political and legal**

There was a perception that the “compression of space and time” which has resulted from technological advances has led Government to adopt fast solutions in a fast changing environment and concerns were raised about whether the right decisions are always taken. There was concern that Government was being too driven by technology and lobbying without giving proper consideration to evidence or to the full range of arguments, including from less commonly heard voices.

## **4.4. Left unchecked, where will these changes take us?**

Left unchecked, it was felt that the availability of content would continue to be restricted by inconsistent international copyright regimes. It was also suggested that the content that does remain available would become less and less useful. In order to ensure that the creative industries remain healthy and the environment for creativity is maintained, participants suggested a number of changes that might be implemented.

- Many participants felt that the role of enforcement should fall to the ISPs as they are in a better position financially than SMEs to instigate action against those infringing copyright
- One participant also suggested that an online enforcement body might be helpful
- Encouraging companies to incorporate respect for intellectual property as part of their corporate social responsibility was seen as another method of reducing infringements
- The idea of a three-strikes-and-you’re-out system was discussed and was seen as a positive development by one respondent representing artists. However, it was viewed negatively by another from the new media industry as it was seen as

punishing ISPs who it was felt would have to adopt the role of enforcer and would therefore lose revenue. Concerns were also raised that such a system would be to the detriment of the consumer as it would create a digital underclass of people who had been excluded.

- Many participants also argued that the only way of competing with free downloads is to provide an easy legal option. It was argued that the technology for paying for legal downloads needs to be as easy as possible as legal downloads are competing with free. It was also posited that having better payment platforms would provide a legitimate alternative to low level piracy.

## 5 Access

This section outlines the main issues to have emerged from the discussion on access. The purpose of this session was to explore the issue of access from a range of different perspectives, in order to establish:

- What kind of access is helpful and required?
- What are the impacts of greater or lesser restrictions on people in different areas?
- What is the value of access for the individual and wider society?

To do this each table was presented with two pen portraits from a selection of student, journalist, producer, researcher, publisher or composer. They were then asked to discuss the following questions from the perspective of the individual:

- How are they affected by copyright?
- What would be the impact of allowing more closed/open access to copyrighted work?
- What is the value of access?

### 5.1. Key themes from the pen portrait discussions

From the creator's perspective, making work more widely available was viewed as leading to better distribution and therefore offering benefits in terms of reputation.

It was also noted that the extent to which access to an individual's own works is valued depends on where they are in their careers. For example, a DJ at the beginning of their career is likely to want exposure in order to get their work known, whereas once established they are likely to want their rights protected.

In general, it was felt that people find ways to use the existing processes to their advantage at different stages of their career, suggesting that the copyright framework as it exists is capable of providing an effective and flexible system. One example provided was that a lot of authors licence for a limited period such as for two or three editions and then rights refer back to them later, when they are more successful.

There was agreement with the principle that access has huge value to society as the body of knowledge created in education, health, science and the creative industries begets more creativity and more ideas. This provides the UK with the intellectual firepower to exploit works commercially. Having greater access to work was viewed as creating a virtuous cycle as existing creative works provide the inspiration for new ones.

Access was also seen by most participants as leading to more content being made available at lower a price which, in the eyes of one participant, a rights holder, was integral to defining the success of copyright. However restricting access was seen by

one group as increasing quality by incentivising creators and eliminating the unskilled competition.

Returning to bargaining power, participants in one group thought that mechanisms such as model agreements might help redress inequalities and better enable smaller organisations and individuals to protect themselves against bigger ones by giving clarity of rights. It was also felt that this would make copyright education easier by providing creators with a tool to protect their own intellectual property.

Education was seen as essential in preventing infringement amongst users and boosting the position of creators and SMEs in contract negotiations. There was a perception that the public are unlikely to be aware of what activities are legal and illegal when it comes to copyright. In the case of the student DJ discussed in one pen portrait, educating him to realise his role as a creator, it was felt, might make him less likely to misuse other peoples' work.

Due to the complexity of rights clearance and the fact that it is a highly time and resource intensive process, gaining legal access to works was seen as heavily dependent on the size and ability to pay of creators and organisations, with the process seen as biased towards larger organisations. Taking the example of a broadcaster, one table felt that well funded, large organisations are better equipped to do things properly and ensure that all rights are cleared as they benefit from having blanket licences which simplifies the process of gaining access to works. For smaller companies, however, this process was seen to take much longer as they have to clear every right individually. The example of a small film maker was used for whom showing a video at a film festival can be virtually impossible. Even simply finding out who the legitimate rights holder is was raised as an issue as it not possible to assume that just because someone claims rights that they are actually the rights holder.

Overall, it was argued that where people will pay commercial rates it is possible to derive value from works, however where people pay next to zero there is no framework for control. In this context one participant raised the question of whether access to creative content should be an automatic right for all. However an objection to this idea was raised in that for those who can not afford to pay or who will not pay, who subsidises this access. There was significant disagreement about whether those who can afford to pay should subsidise others, or whether this was the responsibility of Government.

The issue of moral rights was also raised. It was acknowledged that creators can choose to give rights away for free use but that there is often a tension when someone further down the chain then commercialises the rights. However, a balance is needed and as one participant noted, the more control the creator exercises over what can be done with the work, the harder it is to get that work to market and into wider circulation and therefore the smaller the benefit to.

Finally, the issue of transformative works in the software industry was highlighted as there is seen to be an unclear division between whether something is stolen, recoded

or genuinely new. The issues came out particularly from the discussion of the university researcher pen portrait.

## 6 Incentivisation

The aim of the final discussion session was to establish what aspects of the copyright system are working well and where there are issues that need to be addressed. Each table was given an industry with a map of actors and discussed the following questions:

- What are the incentives for each player to be involved?
- How is the system currently working?
- Could it work any better? If so, how?
- Will the current definition of what is in and what is out of copyright work going forward?

### 6.1. Incentives and disincentives to create, invest and innovate

In terms of the incentives provided by copyright for people to create, invest and innovate, copyright was viewed as a good underlying framework. Indeed, the ability to generate financial reward was seen as one of the most important factors in incentivising actors in the value chain. In some cases this was closely linked to being in control of your product, as this will enable people to make deals and get the best economic reward. However moral rights and the ability to maintain control over your work and ensure its integrity were also seen as important in their own right.

The incentives were viewed differently for different groups. For example, retailers were cited as having a vested interest in copyright, as it provides quality assurance and prevents the sale of cheaper counterfeit products, which would encroach on their profits. For schools, the incentive was seen as the education of pupils while for users the incentive was seen as being entertained. For creators, a sense of satisfaction, the act of responding to the creative impulse and recognition were highlighted as drivers for creativity. Society as a whole was seen to benefit from copyright as it promotes a rich culture, adds to choice and quality and leads to job creation.

While it was felt that the system incentivises most of those within the value chain there were areas where there were seen to be disincentives at work. It was felt that copyright can create an administrative burden for some. This did not appear to be such an issue for those higher up the chain (e.g. large broadcasters), but for those further down for whom the financial reward is not so great (e.g. a part time DJ), there is little incentive to try and overcome administrative hurdles caused by copyright. Lack of effective redress was also seen as a potential disincentive as was the inability to exercise control over the use of work in the online world. It was felt that all these things can contribute to a situation where people are reluctant to publish their work on the Internet.

### 6.2. How is the system currently working?

The fact that the copyright system has 300 years of history was viewed as testament to the fact that it was working well. It was recognised, however, that the composition

of the value chain has changed dramatically in the face of digitalisation and that previously significant sectors have experienced a major loss of economic value. The example cited was that of CD factories that have a diminishing role within the value chain of the music industry. That said, this was not viewed as an issue for copyright and was attributed to business models not adapting quickly enough in a fast evolving market. This was seen to be compounded by “casual piracy” whereby low level infringements are being regularly committed, meaning legitimate players are losing out on reward.

There was a view that within the music industry, artists and record companies were working together to adapt to the change but that progress is sometimes being halted by collecting societies seeking to protect their own revenue streams. However, counter to this it was argued that societies are successfully protecting the interests of their members and collecting societies were viewed positively particularly by those who do not work in industries that benefit from their protection.

It was also noted that technology has offered new products and routes to market, such as telephone ringtones or legally downloadable music.

Rights clearance was an area of copyright that was not seen to be working effectively. Alongside issues raised elsewhere such as the difficulty for small businesses in clearing rights, the problem was particularly acute where multi-territory rights were concerned due to the absence of a pan-European licence. In the video games industry an issue was highlighted regarding the reluctance of hardware vendors to take on new games for fear of being sued as a result of bad past experience.

Another area where the system was seen as falling down was in ensuring creators were rewarded sufficiently. Part of the problem was attributed to the fact that it is “viciously difficult” to know who to pay although it was acknowledged that the situation in the UK is better than in other countries. Furthermore, there was a perception that aside from performers, creators are not always getting the recognition they deserve. In the music industry, while many creators and performers are doing well out of live events, it was felt that there is a lack of transparency surrounding the level of reward they should be getting due to the involvement of collecting societies and record companies.

### **6.3. Areas for improvement**

Better enforcement and education were highlighted as the most important areas for improvement. It was felt that enforcement should be a secondary priority to education, however. The issue of piracy was seen largely as a product of ignorance and there was a perceived need for education amongst both users and creators. Improving knowledge on clearance issues such as identifying rights owners, obtaining clearance and the cost and time of doing so was seen as a necessary intervention in order to improve the workings of copyright.

From the perspective of creators, participants thought there was a need for education, awareness and information provision in order to prevent people entering into contracts which are not in their interests. Model contracts were presented as one possible solution to redressing the imbalance of power between small creators and large commercial and non-commercial organisations. The need for education about copyright was not seen as a panacea, however, and it was argued that it would be most likely to make a real difference if coupled with a simplification of existing rights.

It was also felt that having more effective, easier and cheaper mechanisms for enforcement and redress would provide a disincentive to rights infringement. Legislation and rights were seen as meaningless if there is no way of enforcing them and no knowledge of or interest in the rules. Non-judicial mediation was raised as one possible method for resolving disputes. Registration was also mooted although for most this was seen as an overly bureaucratic solution. However, one participant felt that having an optional register would serve to strengthen the damages regime.

Rights clearance was another area that participants felt was in need of attention. It was seen as an aspect of copyright that remains “analogue in a digital world”. Clearance of rights was noted as being especially complicated on multimedia projects where the process of rights clearance can become prohibitive. The example given was university students wanting to put on multi-media shows but being unable to do so as a result of the difficulty and cost of obtaining clearance for the material they used.

#### **6.4. The realm of copyright**

The commonly held view at the event was that there is no need to extend the coverage of copyright although in some areas there is a need for amending definitions, specifically around what constitutes a visual work as installations are not currently included.

The majority of participants felt that copyright should not be linked to quality and that all work should be subject to the same level of protection. This was because what constitutes a ‘quality’ work is too subjective. However some did dissent from this majority view, arguing that a blogger should enjoy fewer or less exclusive rights than a professional musician.

The overlap between copyright and patents was also raised, as it was felt that the term of extensions for both should be brought into line. There was also a perceived danger of overlap between the two, with participants calling for more clarity on the dividing line.

## 7 Ministerial discussion

The final session involved a plenary with the Intellectual Property Office, followed by David Lammy, the Minister for Higher Education and Intellectual Property, taking questions from the floor.

One respondent suggested that there may be a mismatch between how the user interacts with copyright and how they interact with patents.

One participant raised concerns about the introduction of new exceptions as the creative sector is beneficial for the economy and the country and should be preserved through better mechanisms rather than exceptions. Exceptions were viewed as an opt-out from the economy of copyright. In response, it was argued by another participant that exceptions are not an opt-out as they have to be economically irrelevant.

It was also argued that the responsibility for policing the internet for infringements needs to be shared, to ensure that the burden does not always fall on a just a few organisations. It was felt that a need for greater collaboration on this front exists.

A participant from an ISP said in response to this point that in any such role there would have to be some mutual benefit and that responsibility should lie with those who stand to make money. However, it was argued that artists, for example, do simply not have the resources to police their own work. Some willingness was expressed by the film industry to work together with ISPs to maintain the economic viability of the system.

The need to ensure a fast and efficient mechanism for identifying rights holder and licensing was raised by several participants. It was felt that this would be likely to provide a mechanism for putting value back into the chain and would be particularly effective if coupled with an easy means of paying.

Finally, the difficulty of multi-territory licensing was highlighted. Having a brilliant system in one country was seen as irrelevant if those in other countries are not up to scratch.