



**Developing a Copyright Agenda for the 21st
Century**

**A report on the IPO stakeholder event 25th
February 2009**

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1 Introduction

This document provides a top level summary of the issues to emerge from the IPO stakeholder event on Wednesday 25th 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 20 participants from a range of different sectors including academic and legal, film and broadcast, artistic/ performance professions, user/ consumer groups and technology and software. 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 a Q&A with David Lammy, Minister for Higher Education and Intellectual Property.

Industry breakdown	No	Stakeholder type	No
Academic/ Legal	2	Collecting Societies/ Umbrella Orgs	1
Artistic/ Performers	2	Commercial Rights Holders	6
Film/ Broadcast	4	Creator/ Performers	3
Government	2	User/ Consumer	4
Literary	1	Other	6
Music	4		
Technology/ Software	2		
Other	3		
Total	20	Total	20

2 Key themes

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

Among these were as follows:

- Most participants felt that the principles of copyright are largely sound and the system is not broken

- There was a perceived a need to increase levels of respect for the system particularly amongst the younger generation who have a perception of “for free”
- Education was seen to be at the heart of overcoming this problem
- It was felt that ISPs should be playing a greater role in injecting value back into the system where this is lost through casual piracy
- There was seen to be a need for more effective mechanisms for redress where rights are infringed such as the small claims court, arbitration or mediation
- Participants felt there was also a need for better attribution mechanisms and proposed a system of voluntary registration
- The complexity of rights clearance was highlighted particularly where companies are operating across international boundaries and have to navigate multiple copyright regimes. Domestically, this was also seen as an issue.

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 21st Century.

Overall, participants felt that the copyright system is largely sound and is not in need of drastic overhaul. That said, it was argued by some that as a result of the widening of creative media which has led to an exponential increase in the number of rights holders, the operation of copyright has become increasingly complex and is in need of simplification. However others stressed that copyright is a reflection of the complex needs of different sectors, and it was noted that moral and economic rights should not be put at risk merely in the interest of simplification.

It was also argued that, particularly in the current economic climate, great care must be taken in considering any changes to copyright, so as not to jeopardise the UK's competitive edge.

The Issues Paper itself was seen as looking at the “right” issues. For those organisations that are both users and creators of copyright, the document allowed them to look at all the issues they face while giving organisations who previously have not had a voice the opportunity to get engaged. Participants felt that the issues document struck a better balance between the needs of the user and the creator than the Gowers Review, which was more user-centric. The Issues paper was also praised for recognising the overlap between the user and the creator.

Several questions were raised about the nature and scope of the debate. In particular, participants were keen to understand the difference between this debate and the Digital Britain work. Participants also wanted to know what the outputs of the debate would be and whether the Intellectual Property Office has a first principle in mind. The lack of reference to the Gowers Review, however, was a point of contention and led one participant to question whether this event was just a “talking shop”. A question also arose over where the distinction drawn in the document between commercial rights and artist rights had come from, as this was not something that one participant felt had been emphasised in the past.

An issue that was felt to be only slightly addressed was about copyright being continually infringed through low level piracy, which was seen as largely a result of ignorance. A need to raise the level of respect for the system was therefore identified. Education was highlighted as an example of where copyright is sometimes problematic in the current climate. The example was noted of teachers who are uncertain of what they can do in terms of producing teaching materials with regards to copyright, while their students often just go ahead and do whatever they wish.

A question was therefore raised about whether a lack of knowledge of the law or little regard for it makes it possible to act with impunity. Young people were held up by some participants as the major transgressors, and the question was raised about how they are being targeted by the IPO.

The role of collecting societies was raised by two groups, with one of these groups focusing on moral rights in particular. The collecting society was viewed as useful to an extent but it is a mechanism premised on the inability of the creator to say no. Discussions in the other group focused on the need for collecting societies to be reorganised, as they have been operating in the same way for 100 years.

The role that technology has played in driving change in the creative industries was acknowledged and one participant argued that technology is both the cause and the solution to the problems that have arisen. New business models such as Spotify, a new free and paid for on-line music service, were cited as examples of innovative technological solutions to the changing environment. However, it was also argued that digital aspects should not be overplayed, as 96% of music income is not digital.

In response to the Digital Britain Interim Report, there was also discussion of the role for ISPs. Several participants felt that pursuing individual infringers was economically unviable for rights holders and that ISPs should play a role in monitoring the internet. Ireland and France were cited as example of countries where this had worked well.

A gap was perceived as currently existing between the coverage or attention that a work receives and remuneration. Following from this, one participant was of the opinion that creators should be able to benefit from increases in the value of their work as well as having the ability to determine what that work is used for.

4 Towards a vision for copyright

The next discussion was aimed at understanding why the need for a debate has arisen and what the consequences of leaving the changes unchecked would be. Following a presentation from the IPO, 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?

Copyright was seen as having benefitted society as a whole as a result of the creativity that it stimulates. Participants agreed that without copyright, people would not have an incentive to invest in creative work, and creators themselves would be far less able to earn a living from their work. One table assigned great importance to the latent value of copyright in that it applies automatically and therefore, when it is abused, the creator has grounds on which to take action. It was, however asserted that copyright is harming society as a result of having an over extended term.

Creators of content were seen to have benefited from copyright by some participants as even if the rights to works are held by a producer, contributors are represented by a union and there is, therefore, an efficient process for clearing rights and distributing reward.

4.2. Who has lost out?

Elsewhere, creators were seen as losing out as contract law takes precedence over copyright. In this context it was felt that creators often end up giving away or undervaluing their rights.

Participants thought that whereas in the past, the small claims court provided a mechanism for redress, there is no longer an effective mechanism to address infringement.

Similarly, businesses were seen to be suffering as access to the Copyright Tribunal is prohibitively expensive and alternatives such as arbitration do not currently exist. For smaller businesses who want to use background music, for example, the issue of increasing tariffs and costs that were not seen as being offset by benefits.

Businesses were also seen to be losing out where it is necessary to clear multiple licences. The example of a packaging design firm was raised as they have multiple suppliers and therefore multiple licences. Producing programmes for an international audience was also seen as problematic as the extended process of licensing makes it difficult to get programmes to market quickly. In order to streamline the process of rights clearance, a non compulsory registry was proposed by some participants.

The challenges of operating in an international market place were not seen as confined to licensing. One participant from the software industry related that they would not seek to distribute products in certain countries for fear of copyright infringements. This was seen to have a detrimental effect on exports and therefore the economy more widely. In response to these issues a global approach to copyright and better international cooperation on issues of piracy were seen as important by some. Others, however, felt that there remains an important territorial aspect to copyright in that, by providing the right regulatory and tax environment, a country can attract creators from overseas and generate a competitive advantage.

Finally, restrictions around the exploitation of old material were seen as having a negative impact on broadcast audiences. Access to broadcaster archives was cited as an example where restrictions on use are limiting the choice and quality of material available to viewers.

4.3. What are the drivers for change?

Technology

The availability of information and the speed and ease with which people can make and distribute copies were seen as the primary technological drivers for change.

Enforcement in the digital world was strongly felt to be an issue. One participant argued that it was never going to be possible to prevent copying, which raised the question of whether the function of copyright has been irreversibly altered. In this view the extent of illegal copying was seen to create a disjoint between the theory of copyright and the reality. There was little consensus among participants about whether it was possible to return to an enforceable world at a reasonable cost.

The speed of the internet and digital systems was seen to be at odds with the time it takes to identify the origin of works which, it was felt, diminishes the ability of people to access and use works legitimately. Examples of successful attempts by businesses to enforce their rights online were felt to be few and far between. Indeed, the problems faced by the music industry were highlighted, where the industry received highly negative PR after trying to enforce rights on the internet as they were portrayed as big business victimising individuals.

The industry surrounding internet traffic such as ISPs, telecoms providers, modem manufactures and advertisers was felt to have driven up demand and contributed to the expectations of consumers of available content.

Cultural/ social

There was a strong view amongst participants that a generational difference exists in attitudes towards the availability of information. It was felt that young people have a perception of “for free” and do not see any reason to pay for content. One participant cited a recent survey which found that the majority of 16-24 year olds do not feel guilty about downloading from the internet. While it was acknowledged that young people have always rebelled, there was a feeling that the absence of any tangible

product in the digital world makes it more acceptable to 'steal.' It was argued that while most young people would not steal a stamp from a shop, there are no such scruples where it comes to information that you can access from your own computer. It was felt that the cultural acceptability of illegal downloading was largely down to a lack of awareness and education.

Business

One table felt that profit and how you make money from being creative or being an exploiter of creativity was the most important driver for change. In this context, technology was viewed as the mechanism for determining how this is achieved most efficiently.

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

In terms of where these changes are likely to lead if left unchecked, one view was that businesses would simply adapt and new business models would emerge. Spotify was used as an example of where this process is already underway.

Indeed, concern was expressed that creators would be unable to generate revenue from their works if the status quo was maintained. Elsewhere it was argued that having exclusive rights for such a long term creates a risk that there will be no copyright system left at all in 20 years.

It was also posited by some participants that the copyright system of the past has placed the emphasis on restrictions rather than permission but that in order to fully realise the economic potential of creative works, a more permissive approach should be adopted.

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 a person's use?
- 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:

- What access do they need?
- How is this access important in this area?
- What would be the impact of restricting access to other works?
- What impact on this area would providing greater access to its work to others have?
- How would this access benefit others?
- Is there a need to consider a system of access which is based on the proposed use of the work?

5.1. Key themes from the pen portrait discussions

One of the most prominent themes arising from the pen portrait discussions was the need for better visibility and rights clearance. Under the current system it was felt that identifying the originator of a work and ensuring the copyright is paid for is exceptionally difficult. Participants felt that while it is often easy to find content, a great deal of time is then spent looking for the owner and seeking to pay for use of the work. This problem was not seen as uniform across the sectors, however, and some areas were perceived to be better than others. For example, the emergence of iTunes was seen to set the music industry ahead in terms of helping to make usage legal.

Improving the system of attribution was seen as a real need. While it was felt by some that more established players, such as publishers, might have a better understanding of how to go about getting clearance, new players such as software companies as well as smaller companies were seen to be at a disadvantage. However, others felt that even for those with a good knowledge of copyright, this remains a challenge. Participants felt that both an easier system and better education were necessary to improve understanding of permissions and the levels of protection applied to a work. This was challenged by one participant who felt that simplifying rights clearance was neither feasible nor practical.

It was also felt that improving the system of attributions would facilitate the authentication of works and better enable people to determine quality. In the

example of a journalist wanting to verify the legitimacy of a source, it was argued that by providing easier access to the originator, creators and those wanting to use works would be able to make more effective judgements as to the validity of the information or content.

A more permissive attitude to accessing works was seen by some as having wide societal benefits, such as increasing innovation and boosting creativity as a result of creators being able to use the works of other for inspiration. The need to allow students to have wide access to information was seen to benefit society as a whole and a question was raised in one group about whether education exceptions should be broadened to include music use. It was agreed that exceptions were important but was also acknowledged that “you need to have broad shoulders” to be able to use them effectively.

While the societal benefits of greater access were acknowledged it was felt that a trade-off exists between the benefits to society and the benefits to the individual creator. In this context it was argued that permitting greater access to works would mean the creator would lose out financially as a result of compressed prices. One respondent from the broadcast industry felt that having greater access to information becomes a collaborative effort in which systems such as collective licensing and bargaining must play a part.

Linked to this point, it was felt that there is demand from the market for aggregation. However, competition law was seen as preventing a one stop shop for licensing from emerging. This was felt to turn a single licence into a multitude of licences.

There was debate on one table over whether price constituted a barrier to access or whether it is simply a matter of supply and demand where if you do not have the means to pay for something then you cannot be said to ‘have’ demand for it. It was argued that where price does prevent access, the free library provides a way round this although the speed of accessing the information is reduced. However, elsewhere it was felt that individuals such as an amateur film maker do not always have access to the information they need. This, it was suggested, is of detriment to society.

Participants also felt that the cost of infringement at the level of the individual has to be made up elsewhere. It was suggested that the burden of this often falls to businesses such clubs and pubs, which are easy to target. Copyright was seen by some to facilitate access in the business to business world as it is respected but this was not seen as the case in the consumer market.

Ultimately, the creator was seen by some participants as having a fundamental right to licence or not licence works as they see fit. It was felt that in an economy where brand is so important, moral rights play an important role in protecting this asset and prevent brand dilution.

Finally, the issue of whether access should be linked to intended use was raised in the context of an academic researcher. One participant highlighted the example of the British Library, which already operates a two tier charging system for usage.

6 Incentivisation

The aim of the final discussion session was to establish what aspects of the copyright system are working well in relation to the incentives needed by businesses and creators, and where there are issues that need to be addressed. Each table was given an industry with a map of players 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's in and what's out of copyright work going forward?

6.1. Incentives to create, invest and innovate

One table used the following categorisation to group the different players within the value chain which provides a useful structure in which to analyse the incentives driving each group.

- Creators and contributors
- Investors and producers
- Distributors
- Consumers and users

It should be noted that one participant felt that the creators and end users or consumers were the groups which were fundamental to the existence of the system, with all other groups acting as intermediaries.

The incentives that were seen to have a bearing on creators were broader than those driving other groups. While participants felt that financial reward was significant in incentivising creation, a range of other factors were also seen to come into play. These included an altruistic desire to do something good for society and the exercise of democratic freedoms and rights, as well as the desire for credit, recognition and respect. It was felt that investors, producers and distributions, on the other hand were concerned primarily with return on investment with altruism and the need for recognition playing a less significant part.

The incentives for the end users and consumers were that they have access to a large, diverse body of creative works.

6.2. Areas for improvement?

It was felt by some that the current system is denying creators a just reward as a result of digital technology. File sharing was seen to act as a disincentive to creativity, albeit a small one, and it was felt that sites like YouTube remove value from the broadcast industry, for example, by making everything which is broadcast available on the internet. There was a strong feeling that ISPs had a role to play in

remedying the situation, with one participant arguing that ISPs have built a significant proportion of their revenue and traffic through illegal downloading but are not injecting any value back into the system.

Some participants felt that the system was undergoing a process of change, the upshot of which is that the artist can now go straight to their audience and by-pass intermediaries. This point was disputed, however, as it was argued that artists still need the infrastructure provided by the existing system such as investment, marketing and logistics in order to operate effectively. This discussion took place within the context of the music industry.

The emergence of digital rights and the issue of archived work was also seen as an area of the copyright framework needing to be addressed. This was because there is a great deal of work held in archives, the contracts for which pre-date the digital era. A question was raised about whether there was a case for the retrospective application of digital rights for the creator.

Contractual “bullying” of creators by major companies was seen as an issue that would remain as long as copyright is a property right rather than a moral right.

It was also argued that there was a need for an alteration in the function of copyright and a move away from exclusive rights towards a system of equitable remuneration was proposed.

As seen in earlier discussion, the issue of clearance was raised as an example of the system not functioning effectively due to the complexity surrounding the process of identifying and paying the originators of works and negotiating different international systems.

6.3. Potential solutions

A range of possible solutions were raised in discussions to overcome some of the challenges facing copyright.

A need was perceived to strengthen the link between investment and reward, as it was felt this had been damaged by the internet. There was considerable discussion around the role that ISPs should play in this. One participant from the technology sector cited a statistic which claimed that the music industry has lost 30% of its value over the last five years with illegal file sharing making up 80% of traffic on ISPs. In this context there was a strong feeling among some participants that ISPs should be helping to inject value back into the chain.

The introduction of a levy was suggested however it was argued that this would remove important market mechanisms for establishing value. Collective licensing and compulsory donations were suggested as alternatives.

Several suggestions were raised as to how difficulties of attribution might be overcome – with visibility of who owns the rights aiding use and rights clearance etc.

A non-compulsory registry was seen as a positive solution by many. A compulsory registry was however rejected on the grounds that it infringed on the moral rights of the creator.

One table felt that a registry of creators rather than individual works would be a more workable and less bureaucratic mechanism. It was felt that this would need to be coupled with a labeling system. The use of a digital watermark was raised as a method by which attribution could function, meaning that rights holders or creators could take small sums of money as the work is used. Digital 'finger printing' was raised as another alternative.

One participant felt that there was a need to look at a system where people pay for access rather than an actual item. Assessing the way content flows, it was argued that the value does not necessarily lie in selling an item such as a music recording but in giving it away and deriving revenue from relationship that develops and sale of additional materials that it permits. It was felt that we currently do not have a regime that can cope with this level of complexity.

6.4. Realm of copyright

In response to the question of what should sit within the realm of copyright, participants felt that copyright should be an automatic right and should continue to apply to all expressions of ideas through creativity. There was a belief that making copyright dependent on the quality of a work would not be feasible as it would not be possible to make such subjective decisions about quality.

In addition to this, there was a view that it was up to rights based industries and the technology sector to develop new ways of offering users a better experience in order to redirect them away from existing illegal experiences. This was seen as a matter for business rather than copyright.

7 Ministerial discussion

The final session involved a plenary with the IPO, followed by a Q&A with David Lammy, the Minister for Higher Education and Intellectual Property.

Concern was raised about the perception that copyright restrictions could be 'rolled back' and it was felt that the Government should not move to change the system in response to technological change, as copyright is, by nature, flexible enough to adapt. A parallel was drawn between the current situation and that of the 1930s where the introduction of radio, television and film led to calls for changes to copyright.

Following from this, UK copyright laws were held up by one participant as being some of the best in Europe, and the correlation between strong laws and a strong content sector was highlighted. The strength of the UK system was seen to lie in the fact that it provides some moral rights without curtailing the commercial freedoms of 'UK PLC'. There was concern about the potential loss of positive aspects of the system in the spirit of harmonisation.

A view was expressed that the copyright system should start from a presumption of use rather than restriction. One participant felt that the great majority share the desire to ensure people have access to works but that the system is biased towards needing lots of clearances. Archived works were highlighted as an example of works not in the public domain due to copyright restrictions. Another participant felt that there was a need for a new model with access as its heart, but it was also noted that, for this to be feasible, businesses need to be supported to develop new business models.

The need for education was stressed, particularly amongst the younger generation amongst whom there is a need to engender a respect for copyright that is currently absent.

Collapsing the distinction between users and creators was also seen as important. One participant felt that users who argue for the needs of users are suddenly for creators when their own creator rights are infringed.

Finally, the importance of protecting the interests of society rather than just those of the creator was raised. In this context, however, the difficulty of determining where the balance should lie was acknowledged.