

**Minutes of the Copyright Advisory Panel Meeting
7 February 2017 3pm -5pm**

Attendees

Tim Suter – Non Executive Director IPO (Chair)
Crispin Hunt – CEO Featured Artists Coalition
Geoff Taylor – Chief Executive British Phonographic
Gilane Tawadros – CEO Designers and Artists Copyright Society
Hamish Crooks – Magnum Photos
Julian Ashworth – Global Director of Industry Policy, BT
Magnus Brooke – Director of Policy and Regulatory Affairs, ITV
Susie Winter –The Publishers Association
Stephen Edwards – ReedSmith
Ros Lynch – Director, IPO
Neil Collett – CED, IPO
Ben Beadle – CED, IPO (minute taker)

Apologies

Maureen Duffy –President of Honour of British Copyright Council and ALCS
Amanda Nevill – BFI
Bill Bush – Director of Policy, Premier League

1. Introductions & welcomes

The chair welcomed everyone to the meeting and Ros Lynch (RL) apologised for not having circulated the October meeting minutes.

The chair explained that there were two areas to discuss, trade and the Industrial Strategy and that would take up a large part of the meeting.

2. Update from the IPO

RL gave the following update;

s73 – Waiting on a date to publish the Government's response to the technical consultation (update – published Friday 10th February).

s52 – Depletion date was 28 January 2017 and the transitional period has finished. The guidance has been updated.

DSM – We are now into the Maltese Presidency and the two main areas of work are Marrakesh and Portability. There are issues around verification and the implementation date of the Portability regulations and members of the panel asked if the date will be before or after Brexit as when it happens, it could have cost implications for the CIs. It was not possible to provide a definitive date at this point.

Many panel members asked what the UK Government's position is on the Portability regulations and how Brexit will affect the CI's implementation and continued adherence to the regulations. RL explained that there was no agreed government line at the moment but reassured the group that the UK Government has not stopped engaging in the negotiations and attending working groups.

Attention then turned to 'safe harbours' and a concern that they could potentially stifle creativity. However, the example of Spotify's business model was given as evidence that a successful business can grow and operate without the need for using 'safe harbours.'

Digital Economy Bill – Web marking was not problematic, Penalty Fair (2-10) passed without any problems. A number of amendments to the bill were tabled but later withdrawn. The report stage is due to begin in a couple weeks.

3. Copyright, creative industries and trade

The chair introduced Neil Collett (NC), CED's head of International and Trade Team and he explained that the IPO were not entirely clear on how the process of Trade deals will work at the moment. The Department for International Trade (DIT) require model Future Trade Agreement (FTA) templates by the end of February and what is to be included is still up for negotiation. There will need to be careful consideration of what is included so as not to stifle any future trade deals). At present the IPO is trying to obtain as much information as possible to make sure that all avenues are explored and that the right balance is met. NC told the group that he would be happy to hear from members after the meeting in order to obtain information from their respective sectors.

RL explained that the purpose of the meeting was to get a sense of the issues facing the Creative Industries and to understand the red lines which cannot be crossed.

Members of the panel expressed concern that the IPO are being charged with creating FTA templates, but there is no indication on the impact it will have on the existing framework. Members of the panel asked if there is a strategic checklist or specified methodology which will be used during the FTA negotiations. Will the FTA depend on the country or on what is being offered? Is it a moving field? NC told the group that at this moment in time it is still not clear what the process would be in determining what is included in FTAs and indeed which countries would be prioritised.

NC mooted that it might be high level FTAs to start and then add to this as we go along; i.e. there might be generic FTAs initially before adding country specific elements to these. NC told the group that the starting point had been to look at key treaties and other countries relation to or involvement in those treaties; for example, whether and what reservations or declarations they had made

Members of the panel suggested that the Berne three-step test would be a good starting point and the mutual recognition of international treaties such as Berne and Rome. Some felt that TRIPs compliance might be too low as a minimum threshold.

NC told the group that TRIPS, Berne, WCT, Rome, WPPT, as well as both the AVP (Beijing) and VIP (Marrakesh) treaties have been included in the present draft. He also said that a key issue surrounding the Beijing Treaty would be whether it came into force pre or post Brexit. Members of the panel expressed the necessity and urgency of Beijing if all music is going to be audio visual. NC also stated that CED plan to consider whether any specific and additional elements of modern EU FTAs should be included in model or bilateral UK FTAs.

Some members felt that it might be difficult for the UK to influence the US, but there is a huge amount of work to be done on enforcement, rights and commercial freedoms. There will be much wider scope to work with developing countries and this could be beneficial to the UK CIs.

Members of the panel said that at present they are forced down certain commercial alleyways which don't particularly make money due to constraints and regulatory powers in that particular country.

There was concern that 'fair use' is not just a problem in the US and China, but other countries such as Australia and this could lead to the opening up of present copyright exceptions and possibly create more.

The visual arts sector would to see Artist Resale Rights (ARR) safeguarded as over the past 10 years this has been of great benefit to the economy and any changes could have serious knock on effects. The view expressed was that it would be paramount for ARR to be included as part of UK "asks" in future FTAs and in particular with the US.

It was agreed that there should be some kind of minimum standards on agreements, in particular adherence to International conventions and that there would need to be clarity on the application of ECJ rulings on UK law and whether an FTA would make reference to that.

Concern was also raised that FTAs might damage or interfere with current licensing agreements and this would need to be looked into further. The point was also raised that FTAs might lead to changes in the law of the signatories of that particular agreement.

Some around the table were concerned that WTO rules to access European and other markets are not fit for purpose and that when going into negotiations careful thought would have to be given to enforcement mechanisms and there would be a need to make sure that partners in the agreement on following through on what had been agreed.

Action - There was also a small discussion on Exhaustion of Rights and RL agreed to provide a short paper for the group on the current situation and possible ways forward.

The panel then turned their thoughts to priority countries and NC said that as yet DIT has not provided a list of countries, but CED intend to begin working from a copyright perspective on two initial tranches in order to be best prepared. Panel members

approved the list of nineteen countries and suggested adding Mexico, Switzerland and Tunisia. NC told the group that we might not be aware of areas of particular concern and again it would be helpful if panel members raised concerns with NC, independently of this meeting and provided evidence of any potential risks. RL added that we want to try and think all possibilities so that we are 'ahead of the game' so to speak. The music industry agreed to provide IPO with a list of countries and associated issues that affecting the music industry.

The panel expressed concerns that the CIs could become a bargaining chip during negotiations and they wanted to know if copyright was high up in negotiating terms or if it was expendable? RL told the group that CED had not seen any evidence of this and that everything is on the table and everything is equal. There was a worry about the potential trading away of global market leading industries.

The issue of consumer protection challenging copyright was raised and reference was made to the Children's Commissioners report on how children are regularly signing over their rights to large social media companies such as Facebook and Instagram.

4. Industrial Strategy, creative industries and IP

The chair then turned the groups' attention to the opportunities for the CIs within the UK Industrial Strategy. He explained that although there is still uncertainty with trade agreements, the Industrial Strategy green paper sets a clear direction of travel and this would be a good time to look at the potential opportunities and risks and how the CIs might be able to get better leverage.

Some of the opportunities mentioned included;

- a lot of work has already been done by the CIs and a good place to start would be the CIC documents
- creating an environment where CIs and individuals can create and be rewarded
- identifying potential new areas of work and making sure the support and encouragement is there for new start ups
- link up of the regions around the UK with a cultural and digital strategy
- Although other industries worried about the effect of automation/mechanisation/Artificial Intelligence, the CIs fundamentally work on human relationships and this is unlikely to change meaning jobs will not be lost

RL explained that IP is going to be fed into the wider strategy and once we have a better sense of what might be included there could be an IPO call for views or a consultation. RL reminded the panel that the BEIS consultation 'Building our Industrial Strategy' closes on 17th April.

5. AOB

The Chair asked what the panel should be looking at next and it was agreed that at the moment, trade and the industrial strategy were the two biggest issues and they

deserved further consideration in future meetings. Another issue raised, in light of Brexit, was the future of the portability regulation and how this would transposed into UK law after Brexit. Also will the Great Repeal Bill cover everything? The hope is that it will be broad enough and it appears that copyright will be covered.

The chair agreed that the next meeting will include a stock-take on FTAs and the Industrial Strategy and a substantive look at first steps on Brexit and the Great repeal Bill.

Action – IPO to canvass member's availability end of March/early April.

Update – Date agreed Tuesday 4th April 2-4pm. The meeting will be held at the IPO's London office.

There was one other item of business which concerned membership of the group. As both Jo Twist and Roly Keating were no longer members of the panel, the Chair asked the other members to give some thought to whom in the games and research/library sectors could be approached to join the group?