

**Minutes of the Copyright Advisory Panel Meeting**  
**4<sup>th</sup> April 2017 2pm -4pm**

**Attendees**

Julian Ashworth – Global Director of Industry Policy, BT  
Bill Bush – Executive Director, Premier League  
Gilane Tawadros – CEO Designers and Artists Copyright Society  
Magnus Brooke – Director of Policy and Regulatory Affairs, ITV  
Maureen Duffy –President of Honour of British Copyright Council and ALCS  
Stephen Edwards – ReedSmith  
Ros Lynch – Director, IPO  
Robin Stout – CED, IPO  
Ben Beadle – CED, IPO (minute taker)

**Apologies**

Tim Suter – Non Executive Director IPO (Chair)  
Crispin Hunt – CEO Featured Artists Coalition  
Hamish Crooks – Magnum Photos  
Amanda Nevill – BFI  
Geoff Taylor – Chief Executive British Phonographic  
Susie Winter –The Publishers Association

**1. Welcome**

Ros Lynch (RL) welcomed attendees and made apologies for those who could not attend. RL also explained that due to the absence of the regular Chair, Tim Suter (TS), she would chair this meeting. RL suggested reversing the order of the agenda to allow time for two members to arrive. There was no objection to this.

**2. Terms of Reference and Membership**

RL explained that the Terms of Reference (TOR) do not currently allow substitutes to attend meetings in place of a panel member and she asked the group if it was time to review this rule and possibly amend it. The general consensus of the group was that a change to allow substitutes would be welcomed, as it was not always possible to attend due to leave or changes to schedules at short notice. Those present agreed that members should be allowed to send a named substitute with relevant experience who was well aware of their brief and was able to make an informed high level contribution. As the group usually meets three times a year, it was suggested that members should only be able send a substitute on one occasion per year.

RL then moved on to the issue of finding replacements for the two members (Jo Twist and Roly Keating) who have stepped down from the group. Sandy Nairne was suggested to represent the libraries and museums sectors. Jude Kelly, the Southbank Artistic Director was also suggested. Those present were unable to

suggest someone to represent the games sector and it was suggested that an approach should be made to Jo Twist to seek her views on a suitable candidate.

Given the wider political context in which we are operating, it was suggested that the Panel should consider additional members who could reflect the possible change in focus due to Brexit and post-Brexit landscape. It was suggested that perhaps somebody from the British Council (for example Graham Sheffield) should be approached, as they would have a better understanding of the issues faced from outside the EU. RL then asked if any other sectors should be represented on the panel and it was suggested that perhaps someone with entrepreneurial skills and those in emerging fields, such as self-publishing could be invited to join. It was also suggested that it might be helpful to have some input from the consumer side (Which?, CAB) and OTT players such as Google. The idea was also put forward of having a representative from the Higher Education sector. However the group cautioned that it would be important to find the right balance as there were risks in the group becoming too big and losing sight of the issues at hand.

Ros thanked the group for their contribution and agreed to seek the views of the other members who were not present and the Chair before any decisions were made to update the TOR and prospective members approached.

### **3. IPO policy update**

**s52** – all of the legislative changes have been made with the final changes coming into effect on 6<sup>th</sup> April.

**Digital Economy Bill** – the third reading will take place later this week and it is expected that all of the IP elements of the Bill will be passed.

**s73** – The Govt. responded to the Technical Consultation and s73 will be repealed without a transitional period.

**IPTV** – Call for Views closes Friday 7<sup>th</sup> April. Attempts by industry to require Government to take a broad power were unsuccessful. The IPO launched the Call for Views to try and get to the core of the problem and gather stronger evidence to support any future changes in the current law. There are various campaigns planned and guidance is being prepared.

**Portability** – The Portability Regulations are expected to be agreed in May, with implementation 9 months following publication. Some members of the panel expressed concern that the regulations might only be implemented in the UK for a 12 month period and then following the UK's exit from the EU, they might then be rescinded. RL asked the group to think about other areas of copyright which could be problematic during the run up to and immediate aftermath, of Brexit and RL said that this would be discussed in future meetings.

#### 4. **DSM Copyright proposals: opinion reports from JURI, IMCO, CULT Committees**

Robin Stout (RS) then spoke to the group about the DSM Copyright proposals and the opinion reports from JURI, IMCO, CULT committees. RS explained that since last September, there have been various working groups held in Brussels, which have discussed the different areas (DSM, Marrakesh Treaty and online transmission/retransmission) of the EU Commission proposals. He also explained that the Maltese are working hard to get an agreement on the Marrakesh Treaty before the end of their presidency. RL went on to explain that there are three parts to the DSM proposals – a) greater access to content b) various exceptions (TDM, education, preservation) c) value chain; and that the different committees have published draft opinions on these. These opinions will then be debated, finalised and published in the coming months. Gilane Tawadros (GT) offered to share the European Visual Artists (EVA) position paper on the draft directive for copyright in the digital market with the IPO, as well DACS position on framing, together with that of CIAGP and IFFRO. **Update** – Papers received from GT.

The focus of the group then turned to the specific issues of the Value Gap, remuneration and transparency.

**Value Gap** – The Directive has a number of different proposals around online liability and platforms. Article 13 and Recitals 38 and 39 seek to set out, in the context of the communication to the public right and the E-Commerce Directive's liability exemptions, the conditions when platforms are liable for infringing copyright content uploaded by users and obligations between platforms and right holders. Some of the panel members felt that the Parliamentary committees' amendments cut back the Commission's proposals to the extent that they would add little to the status quo. There was also concern about alternative proposals such as User Generated Content (UGC) exceptions based on remuneration. The panel then went on to discuss what compromises could be made and briefly spoke about a) what is liability? b) co-operation between platforms and right holders and c) search and notify. The panel felt that there should be firmer definitions and a clearer requirement to co-operate. A useful example of cooperation was between Amazon and eBay regarding Kodi boxes. Bill Bush (BB) kindly offered to send the IPO some briefing material prepared by the Premier League on the Commission's value gap proposals.

**Action** – BB to send the IPO briefing materials on the value gap proposals.

**Remuneration and Transparency** – The discussion then moved on to 'equitable remuneration' and the proposed 'best seller' clause, which will allow contracts to be reopened and renegotiated. Some members of the group explained that equitable remuneration was already underwritten in both individual contracts and collective agreements within the UK. However, it has been difficult getting this idea across to some other Member States as it is something they do not practise. The group agreed that there should be transparency around these agreements. It was suggested that one approach could be to provide equitable remuneration for artists/creators in the absence of a collective agreement. RL thanked the group and commented that there will be further discussions on these issues over the coming months.

## 5. Industrial Strategy, creative industries and IP

Due to time constraints and the length of the previous discussion, panel members agreed that this item should be discussed at the next meeting when hopefully more members will be in attendance.

**Action** – add to agenda for next meeting.

## 6. AOB

The Chair then asked the group to turn their thoughts to possible future agenda items. The following five topics were put forward for consideration;

1. **Moral Rights** – in particular the effect of the digital environment on them. RL explained that CH had sent a document which he asked to share with the Panel. This will be sent out with the minutes.
2. **Brexit** – further discussions once there is more clarity around on how Govt. can engage with stakeholders
3. **Access to Talent** – although this is not an IP issue, talent plays a large part in many of the sectors represented by the CAP. It is also part of the Industrial Strategy and it would be beneficial to take an holistic approach and explore how copyright fits into the bigger picture
4. **Exception Creep/Territory Hopping** – the issue of people relying more and more on 'fair dealing' to use others IP. Also, territory hopping the practice of global organisations locating their head office in a particular territory to make use of its laws to operate online
5. **Out of Commerce**- a definition of what it means and how it affects businesses

The Chair thanked all in attendance and it was agreed that the next meeting should be held in early/mid-June so the group can discuss the Industrial Strategy before the July deadline.

**Action** – Canvass members for their availability