



BFI

Response to

IPO: Call for views on maximising the incentives of the Intellectual Property system to stimulate collaborative innovation and licensing opportunities.

November 2017

1. About the BFI

- 1.1 The BFI is the lead organisation for film in the UK with the ambition to create a flourishing film environment in which innovation, opportunity and creativity can thrive by:
 - Connecting audiences to the widest choice of British and world cinema
 - Preserving and restoring the most significant film collection in the world for today and future generations
 - Championing emerging and world class film makers in the UK - investing in creative, distinctive and entertaining work
 - Promoting British film and talent to the world
 - Growing the next generation of film makers and audiences
- 1.2 The BFI is a Government arm's-length body and distributor of Lottery funds for film. It serves a public role which covers the cultural, creative and economic aspects of film in the UK. It delivers this role:
 - As the UK-wide organisation for film, a charity core funded by Government
 - By providing Lottery and Government funds for film across the UK
 - By working with partners to advance the position of film in the UK
- 1.3 To these ends, the BFI helps ensure that public policy supports film and, in particular, British film.
- 1.4 Founded in 1933, the BFI is a registered charity governed by Royal Charter.
- 1.5 The BFI Board of Governors is chaired by Josh Berger.

2. Executive Summary

- 1.1 The BFI welcomes the opportunity to comment on the IPO's Industrial Strategy: Intellectual Property Call for Views.
- 1.2 We believe that a number of barriers remain to the use of IP which Government needs to address, including
 - the bureaucracy and cost surrounding the scheme designed to enable licensing of orphan works
 - the use of films and moving images for our planned new network of Mediatheques (for example in libraries)
 - the ability of the screen sectors to use the Extended Collective Licensing regulations introduced via the Enterprise and Regulatory Reform Act.
- 1.3 We believe a voluntary register of IP would not be an effective use of resources. It would be a vast project. Individual sectors are much better placed to manage and develop subject-matter specific registers/databases themselves.

- 1.4 We also have concerns about aspects of the EU's Digital Single Market proposals which could become a barrier to trade by undermining the territorial licensing on which the finance of films and moving images is based.
- 1.5 The BFI sees the issue of IP valuation as especially important and would strongly encourage the IPO to pursue further work in this area.

- 3. In responding to this call for views, please include the following information:**
- 3.1 Are you responding as an individual, business, intermediary, representative body?**
- 3.1.1 As both a representative body (Non-Departmental Public Body [NDPB]) and as a trading business.
- 3.2 What does your business do / in what sectors do you operate?**
- 3.2.1 We are the UK Government's lead agency for film and the moving image. As such we operate, in different ways, across all the screen sectors including film, television, animation and games.
- 3.2.2 We also operate cinema screens on London's Southbank, run the London Film Festival, the BFI National Archive and have various IP businesses, including the licensing of audiovisual material for our BFI Player and the licensing of audiovisual material which we control to other distributors.
- 3.3 How large is your business, and what proportion of your assets are IP-based?**
- 3.3.1 In total, both as a public agency and as a trading business, we have income of £100m each year. Of this, some £20m is trading income and the remainder derives from our income as a Lottery Distributor, from Grant-in-Aid and a variety of other sources including donations and investment income.
- 3.3.2 While we do not have a precise figure we believe that a significant amount of our assets are IP-based.
- 3.4 In what UK regions do you operate?**
- 3.4.1 We operate across all the nations and regions of the UK
- 3.5 In what international territories do you operate?**
- 3.5.1 We do not have any international subsidiaries although we do undertake some international licensing and also work on IP policy on an international basis. For example, we license rights to audiovisual material to distributors on an international basis.
- 3.6 Is there more the IPO could do to help UK companies operating overseas?**
- 3.6.1 We welcome the IPO's current efforts to help protect intellectual property, for example, through the network of Intellectual Property (IP) attachés which delivers valuable results in countries such as China where copyright theft and infringement remains a serious issue.
- 3.7 What do you spend on IP?**
- 3.7.1 We are not able to calculate this figure with precision at this point.
- 3.8 Which aspects of the IP system do you use?**

- 3.8.1 We use the copyright provisions of the Copyright, Design and Patents Act (CDPA) 1988 (as revised) to protect the rights to works we control where necessary.
- 3.8.2 We use the EU copyright exception in relation to orphan works and make consistent use of the various UK statutory exceptions to copyright including those for teaching and research, criticism and review and making copies of works in the archive for preservation purposes.

3.9 What do you particularly value about the UK's IP system?

- 3.9.1 We believe the UK's IP system is broadly fit for purpose (subject to the barriers identified below) and does not require substantive changes. We value the protections that it gives to the intellectual property, for instance through Section 97A, and we also value the exceptions – such as those for disabled people and those for quotation and research – which are embedded within the system.

3.10 Do you face barriers when using the UK IP system?

- 3.10.1 We face some barriers in respect of licensing material for our planned new network of BFI Mediatheques. We would welcome the opportunity to discuss this with the IPO with a view to considering whether legislative change could help deliver cultural and educational benefits for people across the UK.
- 3.10.2 There are constraints on the use of online material for film clubs in schools, for example via the Into Film initiative which we fund, which are a barrier to access. Again, we would welcome the opportunity to discuss this with the IPO.
- 3.10.3 We find the current arrangements for licensing of orphan works unduly bureaucratic and costly especially for the Cultural Heritage Institutions that hold the vast majority of orphan works. We are engaged in constructive discussions with the Government, including the IPO, about our concerns.
- 3.10.4 We would welcome the opportunity to talk to the IPO about how the BFI might help the screen sectors to take advantage of the legislation on Extended Collective Licensing in the Enterprise and Regulatory Reform Act. At present, this is hampered by the absence of appropriate licensing bodies.
- 3.10.5 We welcome some aspects of the European Commission's copyright package for the Digital Single Market – for example the extension of the education exception to cross-border uses – but have serious concerns about others such as the Draft Regulation on Certain Online Transmissions.
- 3.10.6 In particular, we are concerned by the proposals in the Article 2 of the latter concerning a country of origin principle for the licensing of works. This would allow platforms to license works for all Member States on the basis of securing the clearance of rights in just one Member State.

This would completely undermine territory-by-territory licensing model which is currently used for financing audiovisual works and therefore lead to a significant reduction in choice for audiences.

- 3.10.7 In this context, we would welcome the opportunity to discuss with the IPO the Government's proposed approach to integrating Regulations or transposing Directives into UK statute, if they are adopted by the EU prior to the UK's exit from the EU on 29 March, 2019.

3.11 Comments on specific IPO proposals

- 3.11.1 Most of the IPO proposals are not relevant to our own activities.

We wish to comment upon two of the proposals only:

3.12 Voluntary IP register

- 3.12.1 An official register will be a huge undertaking and is unlikely to be of real value/use because organisations and sectors are much better placed to manage and develop subject-matter specific registers/databases themselves.
- 3.12.2 These stakeholders are more likely to invest in ensuring these are designed to best record the relevant subject-matter specific rights information on authorship and ownership (and thus duration) and would also keep these up to date e.g. when there are transfers of ownership.
- 3.12.3 Bespoke databases/registers should function as authoritative and enduring sources of information as to the status of a given work – it is better that investment/resource is put into how best to support interoperability and adoption of standards/identifiers.

3.13 IP Valuation Standards

- 3.13.1 The BFI sees this issue as important and would encourage the IPO to pursue work in this area. In particular as the paper says to identify the valuation market's structure, behavioural drivers, and whether there are barriers that could be overcome to encourage more businesses to carry out valuations of their IP with a view to being able to trade, protect and invest in it more effectively. We would welcome the ability of businesses to be able to more easily raise finance backed by IP assets as most of the businesses in the sector we represent are rich in IP assets so this would help the sector.
- 3.13.2 The Creative Industries Council (CIC)'s sub-group, Finance for Growth, carried out work in this area and this was reflected in the recommendations in the first strategy published by the CIC. It was proposed that a set of tools for investment and lending appraisal should be developed, primarily to measure the value of IP assets more effectively and provide better comparative measures for creative content investment opportunities. This would address the lack of appropriate tools available to many bank lenders, and supplement existing tools and procedures used by equity investors. Tools would be

based on those already developed by the Intellectual Property Office and piloted with a small number of financial institutions.

- 3.13.3 The BFI is aware that other countries have arrived at commonly accepted, government regulated standard valuation methods. Before travelling down this path it would be worth the IPO investigating how successful this has been so that lessons could be learnt before valuable resources are exhausted.

Ends.