

Minutes of the Copyright Advisory Panel Meeting

23rd October 2017

Attendees

Tim Suter – Non Executive Director IPO (Chair)
Julian Ashworth – Global Director of Industry Policy, BT
Bill Bush – Executive Director, Premier League
Gilane Tawadros – CEO, Designers & Artists Collecting Society
Magnus Brooke – Director of Policy & Regulatory Affairs, ITV
Maureen Duffy – President of Honour of the British Copyright Council and ALCS
Stephen Edwards – Partner, ReedSmith LLP
Christy Whelan – Legal Advisor, BPI (representing Geoff Taylor)
Mark Prince – Department for International Trade
Robin Stout – IPO
Ros Lynch - IPO

Apologies

Hamish Crooks – Magnum Photos
Crispin Hunt – Chairman of BASCA
Geoff Taylor – CEO, BPI

1. Welcome

The Chair welcomed attendees to the meeting and explained that as some members needed to leave early, he would amend the agenda so the discussion of future trade agreements came first.

2. Future trade policy

The Chair invited MP to provide a brief introduction to himself and his role as well as to provide an update on the current state of play with developing new trade agreements.

MP explained that existing trade agreements are held by the EU and partners. Once the UK leaves the EU there will need to be new agreements with the EU and other countries. His team are looking at Future Trade Agreements (FTAs) and the opportunities these could provide for the UK economy. There are a number of working groups currently in place looking at future agreements with the US, Australia, New Zealand among others. The team works with DCMS, BEIS, DEFRA and other departments.

MP explained that he was interested in gathering CAP members' thought and opinions on future trade policy. What specific interests do the members they represent have in regards to trade? The focus shouldn't just be on risks but on what considerations members would like to see included in such future agreements.

MP also noted that this was only the beginning of engagement from DiT. His team has previously met members of the Alliance for IP as well as CIPA and CITMA.

In response to a question on the timetable, MP explained that the department is not in a position to negotiate any new trade deals until March 2019. Working Groups are areas of communication and discussions on areas of mutual interest.

The general consensus of the members was that there is already a good relationship with the US which doesn't prevent opportunity for the creative industries. Therefore around the table there is more concern around the risks than opportunities.

In response to a question on the extent to which 'no deal' on Brexit is being considered within DiT, MP explained that DiT doesn't look at the Brexit deal and FTAs as completely separate. Rather, DiT will consider the outcome from the current Brexit negotiation. The mandate is to look for a deep trade agreement.

In terms of broadcasting, it was felt that while opportunities for the creative industries may exist this isn't the case from the broadcasting point of view. There was concern that broadcasting could become part of the deal but not in a good way. For example, ITV has a big business in the US and owns companies there. It doesn't face any barriers in the US. There is 25% restriction on holding shares in a broadcasting company but this is often waved. However there is a strong national preference in the US and a worry that it would try to dismantle the advantage that UK broadcasters currently enjoy.

It was therefore stressed that the existing opportunities are already being seized and therefore Government intervention (help) isn't needed.

There is also concern about fair use. Recent trade agreements between the US and other countries have seen an unhelpful shift to fair use. UK should resist any attempt to impose this. Massive confusion already in UK over fair use. Also adoption of DMCA wording on safe harbour and notice and takedown was imposed in the Australia agreement.

MP asked for views on global alignment to WIPO interests. Is this something that rights holders would want?

There was a sense that the US copyright law was pretty weak relative to the UK. The US doesn't have the returns to authors that are afforded from EU protection and UK law. No public lending right; no resale rights. US system depends on willingness to go to litigation which is beyond abilities of many individual authors.

From the visual artist point of view there is a strong desire to ensure any new agreement retains ARR. UK is currently a net beneficiary. At WIPO level there is a move to make it an international treaty. Worried about relying on WIPO as a safety net as US might pull out. Compliance with Berne would be important. Reciprocity really important.

There was also concern that a hard Brexit would make the UK negotiating position weaker, and as a result there might be a move to compromise in a way that negatively impacts on the UK creative industries. The creative industries make a

huge contribution to GDP and also employment. The figures though high don't include cultural tourism and all that it contributes.

In addition, there was a worry that a trade agreement that reduces the ability of the creative industries to trade is damaging. Other industries in UK have a much stronger negotiating ability and may therefore seek to worsen the copyright position if it helps their industry improve.

Continuing the discussion on the US, it was felt that while copyright protection in some countries is starting from a low base there has been progress towards boosting their IP enforcement position. For example, though not across the board there has been quite fast progress in China and changes are beginning to happen in India. As the UK moves into formal FTA agreements there was a plea not to staff the steady and slow improvement being achieved while FTA discussions take place.

However, this was tempered with the view from broadcasting which faces more substantive restrictions on national preference in China. It is very restrictive what a broadcaster can show in China and there are difficulties in getting money out of the country. However there are bigger problems than IP and almost certainly outside a FTA. Joining with US here would be good as we wouldn't have the power to address these individually.

On the telecoms side it was felt that an FTA with the US wouldn't strike much advantage for UK firms. Competing in the US would offer potential but impossible to see them opening this up. It would be good if the US would unlock access to fair wholesale agreements as exists in the UK and EU but unlikely to happen. Little upside but more downsides.

Another key issue raised was access of performers to the US – visa requirements make it difficult for artists wishing to perform in the US. It is easier for US artists come to the UK.

MP asked about the NAFTA objective around camcorders in cinemas.

A question was asked about the level at which the objectives are being set. It was noted that there are certain high level objectives that should be principles of how DiT operates. A greater level of national protection is required to safeguard the creative industries. While it is not possible to quantify the contribution that every individual creator makes to GDP, it would be a huge risk to the economy to lose this contribution.

It was pointed out that the issue around camcorders is the tip of the piracy mountain. Intermediaries/platforms are all American; there are some key issues here as well. There was a sense that it would be far more important for the UK for the focus to be placed on platforms and their role in enabling access to illegal material. An FTA that includes something on platform liability would be welcomed. To have some form of even basic liability which would not allow the platforms to hide behind safe harbour would be helpful.

It was however noted that the US was taking a harder line with Mexico and Canada right now.

The Chair asked how DiT intended to take forward this dialogue so that the big fear that the creative industries have around IP being offered up as a trade-off isn't realised. How will DiT be develop its knowledge of risks and benefits?

MP noted that the Government published its White Paper in last few weeks. DiT has started further stakeholder engagement and would welcome input directly from members of industry.

It was recommended that DiT should speak to the BCC.

3. IPO Update

- The first application to operate an ECL scheme has been received.
- Orphan Works Licensing Scheme is 3 years old on 29 October.
- Bournemouth University has been awarded the contract to carry out phase 1 of the work to comprehensively review the legislative framework for enforcement. The researchers will soon be contacting stakeholders for their views.
- The increase in criminal penalties for online infringement came into force on 1 October 2017.
- Several research papers published since the last meeting. Most recent being an OECD study into the *Trade in Counterfeit Products & the UK Economy* and *Share and Share Alike: the challenges from Social Media for IP Rights*
- On ISDs, we are working with industry to launch a CrimeStoppers campaign in November. This will be accompanied by a clear statement on the legality of the boxes. The Government response to the Call for Views is still being developed and there is as yet no definite date for its publication.
- In terms of the DSM, IPO will soon issue a consultation into the implementation of the Portability Regulation. This will focus on the enforcement of the Regulation which comes into effect on 1 April 2018.
- The IPO is currently drafting a consultation document on the implementation of the Marrakesh Treaty which enters into force in October 2018. The timetable is quite challenging particularly since it will be difficult to get much non-Brexit legislation through Parliament. There was a plea to look at the practices of Amazon in respect of its policy on self-publishing.
- On the rest of the Directive, this is still being discussed in Working Groups. The Estonian Presidency is hoping to have a general approach on both the Directive and Regulation by end November. However, given where current negotiations are, we expect this will slip to the Bulgarian Presidency. The most controversial issues remain the value gap and country of original rule, however there has been good progress on the exceptions. MD suggested that the proposal on Out of Commerce works should be kept as narrow as possible.

4. Creative Industries Sector Deal & the Industrial Strategy

It was not possible to discuss this item in any depth as GT, who has been leading the discussions within the IP sub-group of the CIC was unable to attend the meeting.

However, there was a brief discussion about the need not to divorce skills and talent issues too far from copyright. All creative industries depend on skills and talent and it would therefore be impossible to have a meaningful sector deal without these links being strong.

5. Membership of the CAP

The Chair noted that during the course of this year, 3 members have stepped down from the CAP. While there was a previous discussion on membership and suggestions were made, none of these resulted in a commitment to join the CAP. Some names were suggested – David Evans-Anderson (UUK Copyright Licensing Group) and Gaetano Dimita of Queen Mary University. TS and RL will meet these two individuals and come to the next CAP with a recommendation.

Further suggestions included Harriet Finney (BFI) and Richard Mollet (as the PA has so far not fielded a replacement for Susie Winter.

6. AOB

CAP members made a number of suggestions on topics for discussion at future meetings:

- The Portability Regulation
- Moral rights
- Brexit
- Exhaustion of rights
- Enforcement at the borders post Brexit
- Digital Charter