

Minutes of the Copyright Advisory Panel Meeting

Thursday 1st February 2:30-4:30pm

Attendees

Tim Suter – Non Executive Director IPO (Chair)
Bill Bush – Executive Director, Premier League
Gilane Tawadros – CEO, Designers & Artists Collecting Society
Magnus Brooke – Director of Policy & Regulatory Affairs, ITV
Helen Burrows - Head of Policy, BT
Stephen Edwards – Partner, ReedSmith LLP
Ian Moss - Director, Public Affairs, BPI (representing Geoff Taylor)
Crispin Hunt - Chairman of BASCA
William Bowes - General Counsel and Director of Policy, PA
Hamish Crooks – Magnum Photos
Ros Lynch – IPO
Dylan Foulcher - IPO
Helen James – IPO
Ben Beadle - IPO

Apologies

Maureen Duffy – President of Honour of the British Copyright Council and ALCS
Geoff Taylor – CEO, BPI

1. Welcome

The Chair welcomed attendees to the meeting and asked if all members agreed that the minutes from the October meeting were an accurate record. All agreed the minutes, except for one minor correction, which was Crispin Hunt's job title and current position needed to be updated. This has been updated.

2. General update from the IPO

Ros Lynch then gave the following IPO update:

Brexit – The IPO are continuing to look at areas of IP law that will break upon exit from the EU e.g. cross border mechanisms. RL explained that the IPO is guided by current Government policy.

Trade – The Department for International Trade (DIT) still has a trade deal with the United States as its number one priority. The next countries to look at are Australia and New Zealand. RL asked the panel if there were any issues that the IPO should be aware for any future negotiations with both of these countries. Issues raised by the panel included equitable remuneration and broadcasting and performance rights.

Digital Charter – Some members of the panel expressed concern following the Prime Minister's recent speech on the Digital Charter. There was confusion about

what the Charter entails – will it encompass everything digital and will DCMS continue to lead on this project, including IP rights which are in the remit of the IPO. RL reassured the panel that officials from the IPO are engaging with their counterparts in DCMS in order to see what work they are doing in the online landscape and how any problems can be ironed out now, in the early stages, to avoid difficulties further down the line.

3. Digital Single Market (DSM)

RL then welcomed Dylan Foulcher (DF) to the meeting who provided updates to the panel on the DSM copyright proposals under the Bulgarian Presidency.

- **Portability** – The implementation date of 1st April 2018 looms large and the Government consultation on the portability regulations closed on 31st January. DF then summarised the general response to the consultation:
 - **Enforcement mechanisms** – There were no substantive comments against the government’s proposals set out in the consultation.
 - **Implications of Brexit** – Businesses would like to see portability continue post Brexit and would welcome clear guidance on how the changes will affect UK businesses and safe guard them if the legal fiction is broken upon the UK’s departure from the EU. Some members of the panel commented that the regulations are a consumer benefit which might well disappear after Brexit and could become a much bigger problem.

DF then went on to say that the Government response will be published as soon as possible and the aim is to also publish the separate guidance before the April implementation date. DF was asked if the Government response will be difficult to publish in the current political climate. He responded that consultation responses do not need scrutiny clearance and as such there should be no issues.

- **Marrakesh Treaty** – Implementation of the Marrakesh Treaty is set for October 2018 and the IPO hopes to be in a position to consult on the implementation soon. The aim is to consult in March or April and implementation will be along the lines of the EU model. The chair raised a concern about the proposed timeline and that trying to fit in a two month consultation and implementation by October might prove problematic.
- **Articles 11 & 13** - The Bulgarians have recently taken over the EU Presidency and they issued a questionnaire to Member States (MS) on both articles 11 & 13. There appears to be a split between MS that favour the

neighbouring right vs those that favour the deletion and presumption right. RL explained that up until a few months ago, Article 13 was more problematic, however MS seem to be nearing a consensus and attention has now turned to Article 11. Many feel that the neighbouring right did not work well when implemented in Germany and Spain, and are unsure why it is still being pursued. The Bulgarians have asked a series of questions on whether or not to continue the process or revert to stand alone filtering measure. The UK Government is looking at liability however Article 13, as it stands, is not specific enough to open up liability. Some MS are keen to talk about liability without mitigating circumstances. Coreper will consider both Articles and set out a plan going forward.

Some members of the panel spoke about the EU consultation and paper on 'notice and takedown' and felt that it did not go far enough and they should be concentrating on 'notice and stay down.' It was also mooted that standalone measures with no absolute liability would not create a proper relationship between right holders and platforms. The point was raised that the music and film sectors both want different things and both of their approaches should be considered. For example the film sector do not want to licence works to platforms, they would prefer to keep the 'notice and takedown' for infringing works. The question was asked that if compromises were made for one of these sectors and not the other, could it work? It was felt that negotiating separately could lead to legal problems further down the line, especially if the wording around 'communication to the public' is not clear, as it could lead to Internet Service Providers (ISPs) being liable. RL informed the group that MEPs are still open to new ideas in order to get a compromise and any thoughts and suggestions from the group would be welcome.

- **Articles 14 & 16** – RL explained that the Government is turning its attention to and getting clear its position on these two articles. The question of fair remuneration was raised and some in the group felt that Article 14 was troubling as one of the compromises is to share 'gross' and not 'net' revenue. It was felt that a 'fair share' for all could lead to a regulated return and then there would be no profit for producers to reinvest in future projects. The point was raised that it is not just the producers who are investing, but the creators are also making an investment of both their time and talent and they should be fairly remunerated. It was felt that there will need to be a shift in the current position to give all a fair and sustainable future. RL finished by saying that the IPO will be seeking stakeholder positions on both of these articles in the near future.

4. **Exhaustion of Rights** – The chair then introduced Helen James (HJ) from the IPO to speak to the panel about 'exhaustion of rights.' HJ felt that as this

particular subject had not been discussed by the panel before, it would be best to give a brief explanation of what exhaustion entails. After a product covered by an IP right, such as by a patent right, has been sold by the IP owner or by others with the consent of the owner, the IP right is said to be exhausted and the right can no longer be exercised by the owner. HJ explained that this is a big issue for some sectors and that at the moment exhaustion is on a regional basis but in the future it may need to be approached on either 1) an international or 2) a domestic/national basis.

HJ went on to tell the panel that the IPO is commissioning research to look at the current situation to see how best to proceed after the UK exits from the EU. The project will hopefully start in March or April and it will look at different types of regimes for different sectors and what model the UK could have after Brexit. The work being carried out will be very broad as it is not just copyright that is affected as exhaustion applies to all IP rights, as well as the second hand market.

HJ then asked the panel to think of how any changes to the current regime would affect their sectors. William Bowes (WB) from the Publisher's Association explained that there is a great deal of value to publishers in parallel markets. For example, it could hinder their social functions such as sending books to developing countries. WB explained that the sector believes that exhaustion should not be international and they would prefer it to stay regional, or if possible domestic/national.

Ian Moss (IM) added that the BPI have considered this and they would prefer it to be national exhaustion, which would then allow deals to be negotiated with other countries.

Gilane Tawadros (GT) added that it should be made clear that exhaustion should not interfere with the Artist Resale Right (ARR).

HJ finished by telling the panel that she would be very happy to hear from all attendees about their current thinking and to send any position papers they may have. She also said that the IPO would be happy to put the consultants who will be carrying out the research project in touch with all of the panel members as the IPO wants to know how UK businesses will be affected by the changes.

5. AOB

New Members – The chair referred to the previous meeting's minutes and the two names suggested to join the group – Gaetano Dimita (representing the games sector) and David Evans Anderson (representing the library/research sector). The chair has met with both and Gaetano would like to join the panel, however, David recommended Jane Secker, who is an academic at City University as he felt she would be best placed to join the group and represent the higher education sector. The chair said that he would like to nominate both

Gaetano and Jane to join the panel and the panel agreed. Both will be invited to the next meeting.

Future agenda items – The chair asked for future agenda items and the following were suggested:

- A. Creative Industries Sector Deal
- B. Digital Charter – Invite colleagues from DCMS who are leading on this to give an update and explain what is included in the remit of the charter
- C. Follow up on international trade from DIT.

Date of next meeting – The panel agreed that the next meeting should take place in April and members will be canvassed for their availability. **Update:** The next meeting will be held at the IPO on Monday 9th April 2:30-4:30pm.