

Minutes of Copyright Advisory Panel Meeting

Tuesday 16th October 10:30-12:30

Intellectual Property Office

List of attendees

Tim Suter – NED, IPO (Chair)

Bill Bush - Executive Director, Premier League

Geoff Taylor - CEO, BPI

Gilane Tawadros - CEO, Designers & Artists Collecting Society (DACs)

Hamish Crooks - Magnum Photos

Crispin Hunt - Chairman of BASCA (via phone)

Magnus Brooke - Director of Policy & Regulatory Affairs, ITV

Maureen Duffy - President of Honour of the British Copyright Council and ALCS

William Bowes - General Counsel and Director of Policy Publishers Association

Jane Secker - Centre for Learning Technology, City University

Scott Broadley – BT (deputy for Alex Tower)

Stephen Edwards - Partner Reed Smith LLP

Ros Lynch – IPO

Dylan Foulcher – IPO

Taffy Yiu – IPO

Tom Walkden – IPO

Ben Beadle – IPO (minutes)

Apologies

Gaetano Dimita - Video Games Industry

Alex Tower - Director of Policy and Public Affairs, BT

Welcome

The Chair welcomed all attendees and asked for the group to quickly introduce themselves. Scott Bradley (SB) from BT explained that he was attending as a deputy for Alex Tower.

The chair asked if the minutes from the previous meeting had been circulated. Ros Lynch (RL) apologised as they had not been shared and the chair asked if they could be circulated along with the minutes of this meeting.

Updates on key policy issues

a) DSM Copyright Reform

Dylan Foulcher (DF) introduced himself to the group and explained that things were moving at a rapid pace. There are four trilogues in total and the first trilogue, which has already taken place set out the process. DF commented that the Presidency and Commission have set out an ambitious timetable, expecting the negotiations to be finished by December. He added that HMG welcomed that approach.

DF explained that the IPO officials and UKREP will meet before each trilogue to discuss the policy issues and identify areas where the UK can be flexible and where red lines should be drawn. He added that as these are now full negotiations, text changes would be difficult and the focus was on the broader issues. Any changes would need to be taken in the context of the whole reform package. DF spoke about the influence that the UK has in the negotiations. The UK is seen by the Commission as a moderate voice and a willing party able to bring different voices together.

DF commented that there had been one big change and that was the shift in the position of the Italians due to internal political change. This has changed the dynamic in the Council as they are seeking another mandate. He also added that some new elements in Parliament have sought to introduce changes to areas of the DSM package, however the UK cannot actively support these elements as there have been no impact assessments made. The UK agrees that there should be some 'give and take' on the issues but it is important that the wider picture is seen and any changes are proportionate and within context.

Bill Bush (BB) sought clarification on HMG's position on the late addition to the package of a particular sports right. He said that HMG did not seem particularly supportive of the addition and asked if this was on policy or procedural grounds. Both DF and RL explained that this was on procedural grounds as HMG hasn't had enough time to look at it and there was no mandate to change it.

The discussion then turned to HMG's position on the absence of technical measures in Article 13 and the idea that online service providers (OSPs) should be liable for infringement by their nature as online content providers. Some members of the group felt strongly that HMG should be taking the Parliament's approach and that OSPs should have to obtain collective licences, or 'blanket licences' just as other online content providers do. DF explained that without 'communication to the public' there is no infringement and clarification of the law is needed, as at present platforms cannot be liable if they are not aware that infringing content is being shared. He stressed that

the approach HMG supports is 'takedown and stay down'. Geoff Taylor (GT) asked why is infringement different from a data breach, where companies are obliged to meet statutory requirements and that this should be the same for platforms. He did not see the need for further risk mitigation.

DF also added that the technology does not yet exist to track every little infringement. However, Crispin Hunt (CH) felt that this was questionable as the technology is there to make sure that the correct licence is already in place. He asked is there not a position to make any directive futureproof, so that there is an obligation on platforms to use standard technical measures. DF added that HMG has worked hard to make the references to guidance and best practice proportionate and has made it clear that this is not a static situation. Maureen Duffy (MD) reiterated that this is a crucial issue for creators and it is one thing which they desperately need. She suggested that licence fees could be adjusted according to the size of the platform and added that this is done in other areas of copyright (such as photocopying in schools). MD even mooted the idea of a collective licence.

Some of the group commented that the entire UK creative industry (CI) is united on this as a package and if HMG goes into negotiations asking for another set of compromises and attempts to undermine what the UK CI have supported, then a second safe harbour could be created and without sufficient measures in place large platforms could continue to monetise the works of creators without remuneration. DF noted that without measures it would be difficult to get through the Council. Platforms will still be liable and will need a licence or use measures.

RL commented that this is a negotiation and some things will have to give. HMG has engaged across the CI sector and have tried hard to take on board all comments and although we could not get everything everybody wanted in the package, HMG will still have to fight very hard in the negotiations to achieve desired outcomes. RL said we (the IPO) hear what the group is saying but we do not have the mandate to change our current position, as we would have to go out across Government and this could reopen everything and allow those who did not want it in the first place to challenge again.

GT commented that the panel appreciated that, but asked on behalf of the group that when HMG are looking at the text and proposed measures, that a second safe harbour will not be created and that the text will clearly state the need for licencing the use of creators' works. Others added that they did not want to see a 'get out' for large platforms by the creation of an exception. CH added that creators believe the Parliament's text is sensible and want to see the UK not undermine it.

The Chair drew this particular discussion to a close by summarising the position of the panel, stating that the important thing is not to permit these negotiations to create a second safe harbour that will disadvantage the CI and to create a rebalance of the current situation. He also added that the purpose

of the panel is to advise the IPO what you believe the most important issues are.

b) BREXIT

RL gave a brief overview of the current work around Brexit.

- Continuing contingency planning for a 'no deal' scenario. SI to be laid in Parliament on 26th October (**update: SI successfully laid in Parliament**)
- Currently finalising draft legislation (Impact Assessment, explanatory note)
- Producing detailed legislative guidance which will explain how copyright law will change if 'no deal' is reached. The aim is to provide continuity but also prepare for the things that will stop if there is no deal reached.

Action – IPO to recirculate Technical Measures guidance which has been published on Gov.uk website (update – circulated after meeting)

The point was raised there has been a great deal of talk and preparation for a 'no deal' scenario, but not a much information has been provided of how a 'deal' might affect the CI landscape. For example, how will freedom of movement be affected? This will have a huge impact on many areas of the CI sector, as the free movement of people and goods is essential to many business models. Many members of the panel agreed that there has been one sided communication from HMG which has concentrated on a 'no deal' scenario and although these points have been raised on many occasions, there has not been any information provided. BB said it would be helpful if the IPO could reinforce to DCMS and the Home Office the importance of having the right talent to be able to exploit the framework. GT added that trade opportunities post Brexit won't matter if people aren't able to get to the EU to promote UK culture.

RL commented that outside of the IP space, HMG has been looking at a 'deal' situation, although the IPO has heard nothing about this and we do not yet know what will happen if there is a 'deal.' RL said that she would raise the groups concerns with DCMS.

c) Exhaustion

Taffy Yiu (TY) gave a brief overview of the current position on the exhaustion of rights. He explained that if there was a 'deal' and the withdrawal agreement holds, the status quo would continue. However, if 'no deal' is reached then the UK plans to unilaterally align with the EEA/EU regime to allow physical IP-protected goods to come into the UK. However, businesses may need to seek advice if exporting goods from the UK to the EU. There was some concern from members of the panel that unilaterally accepting exhaustion would cause delays on both goods coming in and going out. TY noted that HMG are aware of rights holders concerns.

TY told the panel that the IPO is starting research which will investigate the available data on parallel trade in the UK. The research is planned in two parts. The first part will be an initial feasibility report which is due by the end of the year and if there is sufficient data, then the second study will start next year and could take up to two years to complete. It was agreed that the IPO would circulate the brief which Ernst & Young (EY) have been given to carry out the initial research (**update: circulated after meeting**). RL added that at present, we do not know what the best regime will be for the UK to adopt. It could be either national or international exhaustion, or maybe a combination of both. If the Government decides to change the regime in the future, it will be based on the evidence gathered and the best option for the UK will be chosen. RL also added that we are in uncharted territory and the IPO would welcome any research/data that the panel and by extension the CI sector might have on parallel trade. WB from the PA indicated that early research suggests that under an international exhaustion regime there could be a 25% loss to publishers and as much as a 50% loss to authors. He added that although the public sector may wish to adopt national exhaustion and queried whether this was appropriate. RL added that even after the research is done HMG would likely go through the process of consulting before any decisions are made. Several members of the panel agreed that it would be a difficult task to quantify now what potential impacts a national or international exhaustion regime might have in the future.

d) Trade

Tom Walkden (TW) updated on current trade work the IPO is engaged in.

- Working with Department for International Trade (DIT) and the main focus is currently on trade agreement continuity and keeping to the current EU FTA baselines. The IPO has welcomed the shift in emphasis of FTA EU roll over. He added that, at their request, we have opened up Canada, Japan, South Korea, Turkey and Switzerland to a process of negotiated continuity with potential for added value on both sides. He added that on the IP side there are more likely to be requests on patents than copyright.
- The Prime Minister announced officially after Chequers that negotiations are underway for FTAs with the United States, Australia and New Zealand.
- Also looking at membership of CPTPP (11 countries in all).HMG has not officially expressed that we will negotiate but that we are interested in exploring options. Some panel members asked what the difference would be between the current EU FTAs with individual CPTPP member states and the plurilateral deal. TW explained that there are already existing FTAs with 7 of the 11 countries, there are 2 we are currently negotiating with (NZ and AU) and 2 (Brunei/Malaysia) who we do not currently have any agreements with. He added that there is potential for other countries to join.

- TW then turned to the DIT consultations on trade negotiations which will close on 26th October. He said although this is a DIT consultation, he urged the panel members to have their say from an IP perspective as we are keen to hear your views. The panel asked for the links to the consultations to be sent so that they could study them and respond accordingly (**update: these were circulated straight after the meeting**). GT asked if these consultations would be the blueprints for FTAs and TW responded not necessarily and again urged the panel to have their say. There was concern expressed by the panel that HMG may sign up for the sake of having a deal and it could be more of a political decision rather than in the national interest.

Copyright Literacy and Copyright Education

The Chair called on Jane Secker (JS) to explain more about the International Federation of Library Organisations (IFLA) [statement](#) on Copyright Education and Copyright Literacy. JS explained that the statement came out in August 2018 and she wanted to bring it to the panel's attention for their views and comments. The statement is aimed at libraries around the world and it defines what copyright literacy is. JS went on to say that some of the panel might not be aware but at present the librarian is considered the 'expert' in the area of IP although they are not legally trained and they interpret and apply the rules by the text of the law itself. What is needed is for librarians and other information workers to be copyright literate, so that they both understand IP rights but can also make well informed decisions to allow them to make better use of copyright works and not to impose unnecessary restrictions on users' rights to access information. JS added that there will be a second event next June in Edinburgh and JS used this opportunity to invite all of the panel members to attend. JS then asked for member's comments.

Many in the panel said this was the first time they had seen this and GT said upon first reading it does feel like IFLA are pushing strongly in the direction of broader safe harbours, adding that a better understanding of the benefits of creative industry licensing needs to be fostered which will ensure access, but at the same time allow creators to continue to get paid for their efforts and thus continue to produce work.

WB commented that new publishers would be worried by this statement. He felt that this was an attempt to circumvent the exceptions that already exist. MD added that the public lending right already exists and it should be enough to cover libraries uses. WB questioned whether copyright policy was being used to substitute for the shortfall in funding for schools.

The Chair summarised the brief discussion by saying that there were some robust views from many on the panel and one of those issues is that it is invaluable to have copyright literacy but not at the expense of the creator.

AOB

The Chair asked if there was any other business before bringing the meeting to a close.

WB wanted to bring to the attention of the panel, the European wide proposal of 'Plan S' The rest of the panel were unaware of this venture which wants to make open access to research publications a reality by 2020. The aim of the proposal is that by 2020, scientific publications that result from research funded by public grants should be made published in compliant open access journals and/or platforms. WB commented that UKRI have committed to this and the Minister has signed the declaration. He added that the PA have written to Ministers / Secretaries of State six times but have found it hard to get a response from anyone inside Government. He added that this is was an exception to copyright with no consultation with rights holders. RL added that this was the first time she had been made aware of this and said she would look into it. The other panel members asked WB if he could share his information with the group and it was agreed the IPO would share the website link to 'Plan S' **(update: website address circulated straight after the meeting)**.

The Chair finished by saying that it would be a good idea to meet again before the end of the year and asked the IPO to circulate dates for a meeting in mid-December. The Chair thanked all for attending and then closed the meeting.

(Update: the next meeting will be held on Tuesday 18 December 3-5pm at the IPO)

End.