

Minutes of Copyright Advisory Panel Meeting

Tuesday 19th February 2:30-4:30pm

UK Intellectual Property Office

4 Abbey Orchard Street

London SW1P 2HT

Attendees

Tim Suter – Chair

Bill Bush - Executive Director, Premier League

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

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

Jane Secker - Centre for Learning Technology, City University

Gaetano Dimita - Video Games Industry

William Bowes - General Counsel and Director of Policy Publishers Association

Stephen Edwards - Partner Reed Smith LLP

Ros Lynch – IPO

Tom Walkden -IPO

Ben Beadle (minute taking)

Apologies

Hamish Crooks - Magnum Photos

Magnus Brooke - Director of Policy & Regulatory Affairs, ITV

Alex Towers – BT

Geoff Taylor - CEO, BPI

Ian Moss – BPI

Crispin Hunt – Chairman BASCA

Welcome

The Chair welcomed the panel members and apologised for cancelling the last meeting which was scheduled to take place in December 2018. He explained that at

the time he thought there would be more information to relay to the group about the DSM Copyright Directive, but as negotiations were still ongoing there was not a great deal that could be shared with the group and he and Ros Lynch (RL) felt it was best to cancel the meeting.

The Chair then asked the group if they had any comments about the minutes of the last meeting in October. There was only one correction which William Bowes (WB) had asked to be made and the chair agreed to take the correction as noted.

Policy updates from the IPO

The Chair welcomed Tom Walkden (TW) to the meeting who gave the following updates on Brexit planning and Trade.

Brexit Planning - TW started by saying that the last few months had been spent planning for a 'no deal' Brexit scenario. From an IPO perspective, this meant working on five 'no deal' Statutory Instruments (SIs) which needed to be passed through both the House of Commons and the House of Lords. The SIs were needed in order, as far as possible, to ensure continuity and certainty for businesses and consumers in the event of a 'no deal'. The SIs helped maintain the status quo and provided continuing coverage by, for example, cloning current EU trade marks and registered Community designs into UK rights in the event of a no deal.

The SIs covered all major IP rights (Patents, Trade Marks, Designs, Copyright) and Exhaustion. The Patent, Trade Mark and Exhaustion SIs were all taken together in the House of Lords and although initially rejected they had now been through both Houses. The Copyright SI had passed through the House of Commons and was set to be heard in the House of Lords on Monday 4th March. Ros Lynch (RL) explained that the initial rejection was partly down to a lack of understanding of this niche area. RL added that one of the issues raised by both Houses was that there had been no consultation with stakeholders as was normally the process. It was explained that the SIs needed to be in place for 'business as usual' and although there had been limited informal consultation, there was nothing controversial in the SIs and the IPO's informal engagement with stakeholders had shown that the vast majority were in favour of the SIs in the event of a 'no deal' scenario. TW added that if stakeholders wished to write to the IPO or Minister in support of the SIs then the Minister would potentially find it useful to quote the comments during the debate. All of the members present agreed that in the event of a 'no deal' it was very important to maintain the status quo so that the protection for existing rights continued without any hinderance.

Trade - TW then spoke about the continuing work of the IPO and DIT in relation to trade. Again, the last few months had been dominated by preparation for a 'no deal' scenario, meaning that the proposed new deals with the US, Australia, New Zealand as well as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which TW had spoken about in previous meetings, had been

put on the backburner whilst DIT had been concentrating on Trade Agreement Continuity with the existing EU FTAs and their 40+ partners. Gilane Tawadros (GT) raised a concern that although there had been a DIT consultation on CPTPP, DIT had issued a press release in favour of it before the outcome of the consultation had officially been released. TW could not comment on this as it was from another Government department, however, he did add that from an IP perspective the CPTPP was not the benchmark for IP chapters in future agreements, demonstrated by the fact that government saw the bilateral deals with CPTPP signatories (Australia and New Zealand) as valuable and still worth pursuing.

TW then said that if a 'deal' were reached then we would enter into a period of negotiating the Future Economic Partnership (FEP) with the European Commission as well as continuing to take forward the work on carrying over the 40+ existing EU FTAs and the priority new deals. The question was asked if there was a formal process in place for how this would be done. TW said that this was all new territory and a lot would be decided in the coming weeks as we approached the 29th March exit date. TW finished by saying that it would not be too much of a problem from an IP perspective if these deals were not done as IP was mainly internationally agreed and based on multinational agreements such as the Berne Convention.

DSM Copyright Reform

RL gave an update on the Copyright Directive. She told the group that the last COREPOR session was taking place on Wednesday 20 February. RL said that many people would already be aware that discussions on the final text was taken out of the hands of officials and dealt with at the political level, involving only France and Germany. The original timetable was for the text to go to the EU Parliament in 6 weeks (sometime in early April), however this has been revised and the proposed date is now in late March. RL told the group that we are now in a position where neither the UK or any other MS can make change to the text before it goes to Parliament for a yes/no vote. Members of the panel informed RL that they were unable to find the final text online. RL explained that although the text was finalised on Friday 15 February it was not published until Monday 18 February so it should be online, but she would circulate the final text (**update: final text circulated Friday 22 February**).

RL then spoke about implementation of the reform package. The implementation period would be 24 months from the date of publication and this is likely to be May or June of this year. If the UK leaves the EU with a 'deal' then the reform measures would need to be implemented within that timeframe. However, if the UK crashes out without a 'deal' then the measures will not have to be implemented. Although, there is a chance that implementation of the Directive could be a prerequisite of the FEP and so would still need to be implemented.

Gaetano Dimita (GD) commented that even the parts of the reforms which are favourable to the UK might get caught up in ECJ cases. For example, Article 15 ('best seller') of the Directive could be problematic as every country has a different

approach to this. RL said that we are unable to change anything now and we will be left with the guidance that the Commission will publish, although that will be published under a different Parliament. RL added that pending ECJ cases might give a better idea of the way forward rather than the text. The group then had a frank and open discussion about the Copyright reform package.

RL commented that it has been interesting to see how support and drivers have switched during the last few years that the reform package has been going through. Bill Bush (WB) raised a point about the Government's White Paper on 'online harms' and liability. He asked that can we as a sector self-police regulated gambling in live games? There is a much bigger question to be asked about the platforms and how they collect data. For example, the platforms collect data not just on legal gambling, but they also collect data from grey areas and illegal gambling sites. This information is then used to target vulnerable individuals by making it highly seductive and this raises again the question of who is liable. The Chair commented that it seems to him that at a basic level the online harms issue will be redrawn as part of a wider movement which will look at the issues in a narrow scope.

RL then reminded the group that the IPO's call for evidence on the 2014 Hargreaves changes is running until 10 April.

Enforcement

RL explained that the IPO wants to make online infringement and buying counterfeit goods socially unacceptable. In order to do this the IPO needs to get a much better understanding of people's attitudes to buying counterfeit goods. Therefore, this year there will be an OCI tracker for physical goods. This will run in parallel with a study to fully understand the availability of counterfeit goods in the UK. GD sought clarification and asked if the IPO is looking at just counterfeit goods or unauthorised goods as well, as they can be indistinguishable from the real thing. RL explained that there is no UK policy concerning unauthorised goods, but they are often substandard and this is an area for Trading Standards.

RL then went on to talk about the Enforcement Framework Review. Originally the review was put out to tender over a year ago and there was only one interested party. The review was delivered but following several peer reviews the IPO deemed the work to be unpublishable. The IPO has taken the decision to put the review out to tender again.

RL updated the group on the work the IPO is doing on exhaustion. At the previous meeting in October the panel were told that the IPO were starting research to investigate the available data on parallel trade in the UK. The initial feasibility report which has been undertaken by Ernst & Young (EY) will be published soon by the IPO and then work will start on the second much bigger piece of work looking at options for the UK's future exhaustion regime.

RL then went on to briefly talk about the Creative Industries Sector Deals. The IPO has been working with stakeholders and platforms to come to voluntary agreements.

The original date to reach agreement was December 2018, but this has been pushed back to March 2019. The IPO is looking at delivering voluntary agreements with those platforms that wish to engage and then explore other avenues with those who cannot reach an agreement or have been unwilling to engage.

SCCR - Broadcasting Treaty

The next SCCR session is taking place in Geneva between the 1st and 5th April and one of the subjects under discussion will be the Broadcasting Treaty. RL spoke about the last session which took place in November 2018 and noted that the US tabled new text which they felt they could sign up to. This was because broadcasting signals falls within the remit of their Communications Act which they are reluctant to reopen. RL added that she is still uncertain if she can attend until the current 'deal/no deal' issue is resolved. William Bowes asked if there was any information RL could update the group on concerning other WIPO topics, but RL said not at this time.

Future Agenda Items

The Chair then moved on to future agenda items. He said that part of the value of this meeting was, as well discussing issues within the CI sector, was picking up issues in other sectors and looking at how they might affect other areas of work. RL added that Brexit and Trade discussions will continue for the foreseeable future, but it would be good to undertake some horizon scanning.

RL kicked off the discussion by informing the group that the IPO will be holding a joint conference with WIPO on AI and IP. The conference is scheduled to take place on 18th and 19th June in London and it will look at the impact of AI (economic etc.) on IP. RL made a request to the group to contact her if there were any speakers, themes or subjects they thought might be beneficial to include. RL added that a team from the IPO are currently looking at the copyright implications of AI.

Several other options put forward included:

- **Appropriation Art** - GT gave an example of an artist who had until recently, shown no interest in protecting his IP rights but when Louis Vuitton used his work without permission, he produced a piece of work entitled 'Rules of Copyright 1-5' which used fake Louis Vuitton items. GT believes there is a more nuanced conversation to be had about appropriation and infringement and that there has been a mood change amongst artists in this area.
- **Blockchain** – Many in the group thought it would be useful to have a meeting to discuss recent blockchain developments, including the impact of having multiple owners on copyright ownership. Also, looking at how GDPR might affect using blockchain.

- **Online Harms** – Perhaps invite representatives from OFCOM and the journalism sector to update the group on current thinking and activity in this area.
- **Games** – RL asked GD if there were any issues in the gaming sector he would like to discuss with the group. GD suggested preservation of games and retro games and looking at the terms of protection for them. He also told the group that the ‘More Than Just A Game’ conference is taking place on 4-5 April this year. The conference is an international series of academic-led conferences on Games and Interactive Entertainment Law.

AOB

The Chair drew the meeting to a close and asked the group when they thought it would be a good time to meet again. The general consensus was to hold the meeting in May, as April will probably be a busy month for all of the group dealing with the ramifications of the UK exiting the EU on 29 March.

Action – IPO to canvass member’s availability for a meeting in May (**update: next meeting being held on Tuesday 7 May 2-4pm**)

End.

Ben Beadle