

Minutes of second meeting of Copyright Advisory Panel 2nd December 2014

Attendees

Tim Suter – Non Executive Director IPO (Chair)
Ros Lynch – Director, Copyright and Enforcement Division (CED), IPO
Joanna Huddleston – CED, IPO
Richard Mollet – CEO The Publishers Association
Crispin Hunt – CEO Featured Artists Coalition
Magnus Brooke – Director of Policy and Regulatory Affairs, ITV
Maureen Duffy – Writer, Poet, President of Honour of British Copyright Council and
Author's Licensing and Collecting Society
Bill Bush – Director of Policy, Premier League
Geoff Taylor – Chief Executive British Phonographic
Stephen Edwards – ReedSmith
Ben Beadle – CED, IPO (minute-taking)

Apologies

Jo Twist – CEO UKIE
Julian Ashworth – Global Director of Industry Policy, BT
Gilane Tawadros – CEO Designers and artists copyright society
Roly Keating – British Library
Amanda Nevill – BFI

Introduction & welcomes

- Welcome to the new members of the panel Stephen Edwards, Bill Bush and Geoff Taylor
- Attendees all agreed with the minutes from the last meeting
- Attendees all agreed with the amended terms of reference
- All present stated they were now on the copyright mailing list

Membership of panel

- Panel members confirmed that an approach should be made to the Managing Director at Magnum to see if he would be interested in representing the still images industry on the panel.

Action

- RL to approach Magnum Photos and invite a representative to be part of the panel

Update from the IPO

- Consultation on reforms to 2039 copyright rule will close on 12 December. IPO are working to see if the change could be implemented within this Parliament though it was acknowledged that the timetable was very tight.
- The Orphan Works Licensing Scheme went live on 29 October and there have been several applications to date.

- At the last meeting it was announced that the Criminal Sanctions research report would be published in November but it is now likely to be published in the new year.
- The copyright team have visited Denmark, Berlin, Poland, the Netherlands and Brussels in order to try get a sense of what other member states are doing with regards to the DSM. It is clear from the discussions that other MS are thinking about copyright reform in the context of the whole DSM and not in isolation. Everyone is keen to for more information on the Commission's position and appreciates that the subject area is extremely complex ,
- The recent roundtable discussion with the Minister was a success
- There have been 28 responses to the IPO questionnaire on territoriality with a few more promised and this has been very useful in helping the IPO to understand more clearly the differences between sectors and why they exist. The next step will be to go back to the respondents on an individual basis with some more specific questions.

Structure of the meeting

- To identify strategic opportunities/goals for the UK
- To identify tactical gives - Are there areas where we can get movement/make some progress?
- To identify red lines

Topics for discussion

EU Copyright reform in particular:

1. Cross border access and territorial licensing
2. Exceptions and limitations
3. Fair remuneration
4. Enforcement

Cross border access and territorial licensing

It seems likely that the Commission will be prioritizing this area and will be taking a consumer driven approach. It is also clear that the Commission understands the importance of not damaging creativity and that all access should be legal.

- There was consensus about the importance of evidence-based decisions
There needs to be a very clear definition of what or who a 'consumer' is.
- Changes to the current framework of territorial licensing could cause difficulties in delivering works in a variety of languages etc and could push towards a monoculture. It is clear that current markets are culturally driven.
- However, there are key differences between types of content. For example, literary content is almost all licensed on a pan-EU/global basis. Music is largely pan-EU. Film, AV and sport are much more culturally driven and therefore use more exclusive licensing which is critical to business models.

- Geo-blocking is one way that territoriality of licensing is enforced. If the freedom to geo-block is lost there is a risk that programs will be taken off sites or go onto pay sites/subscription service, leading to reduced choice on free to access sites. The BBC/public sector broadcast model also needs to be accommodated.
- Allowing greater access in “non-targeted” markets would cause problems arise in the area of post sales because of difficulties in providing the expected level of service outside of your territory
- Consumer demand for portable services (e.g. streaming football that has been paid for in the UK when travelling) is low although likely to increase. There are risks to be considered as the market moves to increased portability for licencing and broadcasting rights if increased portability leads to leakage between markets. This is because culturally focused companies and broadcasters will be less likely to invest in productions/broadcasts if they do not have exclusive rights for their region and this in turn could affect the diversity of works produced
- Passive sales go hand in hand with portability but for both there is a risk that someone sets up a business and actively sells or exploits the use of the services provided

Exceptions and limitations

Areas the Commission appear likely to consider include: text and data mining, access to knowledge (libraries /universities) and disability.

- The panel members felt that the benefits of harmonization against the more flexible approach the current system offers need to be appropriately balanced.
- The view was expressed that exceptions for non-commercial data mining are acceptable but a red line should be drawn with regards to commercial data mining as large profits could be unfairly made from the research of others. There was some discussion about whether it would be possible to have an exception that allowed non-commercial TDM but also provided that if the results are later used for commercial reasons then there should be some recompense to the original author/researcher. An exception subject to licence model was also considered
 - The language and implementation of the UK’s recent reforms to copyright exceptions were welcomed, although in some areas it was felt that the market was already delivering and the intervention was not necessary. It was felt the UK should promote the approach it had taken as a model in Europe.
- The point was also made that it was questionable whether the Commission has responsibility for education.

Fair Remuneration(FR)

- Some members felt that there should be a guaranteed right that you should be able to get fair remuneration for your work.
- It was noted that levies for personal copying are available in 15 other member states. There was discussion about the UK's recent reform to introduce an uncompensated, narrow private copying exception.
- There was some discussion as to whether or not further remuneration mechanisms (e.g. as practiced in Germany and the Netherlands) are advisable in the UK or EU-wide. Some felt this was an area where freedom of contract and price regulation not copyright were key
- It was expressed that FR mechanisms could be absolutely appropriate if it is in addition to a contract but it should not replace a contract.
- Some members raised the view that FR should perhaps be looked at with regards to exceptions to copyright which although a good idea there was a question about whether a work should be continually copied with no remuneration.

-Enforcement

- Enforcement has to be part of the package if copyright reform is to be considered. Question about what penalties should apply?
- Members of the panel raised concerns about site blocking (article 8.3) and their frustration that court judgments are only valid in the country where the application was made. The possibilities for judgments being recognized EU wide should be explored.
- The real issue is unauthorised commercialisation. This includes issues of 'safe harbours' and secondary liability for copyright infringement. There was concern that the current system of safe harbor provisions does not adequately protect against the business model of an intermediary relying on users uploading infringing content for their revenue stream
- The panel agreed that the question of damages needs to receive further consideration as well as statutory damages such as in the US. It was stated it seems odd that the same fine for an individual is metered out to a giant corporation.

Topics for future meetings

- It was agreed that further discussion is needed on the European reform of copyright so the panel agreed to add an additional meeting in the New Year.
- **Action - IPO to canvass availability for a meeting in January.**

AOB

There was no AOB.