

Minutes of ad-hoc meeting of Copyright Advisory Panel 30th January 2015

Attendees

Ros Lynch – Director, Copyright and Enforcement Division (CED), IPO

Joanna Huddleston – CED, IPO

Richard Mollet – CEO The Publishers Association

Magnus Brooke – Director of Policy and Regulatory Affairs, ITV

Bill Bush – Director of Policy, Premier League

Geoff Taylor – Chief Executive British Phonographic

Stephen Edwards – ReedSmith

Amanda Nevill – BFI

Gilane Tawadros – CEO Designers and artists copyright society

Julian Ashworth – Global Director of Industry Policy, BT

Ben Beadle – CED, IPO (minute-taking)

Apologies

Tim Suter – Non Executive Director IPO (Chair)

Crispin Hunt – CEO Featured Artists Coalition

Maureen Duffy – Writer, Poet, President of Honour of British Copyright Council and
Author's Licensing and Collecting Society

Jo Twist – CEO UKIE

Roly Keating – British Library

Agenda

- It was agreed at the previous meeting that this ad-hoc meeting would deal solely with the question of EU Copyright Reform.
- All agreed that the meeting arranged for 12th February will deal with Enforcement

Update from the IPO

- 2039

- Response published 29 January. Following consultation, the Government has decided not to proceed with its proposals to reduce copyright duration in certain unpublished works, in their current form.
- The consultation received responses from a range of interested parties, some of which raised genuine concerns for which a legislative solution is not readily apparent. The Government is already in contact with our key stakeholders in this area, and will discuss some of the issues the consultation raised, and where practical solutions might be found.

- Orphan Works

- o 9 licences issued so far covering nearly 200 works and categories including crime novels, photographs and music scores

Action: IPO will provide a fuller breakdown of the figures to the next and subsequent meetings

- S52 Designs

- o Waiting for the RPC to clear
- o Impact Assessment due late February

- CRM

- o Likely to be consulting very soon. **(Update launched 04/02/2015)**

Overall discussion on DSM

- Several attendees had been present at the BSAC European Politics Event, Thursday 29 January. Members reported that Robert Madelin (DG CNECT) gave an overview of the general approach President Juncker is taking to DSM reform, in the context of his overall commitment to fairness.
- Although the discussion did not cover the details of reform proposals, it was apparent that the likely areas of reform are around portability, access and exceptions. The timetable is likely to be that the EU DSM paper will be published in May 2015 with copyright legislative proposals in Sept/Oct 2015
- Several members felt there were serious concerns that reforms to the framework of territoriality that appear to be under consideration by the Commission have not been fully thought through in terms of their possible impact on the production of creative content in the EU and on the Creative Industries as a whole and could have severe consequences. See discussion on access and portability for specific concerns
- It was also noted that emerging case law needs to be considered as part of the debate. For example, some parties have raised concerns about the implication of the Bestwater case.

- It was also noted that the licensing market is extremely fragmented and this is an important reason why not all services operate cross-border.

Portability

- It was noted that in some sectors (music, ebooks) most if not all content is already portable.
- In general, attendees felt that initiatives to promote portability should be encouraged as it is reasonable that a consumer paying for access to content should continue to have that access when they travel in the EU. However there were concerns raised that proposals may not sufficiently differentiate between ad-funded, licence-fee funded and paid for/subscription services. For example, advertising is highly territorial and consumers have a value to advertisers that is based on their nationality and location.
- It was noted that although portability is not a priority for all consumers at the moment it is likely that demand will grow.
- Enabling portability might in some circumstances reduce incentives for piracy.
- Long-term portability (i.e. more than a few weeks of use e.g. on holiday) in particular raises concerns as this would be a back door to cross border access.
- Members raised various practical, technical and legal concerns that would need to be addressed were the requirement to provide portability to become mandatory on distributors (potentially via the EU introducing legislation), including:
 - o Is portability always technologically feasible, in particular where there needs to be a way for legitimate subscribers to be identified when they travel (this is a particular concern for UK free-to-air providers)?
 - o Would distributors be obliged to purchase pan-European licences or do their current licences cover them for portability [**Action:** industry representatives to check the standard terms in their sectors]
 - o Should portability be included as standard in subscriptions or would it be acceptable to charge extra?
 - o Would the industry be compelled to offer the same service the customer has paid for in their own country or could it be acceptable to provide a slightly different service?
 - o Would the distributor be obliged to provide technical support when a service was used out of country?
 - o Should a customer be obliged to prove residency to benefit from portability?
 - o More information is needed on how advertisers would view services being portable, as medium/long term use of a subscription in a portable way may mean the user no longer forms part of the advertisers target audience [**Action:** representatives that work with advertisers to seek further information]

Access

- It was noted that in some sectors access is already good (e.g. publishing) and there are increasing numbers of services that operate in all or many Member States. However, not all services provide the same content in all Member

States and the extent to which catalogues differ is one factor where more evidence is needed [**Action:** members to provide data, where available]

- Some members felt that a passive sales approach to permitting greater access to content might be possible and would be less disruptive than an entire re-write of the copyright system. It was noted that this is the direction that case-law is taking and it is likely that this is an option the Commission is considering.
- It would be important to ensure there were mechanisms in place to allow appropriate remuneration for rightsholders if a passive sale occurs.
- However, other members raised concerns that further permitting passive sales would be detrimental, in particular to film and TV.

Points made in discussion on specific risks:

- o Risk that independent and smaller players in film and TV would not be able to afford licences to operate at a pan-EU scale and therefore would be priced out of the market in favour of larger players
 - o Risk of reduction in consumer choice if productions are unable to raise funding because they are unable to sell distribution rights on a territorial and exclusive basis
 - o Risk of reduction in value of pre-sales and therefore a reduction in the amount of content produced
 - o Risk that English language productions would dominate a EU-wide single market to the detriment of cultural diversity
 - o Risk to consumers of prices rising to the maximum across the EU
 - o Risk of behaviour changes such that online/catch-up rights are held back to wait until the end of all broadcast windows across the EU, to the detriment of the consumer experience
- It was noted that the majority of the value of a film comes from the first theatrical release and that this would need to be protected in order to avoid undermining incentives to create.
- It was noted that film and TV are cultural products and have different values in different markets.
- It was noted that the differences in models for payment for content need to be taken into account. For example, ad-funded content is very different to subscription content. Ad rates for broadcasting and related services are much higher than online ad rates and this will influence commercial decision making on whether content should be released online.
- It was noted that, regardless of views on the merits of using geo-blocking to prevent passive sales, it is one mechanism that is used to prevent people who have not paid for content getting it. This is particularly important for free-to-air licence-fee paid content. It will be important that this point is clearly articulated

Action: Panel members to further consider mechanisms that could work for their sectors to increase the possibilities for consumers to be able to pay to access content that is not available to them through a local provider.

Members also to consider whether the current enforcement framework would effectively support any solution they bring forward

Topics for future meetings

- The meeting on 12th February will deal with Enforcement and Exceptions & Limitations

Exceptions

There are likely to be discussions both over the type of exceptions to be harmonised and the level of harmonisation.

- which exceptions are more suited to harmonisation and which are not?
- Where should discretion be maintained?

Enforcement

- Current perspectives on how the enforcement framework is working at domestic and EU level
- Are there any particular areas of the proposed EU Copyright reforms where you consider the enforcement framework will need to be revisited?

AOB

None