

The Intellectual Property Office
Concept House
Cardiff Road
Newport
NP10 8QQ

13 November 2017

Dear Sir/Madam,

Re: Industrial Strategy: Intellectual Property Call for Views

Background & context

The Association of Photographers Limited (AOP) is a not-for-profit professional trade association, founded in 1968. Its aims are to promote and protect the worth, credibility and standing of its members and to vigorously defend and lobby for the interests and rights of all photographers in the photographic profession.

The AOP represents professional photographers, assistants, agents and students as well as offering supporting membership to related professions in the creative industries. Professional members have a wide client base, ranging from individual clients in the corporate sector to design groups, publishing houses, music publishers and advertising agencies. Their work is published worldwide in magazines, newspapers, books and advertising campaigns and many sell their images as fine art through galleries, both in traditional spaces and online.

The AOP is a member of the British Copyright Council (BCC), Creative Industries Federation (CIF), British Photographic Council and Pyramide Europe (EEIG) and we fully support the 'Fair Terms for Creators' campaign (<http://www.fairtermsforcreators.org/who-we-are.html>) co-ordinated by the Creators' Rights Alliance (CRA). AOP members are represented by the Design and Artists Copyright Society (DACS) for collective licensing.

All our photographer and assistant members are SMEs, some work in partnership with another photographer but, overall, the majority are individuals either working for their own limited company or as sole traders.

The AOP has commented previously on the Industrial Strategy and its importance through the BCC and we wholeheartedly support the recognition that government attaches to the value of the UK creative industries and the intellectual property it generates. We are pleased to be able to add some additional, specific commentary here. Some of the sections in the Annex of the Call for Views document are of less interest to us, so comments have been included where appropriate.

B2B model IP agreements

Professional photographers predicate their business models on the notion of selling 'use' not 'unit' and have long used licensing of their creative IP as the means to achieve this. A licensing agreement, or a 'Licence to Use', forms part of the contract between Photographer and Commissioning Client and photographers use the three main criteria of territory, time and media to establish the terms of that licence. This can be documented very easily via a simple

paragraph of text summarising the terms of use for the photograph(s) and inserted into either an invoice or a separate licence document. We provide template forms for our members to facilitate this. Tracking these licence agreements is equally straightforward through the use of appropriate software and forms part of the business activities of the professional photographer.

Voluntary IP register

Whilst any attempt to clarify and underpin the security of IP, especially in relation to those SMEs that do not have the resources to chase up the ever-growing number of infringements of their IP, is welcomed, we have strong reservations about the creation of a voluntary IP register.

As is already acknowledged in the Call for Views document, a number of international agreements prohibit signatory states from making such registers mandatory and indeed the Berne Convention does not compel any form of registration for copyright either. It is worth noting that there are several private sector options available to potential registrants already, however, we do feel that some of these private sector options are somewhat misleading in the way they seek to present themselves to the public, adopting as they do, a supposed authority and legitimacy by way of URL and portal name. The creation of an additional voluntary register would only add to the confusion.

There is no requirement for copyright holders to register their IP in the absence of any provision for claiming substantial statutory damages for infringement and we believe this to be the correct state of affairs.

We are unclear about how a new IPO-backed IP register would authoritatively and legally ascertain ownership of IP. Without appropriate and proper procedures in place, IP might be registered when in fact it is not legally owned by the registrant. This becomes a time-consuming and therefore expensive issue to rectify, creating a hierarchy of those with resources to manage this additional work and those without. That, in our view, is wrong and would put undue additional pressure on many of our members.

Illegal use of IP, particularly copyright in the form of photographs, is on the increase and is a problem that has still not been fully addressed to the satisfaction of creators. We welcome initiatives such as the creation of the Intellectual Property Enterprise Court (IPEC), which have been empowering for, but the fact remains that some of the procedures and processes are still too obfuscated and remain difficult to access for many.

New financial products

The AOP is interested in developments in this area as our members generate substantial amounts of IP as the core of their business model. Raising capital based on the value of IP could be a useful additional avenue for small creative businesses to explore and from anecdotal experience, banks do not currently place any value on this type of asset, particularly in relation to the SMEs that both make up our membership and the majority of the creative industries.

Please do not hesitate to contact us if you require any additional information.

With thanks,

Yours sincerely

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