



Independent Review of Intellectual Property and Growth

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Executive Summary

1. The UK creative industries are a success story. The contribution of our core copyright sector to the overall economy is greater than in the US and anywhere else in Europe. Employment across these industries exceeds 2m; conservative estimates place the annual level of investment in new content at £4.3bn. Steadily-rising annual export income in excess of £17bn confirms the international demand for UK creative content. The key challenge for IP policy is to provide a development framework that recognises the full range of factors that will contribute to ensuring this success is sustained.
2. Copyright aims to incentivise individuals to create new works while at the same time permitting access to such works to promote learning and innovation which in turn drives social and commercial entrepreneurialism. This key balance between access and reward is enshrined in international copyright law. Within this framework UK copyright has developed a system of 'conditional exceptions' around which licensing solutions have evolved providing flexible access to works for education and business needs. These solutions are developing to meet the needs of the digital-use environment.
3. Licensing solutions provided by collective management organisations offer high-volume rights clearance at a single point. This provides certainty of access while minimising bureaucracy and costs. The cost for a business of a copying licence covering all their books and periodicals works out 0.0006% of their overall spending. For a university the figure is 0.04%; the annual cost to secondary schools of recording and re-using a huge repertoire of TV and radio programmes is 57p per pupil.
4. The introduction of US fair use principles into the UK copyright system would threaten the balance between access and reward set by the present framework. For educators, the highly subjective nature of fair use creates acute uncertainty around access and use; more fundamentally a system that invites legal contest hampers copyright's role in driving innovation - the risk is that access is delayed or stifled, reward is uncertain and may be offset by legal costs.
5. The success of the UK creative industries is built upon the talent of creative individuals; without the initial creative spark, there is no product to sell. Like most creators, writers are innovators, risk-takers – they invest considerable time and resource despite uncertainty over the ultimate outcome or level of reward. The evidence shows that the market is skewed towards a small number of commercial successes and that achieving commercial success is usually a protracted, highly unpredictable process. Given the reliance of this core sector of the economy on the continued efforts of creators such as writers, copyright's role in incentivising creation is crucial. This response highlights the *regenerative cycle* by which licensing from secondary-uses of copyright supports the creation of new works for release into the 'primary' commercial market.

Introduction

The Authors' Licensing and Collecting Society Limited ('ALCS') is the UK collecting society for writers. Established in 1977 and wholly owned and governed by the writers it represents (of whom there are 80,000) ALCS is a not-for-profit, non-union organisation. Since its foundation, ALCS has paid writers over £250 million in fees and today it continues to identify and develop new sources of income for writers.

Writers and the economy. Government figures place the contribution of the Creative Industries to the overall economy at around 5.6%, identifying a sector that has continued to perform despite the economic downturn. Figures produced by the World Intellectual Property Organisation (WIPO) show that the contribution made by the core copyright sector to the UK economy is greater than in the US and anywhere else in Europe.

The talent and creativity of writers provides the catalyst for content production in various sectors: publishing, broadcasting, gaming, news provision. Their continued innovation will play a lead role in supporting growth across the creative industries. In this paper we analyse the environment in which ALCS operates on behalf of writers to identify how copyright can continue to support creativity and economic growth.

The 'secondary-use' market. By entering into licensing partnerships with bodies representing creators and other rightsholders in the UK and internationally, ALCS provides high-volume rights clearance solutions, enabling simple, flexible access to content for enjoyment, learning and business development.

ALCS exists to ensure that writers receive a fair level of return when their works are used in situations in which it would be impossible or impractical to offer licences on an individual basis. The secondary rights licensing income we collect and pay to writers from the legitimate use and re-use of copyrighted material can and does help to subsidise the creation of new works.

In the secondary-use context the UK copyright framework establishes the fulcrum of this balance between access and reward by enabling a flexible approach to the relationship between exceptions and licensing.

Throughout our submission we refer to extracts from a recent report compiled by PricewaterhouseCoopers¹ ('the PWC Report') looking at the economics of 'secondary copyright' and collective licensing.

We have confined our submission to those Questions in the call for evidence that are of direct relevance to ALCS and its members.

¹ *An economic analysis of secondary copyright and collective licensing*, PricewaterhouseCoopers LLP, March (2011). Report commissioned by CLA, ALCS, PLS and DACS

Questions

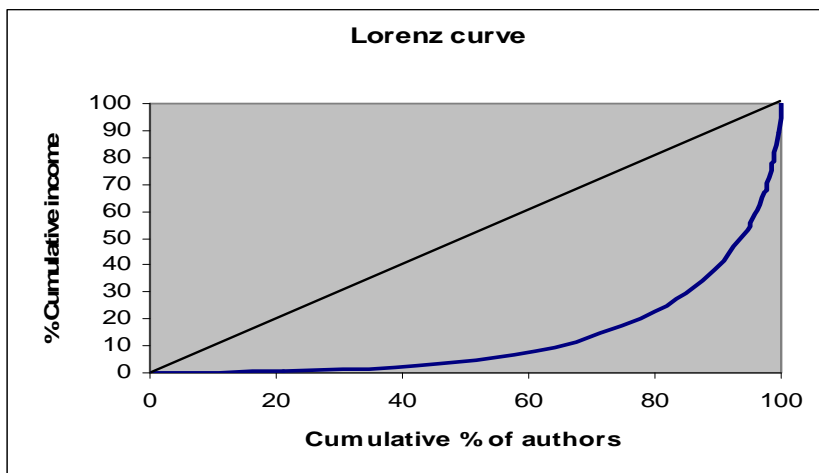
1. Is there evidence from other national frameworks to suggest how the UK (and EU) copyright systems could better support innovation?

The Director General of WIPO recently identified the central question for copyright policy in the following terms, “How can society make cultural works available to the widest possible public at affordable prices while, at the same time, assuring a dignified economic existence to creators and performers..?”²

Broadly speaking copyright supports innovation in two ways: incentivising the creation of original works and permitting access to such works to support further creation, innovation and knowledge dissemination.

Innovation involves risk, weighing upfront investment of time and resource against unknown or uncertain rewards. Writers do that every day.

To better understand the investments and return structures within writing markets, ALCS commissioned research by the Centre for Intellectual Property Policy & Management at Bournemouth University³. The research highlighted the precarious balance between risk and reward. In analysing the distribution of UK earnings from writing, the research used the statistical measure the Gini coefficient, whereby 0 = total equality and 1 = total inequality. The UK result of 0.74 shows the highest returns are concentrated amongst a relatively small group⁴.



Source: CIPPM

The research also revealed that writers receive the lowest income returns during the early stages of their career with the median income figure for the 25-34 age-group coming out at only £5k per annum.⁵

² *Future Directions in Copyright Law*, Queensland University of Technology, (February 25, 2011)

³ Authors' earnings from copyright and non-copyright sources, [Centre for Intellectual Property Policy & Management](#), Bournemouth University (December 2007)

⁴ *Ibid*, Table 7.3, page 86

⁵ *Ibid*, Table 3.4, page 27

Clearly writers are motivated by factors other than financial returns. However, there is an important point here in the context of the current review and its core question: how can copyright support innovation?

The findings above confirm that writers need to 'stay the course' to reach the point at which their output generates significant commercial returns. It is at this point that their contribution in overall economic terms is optimised.

What is the support structure to achieve this?

Either alone, or through their agents, writers trade their copyright through licensing and receive royalties in return. Looking at the wider picture, the secondary-use payments model, administered on behalf of writers collectively by ALCS, is another core component of this structure supporting continued creativity and innovation.

The focus here is where support for innovation lies in the UK copyright system, when compared internationally.

The UK copyright system sits within a hierarchical structure of international law governed by various treaties and conventions. These recognise the access/reward balance referred to above as a core principle of copyright. The WIPO Copyright treaty recognises "the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention". This balance is exemplified by the three-step test established under the Berne Convention. At the European level the EC Copyright Directive sets out certain principles to achieve a balance between access and reward: "If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work..."⁶, "This Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching."⁷

Within this structure ALCS links into an international framework of collective management organisations (CMOs) through its membership of bodies such as IFRRO (International Federation of Reproduction Rights Organisations) and CISAC (International Confederation of Societies of Authors and Composers), establishing licensing networks that enable access to UK works internationally and providing increased export income, while at the same time widening the range of content open to UK businesses, educational institutions etc. The resulting income from these arrangements supports writers in the process of developing and creating new works.

The Review is interested in analysing the benefits of the US fair use system and how these might be achieved in the UK.

⁶ Directive 2001/29/EC, Recital 10

⁷ Ibid. Recital 14

It has been said that one of the chief benefits of fair use is flexibility as the doctrine permits a breadth of interpretation. The downside of this approach is the resulting uncertainty as to what actually constitutes a fair use in any given case.

“When it is impracticable to obtain permission, use of copyrighted material should be avoided unless the doctrine of fair use would clearly apply to the situation. The Copyright Office can neither determine if a certain use may be considered fair nor advise on possible copyright violations. If there is any doubt, it is advisable to consult an attorney.”⁸

“...be aware that millions of dollars in legal fees have been spent attempting to define what qualifies as a fair use.”⁹

Apart from the delay and cost implications associated with a system that invites legal contest the fundamental lack of certainty for users and copyright owners upsets copyright's role in driving innovation: access is delayed or stifled; reward is uncertain and may be offset by legal costs.

The fair use doctrine is intended to encourage transformative uses of works in the public interest. Expanding the range of accessible content for learning and enjoyment is clearly something that a copyright system should aspire to deliver in the public interest. Does the fair use approach achieve this successfully?

If we take the example of the Google Books library project, the aim is to provide access to millions of books on-line. Public interest in such a project is evident – greater access to a vast knowledge resource. Google claimed the copying necessary for digitising the books was a fair use: authors and publishers sued, a settlement was reached, challenged, amended and challenged again.

One of the key elements of the model developed under the settlement¹⁰ is subscription-based access to a database of works available to the business, education and public administration sectors. Pricing structures follow multipliers such as the number of employees/students; individuals users can copy, print and re-use the works under the terms of their subscription. Revenues from the subscription service will be apportioned between authors and publishers based on rules agreed by a body mandated by their respective representative bodies.

This model delivers access – research, innovation based on newly available content – and reward, returns for authors and publishers of older material promoting new creation and production. However, more than five years on from the filing of the lawsuits, the process is stuck in court with no immediate resolution in sight. Google's aim was to harness digital technology to provide new models for accessing copyright content to a vast number of users; in this case, the fair-use approach has resulted in a demonstrable market failure.

⁸ US Copyright Office, Fair Use

⁹ Stanford University Libraries, Copyright and Fair Use

¹⁰ http://www.googlebooksettlement.com/r/view_settlement_agreement

By contrast, the key elements of the subscriptions model outlined above already exist in the UK and have been operating successfully for many years through the Copyright Licensing Agency (CLA)¹¹. (We provide further detail on this model in our response to Questions 3 and 6).

Providing the right balance for educational access is a crucial element of any copyright system whether it is based on fair dealing, fair use, or specific educational-use exceptions. In the US fair use extends to “teaching (including multiple copies for classroom use), scholarship, or research...”¹² However, the practical application of these allowances appears uncertain.

Guidelines provided by the US Copyright Office¹³ concerning the copying of books and serial publications for use by pupils in the classroom outline various factors that determine whether or not the copying may be considered a fair use. This amounts to a three-step analysis (i) does the amount of copying meet the test of ‘brevity’ by reference to various word-counts applicable to different classes of work? (ii) does the proposed act of copying satisfy the requirement of spontaneity: “The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.” (iii) does the copying adhere to the cumulative limits restricting the amount that maybe copied for a particular course of study, from a particular author and does the copying act fit within an overall limit of nine per course of study, per term?

The guidance also requires consideration of the possible impact of the copying act on potential sales of the work, whether the copying is repetitive in relation to a given item and whether due to the ‘consumable’ nature of the publication copying is prohibited in any event.

That’s a lot to think about. The guidelines for the educational use of broadcast recordings¹⁴ include limitations such as the requirement to erase or destroy recordings after 45 days and further restriction on the number of times a recording may be used by a teacher.

In this context the fair use approach appears highly inflexible, failing to provide certainty as to which works may be accessed legally at any given time. Educators need to know that they can access the content they need to teach effectively, without wondering if they are infringing copyright in the process.

Building upon the fair dealing exceptions the UK copyright framework includes specific copyright exceptions enabling the copying of books and serials and recording from broadcasts, for educational use¹⁵. These provisions allow for a ‘conditional exceptions’ model whereby the access rights granted by statute can be extended through licensing schemes.

¹¹ <http://www.cla.co.uk>

¹² S.107, US Copyright Act (1976)

¹³ US Copyright Office, Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, s.C

¹⁴ US Copyright Office, Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, s.F

¹⁵ S.35 and 36, CDPA (1988)

The CLA and the Educational Recording Agency (ERA)¹⁶ provide educational licensing schemes that offer certainty of access to a huge repertoire of works right across the education sector. These systems also provide simple mechanisms for rewarding the creators and other owners of the content in the form of secondary income.

We asked our colleagues at the US Authors Guild for their perspectives on fair use.

Case study: Fair use - a US perspective

The Google Settlement

Most remarkable is what the parties negotiated. Authors, publishers, Google, and many leading US research libraries came up with a settlement that carefully *avoided* fair use, and set up what looks nearly identical to our opt-out collective licensing system, but applied to a digital environment of out-of-print books. An assembly of businesses, institutions and lawyers with vast experience in American fair use law found that the answer to maximizing access, to bringing enormous digital libraries of works to libraries and academic institutions while compensating authors and publishers for their countless hours of work and enormous investments wasn't fair use at all.

Fair Use and educational content

Many concepts often get bundled together when considering US fair use rules. For example, under US law, certain photocopying uses are allowed for educational purposes and for interlibrary loans. These aren't actually part of fair use, but the exceptions are certainly inspired by fair use. Once in place, these exceptions have had unintended consequences, distorting the educational market and depriving authors of income. The result is diminished investment in the very sectors that the government had sought to support.

The guidelines permitting free photocopying of works for educational purposes are intended to be limited.

In practice, however, the guidelines are widely abused according to many people who have attended US academic institutions, including our colleagues at the Authors Guild. Photocopy machines have been placed near "reserve" rooms in academic libraries for years. Instead of buying several copies of a popular nonfiction work (which one had to do before photocopying machines were common), an academic institution will just purchase one and place it "on reserve." The publisher and author lose sales. Inevitably, this affects what gets published.

It works exactly as it would in any business (often, because of the cultural and educational importance of books, people have a hard time fully accepting that normal business rules apply to publishing). The publisher sees that works aimed at the academic market aren't especially profitable, so the publisher invests less money in works that might appeal to that market.

¹⁶ <http://www.era.org.uk>

Of course, this affects not only the academic market, but the general book market as well. High quality nonfiction works can and do sell in both markets. Before photocopy technology started draining profits from the academic marketplace in the US, a publisher could reliably estimate that a well-written account of our westward expansion would have a substantial market among academic libraries. The publisher would also, of course, try to assess the work's far less certain prospects in bookstores. The potential rewards from both markets might make paying an author enough to spend a few thousand hours researching and writing the manuscript worthwhile. Reduce the academic market, and the publisher's calculations change: the risk is no longer worth the potential reward.

Authors of talent turn to other markets or to other endeavors entirely. Policies intended to help academic institutions instead result in fewer high quality works being written for that market.

When the library market shrunk, the US had what was known as a "midlist crisis". Fewer publishers and authors were producing high-quality "midlist" books, works that seemed likely to be modestly successful. There was widespread debate over the causes of that crisis, and publishers were often blamed for focusing obsessively on the bestseller list, but a shrinking library market left publishers with few other options.

Finally, we must bear in mind that a country the size of the US can far more easily absorb the market distortions of free use than we can. British authors and publishers already have the handicap of serving a smaller domestic market than our colleagues in the US. If British publishing becomes less profitable, and fewer valuable works are produced here, the much larger American market may fill the void.

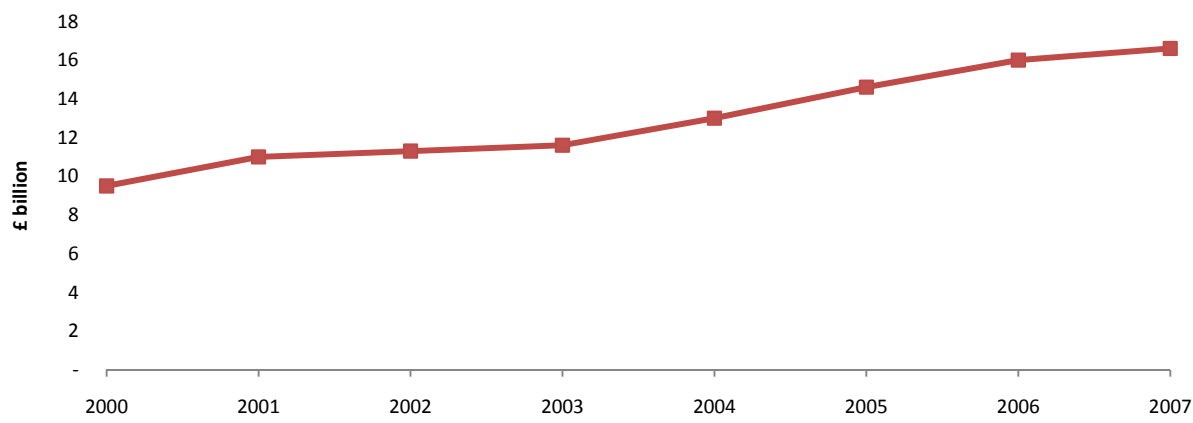
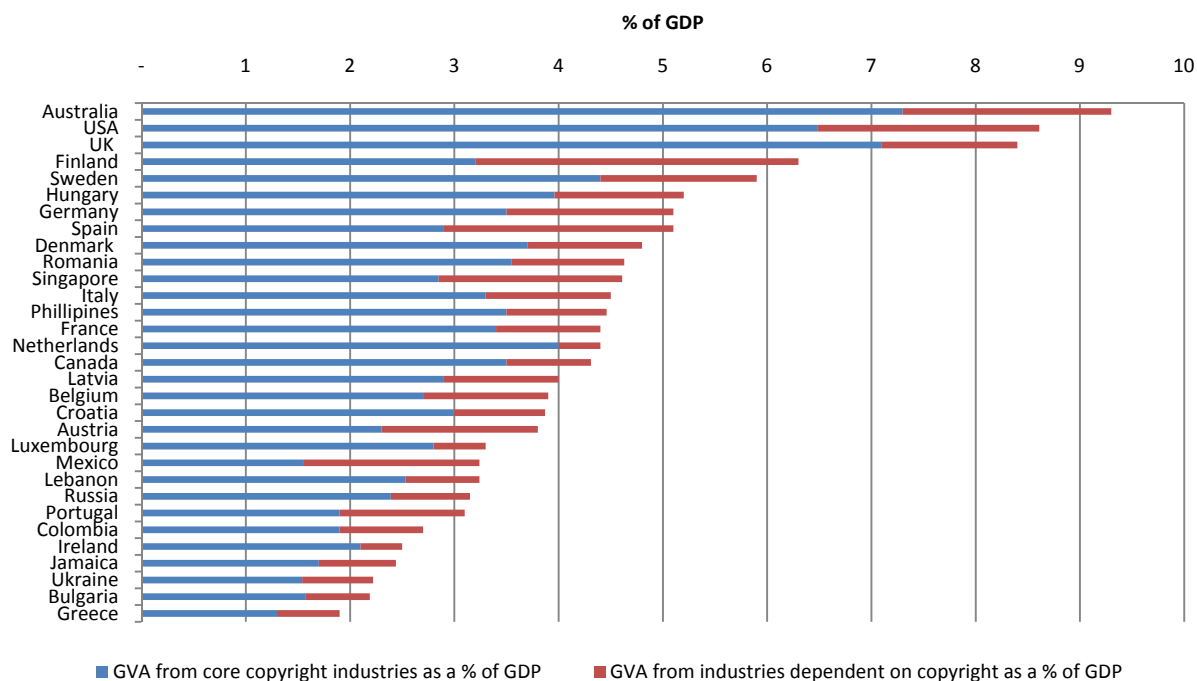
Writers are innovators by nature, they operate in a risky, highly uncertain environment. Research demonstrates that they need to 'stay the course' to reach the point at which their output generates significant commercial returns which in turn have the greatest impact in terms of economic growth. Businesses and education providers need access to copyright content to develop innovative products and services and skilled individuals.

Within the international IP framework UK copyright has developed mechanisms that successfully balance the need for access to drive innovation and learning with rewards that support the future creation and production of content. Radical changes to this system may have unintended consequences.

The evidence suggests that fair use does not deliver certainty of access; in fact it generates considerable uncertainty - notably in the key context of educational use - and can operate as a major impediment to the process of delivering new content delivery models.

3. Is there evidence of how the UK copyright framework supports growth and innovation?

The evidence suggests that the 'UK copyright industry' is already making a major contribution to the economy, both in terms of the impact of the core copyright industries, where the UK outperforms the US and the rest of Europe (highlighted in blue on the chart below),¹⁷ and in relation to steadily rising growth from exports.¹⁸



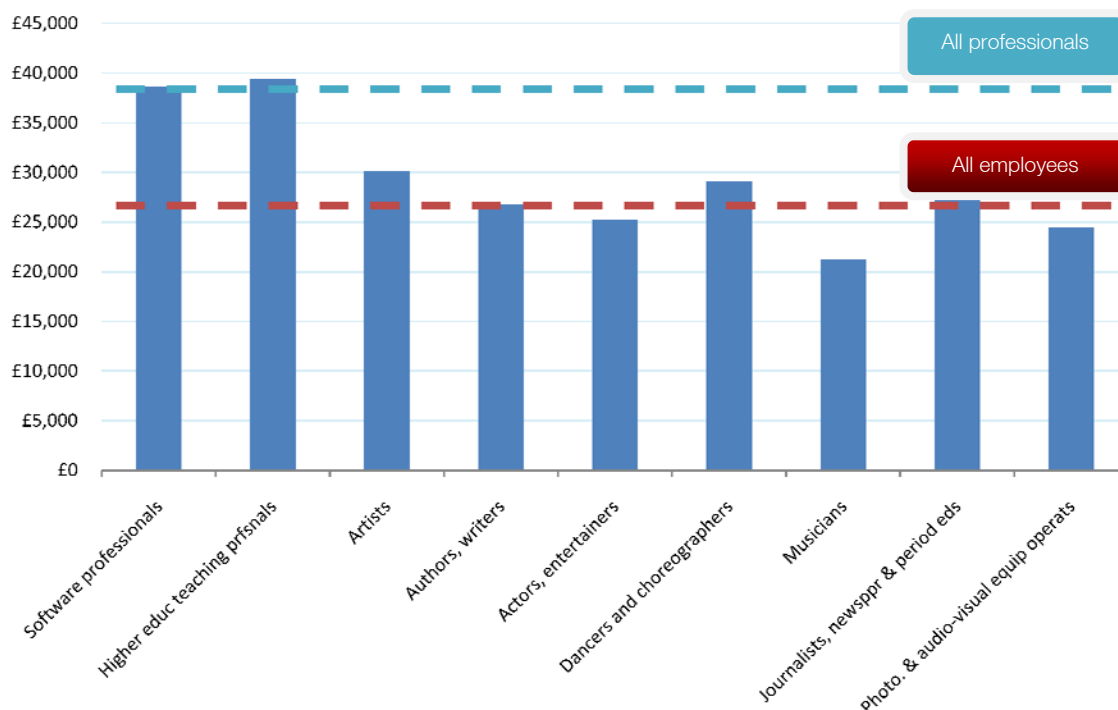
¹⁷ World Intellectual Property Organisation (WIPO) figures

¹⁸ DCMS, 2010

Impressive though these figures are they still do not present the complete picture. For example, although the WIPO classifications extend to the broader range of ‘copyright dependent industries’, they do not fully reflect the ‘knock-on’ value enjoyed by other sectors such as education and ‘cultural tourism’.

Looking at the economic significance of UK copyright based on an employment/ investment model the numbers also look encouraging. DCMS figures place the numbers employed within the creative industries at 2.3m. A more detailed analysis undertaken by the IPO¹⁹ based on employment within creative sectors estimates that, in 2007, £850m of investment was attributable to authors in the book publishing sector alone.

The PWC Report reveals that average gross earnings amongst professional creative workers tend to fall well below those available amongst professionals working in other sectors.



Source: Office for National Statistics Labour Force Survey, Annual Survey of Hours and Earnings

(It should also be noted that ONS figures used in this analysis are based on average (mean) income figures for professional writers. The Bournemouth University research showed *typical* (median) earnings for professional writers at £12,330, less than half the sum indicated by the ONS figures²⁰. The disparity between the mean and median figures confirms the inherently risky ‘winner takes all’ nature of writing markets).

¹⁹ Goodridge, P and Haskell, J, *Film, Television & Radio, Books, Music and Art: UK Investment in Artistic Originals*, Report for UK the Intellectual Property Office, (2011).

²⁰ Authors’ earnings from copyright and non-copyright sources, [Centre for Intellectual Property Policy & Management](#), Bournemouth University (December 2007): Page 99, Table 7.15

An analysis based on the numbers employed to generate content within these industries does not tell the full story. The Bournemouth University research also shows that more than 40% of professional writers earned less half their income from writing, while 60% of all professional writers held own second jobs²¹.

These figures confirm the unusual nature of the 'writing industry' whereby many 'professionals' operate outside of formal structures, for example as freelancers, and many create on a part-time basis while making economic contributions across other sectors.

This is consistent with the data referred to in our response to Question 1, highlighting the gradual progress for many writers of reaching the point at which their work becomes commercially significant.

The risk in relation to a significant group of professionals and other contributors working across various core production sectors of the creative industry is clear. If the UK copyright framework fails to provide the necessary incentives and support structures, individuals will either fail to maximise their creative output or stop altogether.

How does a copyright system support growth and innovation?

Earlier we stressed the importance of the access/reward balance. As a collecting society representing thousands of writers ALCS sees its role as facilitating access to content through the provision of licensing on terms that recognise the rights of the authors of the works.

Access models

Access for education

We mention in our response to Question 1 the role of 'conditional exceptions' and licensing. The UK copyright framework includes two elements that underpin this model for access in education: s.35 and s.36 of the CDPA (1988).

S.36 permits limited reprographic copying but 'extends' this by reference to a licensing scheme. Such a scheme is administered by the CLA - the licensing body established by ALCS and the Publishers Licensing Society (PLS). Under the CLA scheme hundreds of thousands of individual works are made available across all sectors of education at a single-point of licensing. Over time the licence terms have developed in line with digital-use technologies to enable the use of licensed content remotely through virtual learning environments and for enhanced classroom use such as display on whiteboards.

S.35 allows educational establishments to make copies of TV and radio programmes by recording from broadcasts. This section also envisages a licensing scheme to provide for a structured system of access. The scheme run by the Educational Recording Agency (ERA) brings together a uniquely broad collective of organisations representing the various rightsowners involved in broadcast productions.

Good quality content is at the heart of learning. The CLA and ERA schemes provide straightforward access to copyright material on terms that provide legal certainty while minimising bureaucracy for

²¹ Ibid: Page 24, Table 3.1

educators. The access to educational content facilitated by these structured licensing partnerships will have a key role to play in achieving the goal set out in the Government's growth agenda of delivering an education and skills system that supports sustainable growth.

"Evidence shows that the better skills a person has, the more likely they are to be employed, to earn more, and to be more productive. Better skilled people are also better able to adapt to new technologies, and the better use of technologies throughout the economy offers huge potential for growth."²²

Both the CLA and ERA continue to develop new licence schemes to ensure that their educational licensees have the freedom to exploit new digital content services. In recent years the CLA has built upon its core reprographic licences, first by extending rights for scanning, and then developing licence extensions for copying from digital publications and websites.

ERA has built upon the core provisions of s.35 by developing a scheme, ERA PLUS, that enables students to access content off-site. To ensure that the licensed repertoire is as comprehensive as possible, ERA has extended the scope of the rights it represents by admitting several new members in recent years. To meet the longer-term needs of educational licensees ERA aims to:

- a) Ensure that educational establishments are able to build valuable libraries of resources tailored to their specific needs, whilst still providing satisfactory incentives to creators and investors.
- b) Ensure the developments help to promote research and innovation over the use of the licensed library of recordings and extracts.
- c) Allow for the development of online library services offered by educational establishments to students.

In terms of the current UK copyright framework, ERA is looking to extend the scope of s.35 and paragraph 6 Schedule 2 of the CDPA (1988) to encompass the activities covered by the ERA PLUS scheme. ERA is also developing proposals to extend the current legislative provisions to enable the recording and use of extracts from commercial sound recording or films or communications to the public within services intended primarily for personal private use, to allow educational use by educational establishments to be covered by licensing.

ERA is also looking at ways in which the Terms and Conditions for access to new Video On Demand Services which include programmes of educational interest, may be extended to ensure that use for non-commercial educational purposes of an educational establishment can be covered simply by an extension of current licensing arrangements. With a reported 1.3bn requests for the BBC iPlayer alone during 2010²³ it is clear that future educational access requirements will extend beyond the recording of broadcast material.

ERA has undertaken considerable work with the Intellectual Property Office (IPO) to bring about the necessary legislative changes to develop its educational licensing scheme and we hope that the current review will recommend support for this process.

²² *The path to strong, sustainable and balanced growth*, HM Treasury/ BIS, November 2010

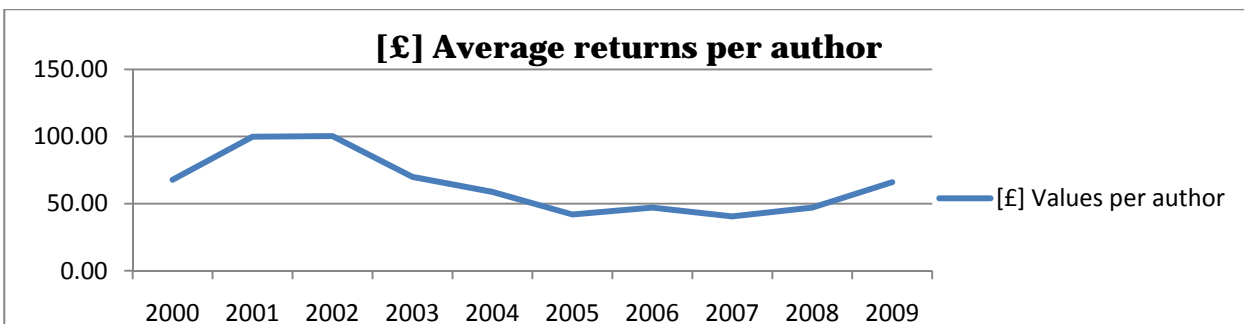
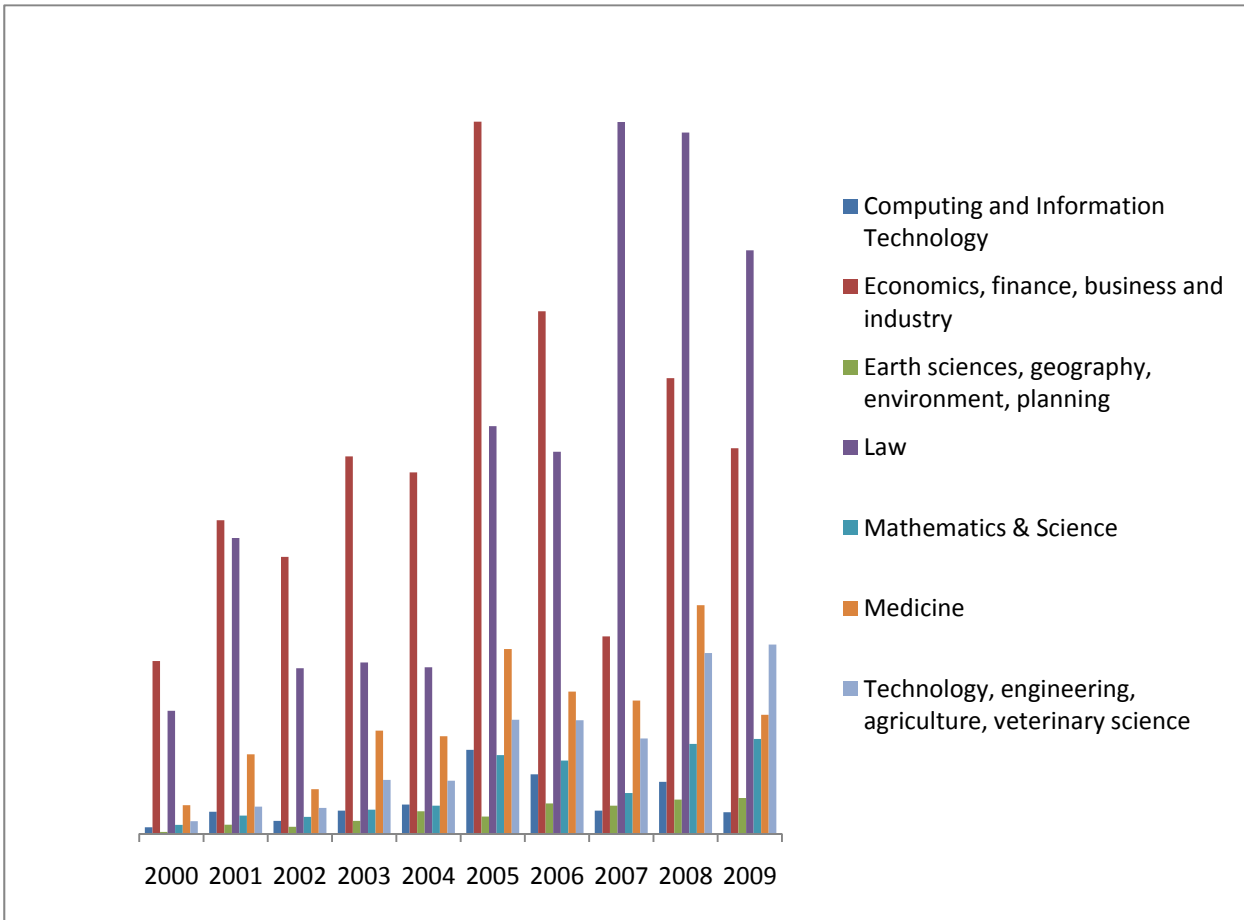
²³ Source: *Broadband TV News*, February 2011

Access within the business sector

The model developed by CLA for education provides a similar one-stop, high-volume rights clearance solution for other sectors.

Businesses rely to a large degree on the information contained in books, journals and other publications (in hard copy and e-formats) to enable them to compete and thrive in a challenging market. The CLA scheme provides access to hundreds of thousands of individual works across all sectors of business at a single-point of licensing.

The table below indicates copying trends under CLA licences across the business and professional sectors identified as key by the recent HM Treasury/BIS growth review. The following chart shows the average level of return to individual writers whose works are used in these sectors. It should be noted that though the average payments are relatively modest, this is a single sector. One of the strengths of the CMO model is the administrative simplicity it provides for rightsholders; ALCS collects micro-payments from numerous sources across different sectors and territories, aggregating them into a single payment for the writer.



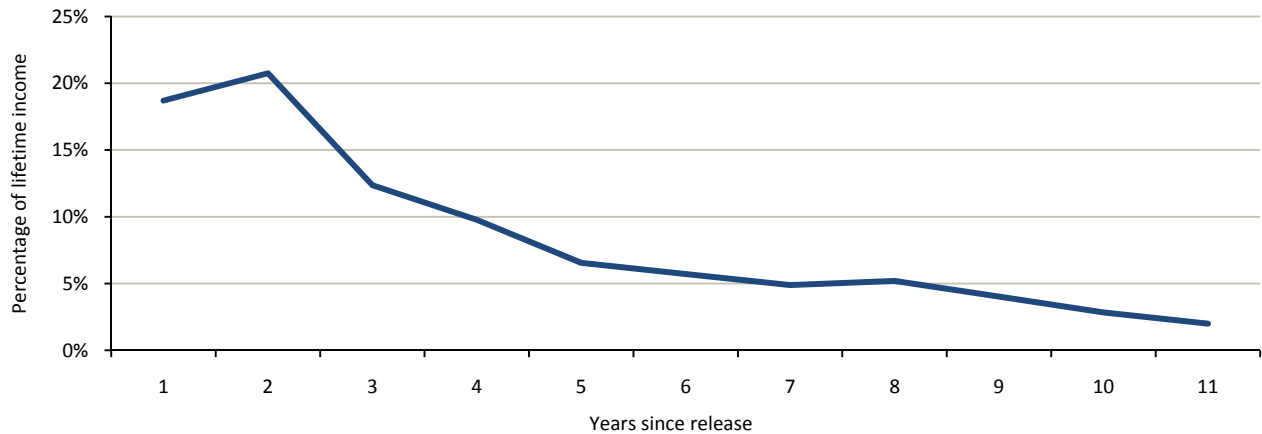
Source: ALCS/CLA data

The collective licensing models established under the UK copyright framework enable cost-effective licensing solutions, avoiding the uncertainties associated with seeking thousands of individual rights permissions. This facilitates access to information for education and business which in turn promotes better skills and commercial innovation and growth. These models are evolving to encompass the changing demands of the digital age.

Reward

We have dealt with the access provided by the licensing schemes established under the UK copyright framework - but what about reward? Earlier we highlighted the central position writers occupy in the copyright/creative industries eco-system. We also noted the risky nature of the writing profession and the need to ‘stay the course’ to achieve the kind of commercial success that creates domestic investment and secures export income.

In 2010/11 ALCS distributed over £27m to over 55,000 writers. In many cases the individual payments derive from the secondary use of older works that have passed their initial commercial peak. In this way the secondary rights income that ALCS receives from CLA, ERA and other UK and international sources captures the added value represented by the long-tail of copyright works. To illustrate this the graph below shows how secondary-use revenue from a book persists long after its initial publication and ‘commercial peak’.



Source: ALCS

This income plays a significant role in the creation of new works for release into the ‘primary’ commercial market. The successful operation of this regenerative cycle is borne out in the comments we have received from our members.

Case study: The role of secondary-use payments in the creation of new works

Mal Peet, children's author

Those of us who are fortunate enough to scratch a living from our writing are all net exporters. We have to be, for the simple reason that our home market is too small and crowded to sustain us. Without the sales of my books in several European countries, plus Japan, Brazil and – crucially – the United States, I wouldn't survive. Likewise, foreign rights deals are vital to my publishers who are, I should mention, an independent British company rather than part of a global megacorp. Together we make money overseas and spend it here. David Cameron should be jolly pleased with us. You'd think he might even consider it a good idea to make things a bit easier for us, the way he does for other exporters. The PM appears to believe that the American 'fair usage' approach to copyright encourages 'innovation' whereas our system stifles it. Actually, the opposite is true. 'Fair usage' is so nebulous a concept that it occasions incessant litigation. What has happened in the States is that money has been diverted from writers and creators (who need it) into the coffers of lawyers (who don't).

On the other hand, our system of secondary payments (and PLR) does encourage creativity. I modestly offer my own case in evidence. For many years I was a writer of educational texts of various kinds. My books were voraciously ripped off: pages, chapters, cheerfully photocopied and distributed to students in schools and colleges. Compensation for this wholesale looting of my work came in the form of payments from the ALCS. Usually, they exceeded my royalty on sales. When, ten years ago, I embarked upon the perilous adventure of writing fiction, those cheques, those blessings, continued to arrive. They were never for huge amounts of money, and I'm not saying that without them I couldn't or wouldn't have written my novels. But they sure as hell helped. When you're six months into a book and in an agony of self-doubt, a cheque that covers the next two months' mortgage or gets your car through its thirteenth MOT really matters. More importantly, though less measurably, you feel supported, protected, less lonely; in a word, valued. And so you go on, encouraged; and if you're lucky, like me, you win prizes and foreign contracts. You sustain that most reliable of our exports: our literature.

Our system of copyright, based on respect for and need of writers and other artists is cheap and self-financing. It primes the pump of creativity. It doesn't attract a plague of lawyers. So please don't trash it. Defend it. Strengthen it.

Paul Powell, TV and radio scriptwriter

As a comedy writer for television and radio, the British copyright laws have been invaluable in sustaining and indeed propelling my professional career.

When I began writing sketch comedy back in 1991, Radio 4 paid just £21 for every minute of broadcast material. If it hadn't been for secondary-use payments my career would have ended there and then.

Thankfully, their financial assistance enabled me to persist through lean times, establish myself as a professional writer, and contribute to some of the most successful shows in British television history, including *'Spitting Image'*, *'Top Gear'* and *'Have I Got News For You'*.

20 years on, royalties continue to provide a substantial percentage of my income and allow me to be ambitious, to explore new ideas and develop new programmes. Copyright and secondary-use payments give me the freedom to take risks in a business where risk and originality are essential. If the UK is to compete with the well-funded competition from American networks like HBO and Fox then we need to give writers the space to innovate and imagine.

As a sitcom writer, working on series like *'Miranda'* and *'Life of Riley'* requires a significant investment of time and energy. Scripts can take months of hard graft for little financial gain. It is only when additional payments are taken into effect that they become commercially viable.

Of course, these sitcoms are sold across the world, generating vital income for broadcasters, distributors, studios, edit houses, and independent production companies. Sitcom writing is an excellent example of how a writer's small spark of an idea can grow into something truly global, promoting British talent and expertise throughout the world, while generating considerable wealth at home. You only have to look at the international success of Ricky Gervais to appreciate that.

Copyright and secondary-use payments provide a vital safety net in a writer's career. Without their financial protection, the British broadcasting industry would be reduced to hack work, quick bucks and repetitious mediocrity, instead of maintaining its reputation for producing the world's best and most envied television and radio.

Stella Duffy, novelist

I have never had large scale advances. Every advance I've received has been in four and low five-figure sums. What this means, as a working writer who derives the bulk of my income from writing novels (other income from very occasionally teaching workshops, public appearances on TV and radio, theatre work), is that my income is as dependent on royalty payments as it is on advances. I believe this to be true of very many mid-list authors such as myself.

I have also written two novels 'on spec', when publishers have not been sure they wanted to buy the book, and were not therefore in a position to make an advance. My novel *State of Happiness* is one such book. I wrote it between 2000 and 2003, without a contract (ie, without an advance), knowing that my editor wanted to read it before she bought it. As it turned out, and as I had assumed, it was not right for her list and the book subsequently sold to my current publisher. This novel has now been published in Italy, Russia, Brazil, Germany and Japan. It has been optioned for film, I have been paid to write two drafts of the film, and though this film had not yet gone into development, it is still very much a live project. That is, a novel I wrote without publisher's advance has ended up being a success, internationally, and of course, in every instance, something I have paid taxes on!

I could not have afforded to write this novel if not for the income from my copyrighted works : ie, the income I received from ALCS, the income I received from PLR, the income I received from earlier novels which, having sold out their (admittedly quite small) advances, meant I received royalty payments from their respective publishers. This is the income I lived on while writing a book that then became a success. It's what I'm currently living on, as I write my 13th novel, out of contract. (A novel that, even though it does not have a publisher's contract – which is being negotiated now, having written the first draft – already has a major international television option.)

What this exemplifies is that it is possible to make a living from writing, without conforming to market expectations, to write works that are not necessarily assumed to be bestsellers before publication, but which then go on to be highly successful. It is not possible to do this without copyright income. If we want our writers to remain hugely varied and individual, to stay a far broader group than the couple of dozen we see in every high street shop and every airport store – then it is vital we maintain the integrity of copyright.

The financial problems in current publishing, and with major book retailers closing one after the other on the high street bear this out. Royalty payment (ie paying an author a percentage for work used – via ALCS, PLR as well as traditional royalty payments from publishers' income) will naturally become even more important as we move more firmly into the digital age, when it will be harder for us, as individual writers, to check on the uses of our work, and when well-established organizations such as ALCS and PLR, who are already engaged with digital models, will become even more valuable to all of us who create written work.

nb – I would urge the review to read Professor Graeme Austin's 5th Annual Hercel Smith Lecture on International Intellectual Property delivered in October 2010 at Emmanuel College, Cambridge. Professor Austin makes a compelling case for the necessity of copyright, not only to fund writers, but also to ensure the creation of future work, to 'buy the time' necessary to create future work.

<http://www.victoria.ac.nz/law/staff/AustinG.aspx>

Philip Pullman, children's author

I am strongly in favour of secondary payments systems such as PLR and ALCS. Before I had a bestselling book, the annual payments for the use of my work often made a difference to my ability to continue working in the way I was doing.

It's not only the money, which frequently doesn't come to a great deal: there is also a psychological benefit that should not be underemphasised or misunderstood. It is of huge importance to know that somewhere out there, where we can't see them, there are readers who enjoy and value our work.

Writers need that sense of an audience, and that - as much as, or more than, the money involved - is what PLR and ALCS provide.

Wendy Cope, poet

In the financial year ended April 2010 more than one fifth of my income as a self-employed writer came from payments for secondary use of my poems. As well as payments through ALCS, I received payments from publishers for the use of my poems in anthologies, from broadcasting organisations for their use in programmes and from the Performing Rights Society in connection with musical settings of my work. I also received some income from Chadwick Healey/Proquest because some of my work is available, with permission, on their website. Users pay for access to this site.

This income is important to me because it buys me time to write. I spend a great deal of time travelling around the country doing poetry readings because I need the fees. If I were to lose the secondary use income, I would have to do more of this and would therefore have less time for writing.

My work has won awards on both sides of the Atlantic. My books sell well by poetry standards but do not generate enough income for me to live on. Some poets have told me they receive more in permission fees than in royalties for the sales of their books.

I am appalled by the idea of "fixing" copyright, so that I and other writers lose a significant proportion of our income. Greater access may be desirable but not at the expense of creators.

The collective licensing model has developed successfully within the UK IP framework and has the capacity to adapt to technological developments and market changes. This is a model that lowers access barriers, promoting the needs of education and business while at the same time providing authors and other rightsholders with the returns that enable them to develop new works.

This fine balance works well within the current UK copyright regime. We are concerned that major structural change to this framework - particularly in the context of the treatment of legal exceptions - could upset this balance.

4. Is there evidence of areas where the UK copyright framework does not deliver the optimal outcomes?

We mention in our response to the previous question the process ERA is undertaking with the IPO to identify appropriate amendments to s.35 and paragraph 6 Schedule 2 of the CDPA (1988). We believe that the changes ERA propose will improve educational access by providing flexible solutions suited to digital delivery and use. An optimal outcome.

We also highlight two further areas where the current UK copyright framework may not deliver optimal outcomes: orphan works and private copying.

Orphan works

The term 'Orphan Works' generally refers to works protected by rights that cannot be made available to users because the rightsholder has not been found after a diligent search. As far as written works are concerned orphan works may include books, audio books, journal articles, academic papers and scripted material used for radio and television broadcast. Where written works in the 'orphan category' cannot be made available their potential further value may be reduced as neither prospective users, nor the creators can benefit from their dissemination. At a wider level the unavailability of such works can stifle the dissemination of information, and in turn the development of understanding and growth of knowledge.

A recent review instigated by the European Commission²⁴ recommended a Europe-wide solution to the question of accessing orphan works, however the approach outlined would still require the implementation and design of national solutions. Similarly while the European ARROW project²⁵ has developed a system for automating processes for identifying works as orphan, it does not go as far as defining national rules or processes determining the legal rules for the use of such works.

Hard evidence as to the scale of the orphan works problem is limited, however research looking at UK public sector bodies²⁶ suggests that on average 5-10% of copyright works in such organisations are orphan works. Over time as library and archives look to digitise the stock in their collection, the issue of how to make use of orphan works with legal certainty will become increasingly significant.

As part of its digital programme the Wellcome Library is running a pilot project to digitise a selection of books in its collection to create an online resource on the theme of "Modern Genetics and its Foundations."²⁷ The pilot covers 1,400 books published between 1850 and 1990. The Wellcome Library approached ALCS to discuss tracing the authors of the books in the pilot. As the books include a range of UK and international publications we are working with PLS and the operators of the ARROW system to develop a process to ascertain the in copyright/public domain status of the works, identify whether they are in or out of print and initiate and record searches for the relevant rightsholders.

²⁴ *The New Renaissance*, Report of the Comité des Sages (January 2011)

²⁵ <http://www.arrow-net.eu/>

²⁶ *In from the Cold: An assessment of the scope of 'Orphan Works' and its impact on the delivery of services to the public*, JISC (April 2009)

²⁷ <http://library.wellcome.ac.uk/node350.html>

This work is at an early stage but it is already providing useful intelligence on the challenges associated with clearing rights in older material. Research into an initial sample of 50 titles reveals that while a significant number of authors are either existing members of a CMO or traceable through available contact details, there will always be a proportion of in copyright works that appear to be orphan.

Currently there is no copyright-based solution the Wellcome Library or others could rely on - if they want to include orphan works in a digitisation project they must do so at their own risk. The Digital Economy Bill included a framework for licensing bodies to grant licensed access to orphan works, however these measures were not included in the Digital Economy Act (2010).

There is a gap in the current UK copyright framework that may constrain the development of worthwhile projects such as the Wellcome Library genetics resource.

The British Copyright Council (BCC) has developed proposals to enable the use of orphan works. These proposals have been designed to operate within the existing structures set out in the CDPA (1988). ALCS supports these proposals and suggests that the IPO works with the BCC to develop them further.

Private copying

The second area, private copying, also concerns the high-volume use of copyright works but here the emphasis is on individual rather than 'institutional' use. The Gowers Review looked at the question of private copying in some detail and a subsequent strategy paper published by the previous Government²⁸ referred to plans to take this matter forward.

Put simply, the current UK copyright framework does not allow for certain commonplace activities undertaken by millions of individuals on a daily basis. Though these acts of private copying are technically unlawful, their scale and the impracticality of monitoring them means that enforcing copyright in this context is unworkable. This is not an optimal situation.

The UK 'private copying regime' is fairly circumscribed when looked at in the context of the everyday use of content. The fair dealing provisions in s.29 of the CDPA (1988) envisage individual acts of copying for non-commercial purposes however the extent of permitted copying is not fixed, being a "question of degree"²⁹ in each case, the exception does not apply to copyright in sound recordings and films and, in any event, copying a work purely for entertainment purposes would seem to conflict with the underlying purpose of this section.

S.70 of the CDPA (1988) does extend to copying entire works for private use, however this is limited to the making of a recording from a broadcast to be viewed at a more convenient time. Guidance on this section provided by the IPO suggests a narrow application, "This time-shifting exception does not however cover the making of recordings for placing in a collection for repeated viewing or listening. The making of a recording for purposes other than to time-shift a programme for you or your family is likely to be illegal."³⁰

²⁸ © *the way ahead: A Copyright Strategy for the Digital Age* (2009)

²⁹ Per Lord Denning MR, *Hubbard v Vosper* (1972) 2 QB 84

³⁰ <http://www.ipso.gov.uk/>

Digital technology provides individuals with considerable freedom to access and use copyright works in increasingly flexible ways. For example CDs and DVDs may be copied onto PCs for uploading to various portable devices. Digital PVRs facilitate the recording, organisation and storage of television programmes in great numbers; copies of recordings made in this way can be transferred to mobile devices.

To set this in the context of the UK copyright framework, it is interesting to consider the technology in place when s.70 was developed, compared to today.

Case study: 'Time-shifting', from 1989 to 2011

2011

PVR (Personal Video Recorder)*

- Time-Shift (record) without tapes or timers onto non-portable encased hard-disc by touching a button; options to remote record using a mobile device or online service
- Record two different channels at the same time, while watching a recorded show
- Rewind and pause live TV
- Recordings may be copied to a video or DVD recorder using a scart lead
- Recordings can be copied to a hard-disc, although to do so is relatively onerous, with comparatively low quality output and possible breach of warranty (as with Sky+ for example)
- Select which programmes to record using an onscreen TV guide
- Record an entire series by touching a button
- You can start watching before you have finished recording
- Many PVR devices require a monthly subscription representing additional cost
- Some PVR systems such as 'TiVo' will make recommendations and record programmes automatically based on user preferences (based on a 'thumbs up' user system) adding to its intuitive value

*Functionality of specific PVRs differs. E.g. there are several differences between Sky+ and the TiVo system due to be integrated within Virgin digital boxes

1989

VHS (Video Home System)

- Time-shift (record) programmes onto portable cassettes
- Length of cassettes limited
- Both represent an additional cost
- Domestic VHS recordings can occupy considerable space

Copyright exerts various restrictions, as do the terms attaching to the use of the various services and devices for accessing content. However technology inevitably drives user expectations. There may be confusion as to what is allowed; more realistically the simplicity with which the copying takes place and the lack of any sanction will lead to an assumption that the acts are permitted.

An extension to the current private copying framework could clarify this position. If the present review were to take this forward we would suggest two broad strands of initial activity: definition of terms and evidence gathering.

It is important to be clear about what is meant by 'private copying', for example by focusing on genuine (non-commercial) private/personal use of lawfully-owned and distinguishing activities that fall outside of the private sphere, such as sharing, or uses in broader contexts, such as educational provision, where separate exceptions and licensing provisions will apply.

The EC Copyright Directive links private copying exceptions to fair compensation³¹ and this tends to be a contentious issue in any debate around expanding UK private copying rights. To inform this debate and make progress further in this area more evidence is needed.

The Copyright Directive identifies harm to the rightsholder as a criterion for measuring compensation. This analysis often leads to polarized viewpoints as to whether private copying equates to lost revenue. However 'harm' is a suggested criterion within the Directive, not an absolute test. It is also worth noting that the Directive predates many significant developments in digital technology and services. It may be true that, for example, the ability to record and store libraries of TV shows, will impact on the sale of DVDs. However to say this is harm that must be remedied seems like a retrograde approach. What is happening in effect is that consumption patterns are in transition and new markets are emerging redistributing value; copyright-based solutions need to reflect this.

On that basis rather than focus on harm, it may be more progressive to look at how the ability to make private copies adds value to digital products and services and use this as a starting point from which to gather evidence.

There are various ways in which value might be measured. An analysis of commercial value could look at the market for products and services in terms of the degrees of *facility* they offer for individuals to consume content in a flexible way. For completeness a complementary analysis of the cultural value of private copying rights would link usefully with work being undertaken in this area by the DCMS, aimed at measuring cultural values in line with Treasury-approved metrics³².

Private copying rights exhibit strong 'public good' characteristics: they formalise a system whereby a copyright work is accessed and enjoyed by many individuals simultaneously without constraint. In other markets the supply chain might be threatened as diminishing returns disincentivising further production. In the private copying context zero-level compensation will not lead to an end to content production. However, as evidenced earlier in our case study in Question 3, there is a direct link between secondary-use compensatory payments and sustained creation.

³¹ Directive 2001/29/EC, Recitals 35 and 38; Article 5 (2) (b)

³² *Measuring the value of culture*, co-funded: DCMS, ESRC, AHRC (December 2010)

6. What evidence is there that the necessity / complexity / cost of obtaining permissions from existing rights holders constrains economic growth?

Earlier in this paper we describe how the system of rights clearance through CMOs achieves the necessary balance between access and reward. This system doesn't constrain economic growth, it promotes it.

Complexity

The CMO licensing model is designed to reduce complexity for copyright owners and users. For example, it would clearly be impractical for an author to monitor and license each copying act in a given university; it would be equally impractical to expect the university to seek permission for each proposed use from every author. This system of mutual benefit is seen as a key feature of the CMO model. "The collective administration of copyright is often the most effective method of managing the rights, both for the owners of the rights and those who need access to them. Quite simply, collective administration is in the public interest."³³

In the UK in respect of published works the CLA brings together the bodies representing thousands of individual creators and publishers in one place and negotiates licensing terms with the bodies representing the education sector to hundreds of thousands of publications. These 'blanket licensing' arrangements are also available to businesses and public bodies, with central negotiations focussed on a sectoral representative body wherever possible to ensure that the administrative burden on individual licensees is minimized. The international bilateral agreements signed by CLA extend the breadth of material to include international repertoire.

Similar principles apply to the licensing undertaken by ERA for licensing the use of broadcast material in the education sector. ERA brings together a uniquely broad range of rightsholders and continues to expand its membership to provide the most comprehensive mandate coverage. To minimise bureaucracy, negotiations and consultations over licensing terms are conducted with bodies collectively representing educational institutions.

For authors the ability to participate in these licensing schemes through ALCS removes the complexity associated with tracking multiple uses. Thanks to the popularity of English-language works the international re-use market for UK works is growing. Under different national copyright rules UK writers' works may be rebroadcast, lent in public libraries, home-copied etc. Through a network of international agreements covering over 40 countries ALCS ensures that this value is accounted for and returned to writers.

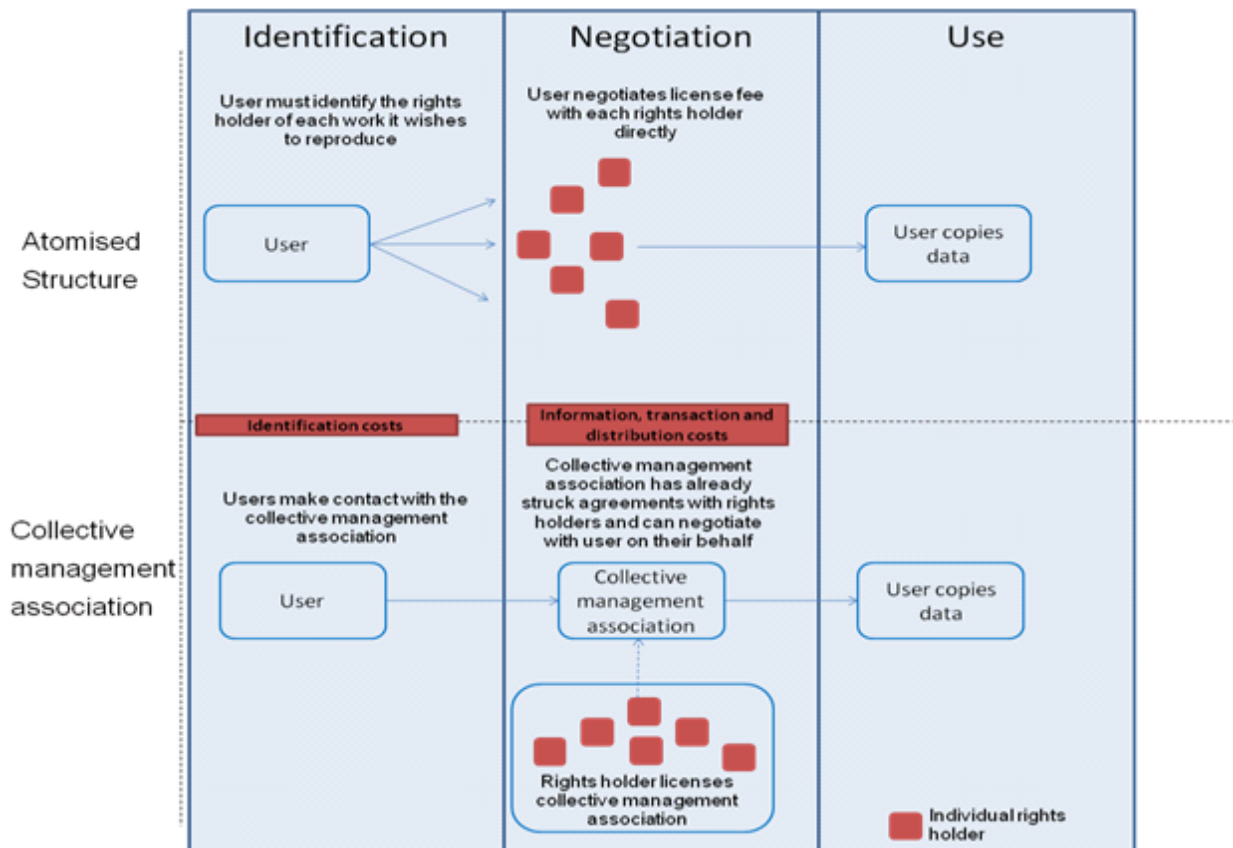
By bringing together groups of rightsholders offering broad repertoires and bodies collectively representing the interests of licensees, the collective management model effectively reduces the complexity on both sides and in so doing permits costs savings associated with high-volume rights-clearance.

³³ The Simpson Report: *Review of Australian Copyright Collecting Societies*

Cost

A large part of the rationale for the CMO model is that it is less costly to the user than seeking individual rights clearances. Overall costs can be broken down into transactional costs and licensing fees.

Licensing transaction costs. The ‘one-stop’ model reduces the administrative burden of negotiating individual transactions leading to savings in transaction costs. The PWC Report includes a comparative analysis of cost of the two systems, using the Higher Education sector as a case study.



PWC estimate that the transaction costs for higher education licensing under the collective system are around £6.7 million a year. With an atomised model, they estimate that the transaction costs would be between £145 million and £720 million. Faced with significantly higher transactions costs licensees would need to be more selective about content rather than accessing the full range of material – a market failure.

Licensing fees. If the CMO model is to offer value, pricing needs to reflect user requirements. CMOs do this in various ways: usage surveys collate data on levels of copying undertaken, multipliers such as employees/number of students are then factored to arrive at a licence tariff relevant to that organisation or institution.

The PWC Report analyses the cost of ‘secondary licensing’ of published works through CLA within the education and business sectors

Type of organisation	Secondary copyright spend as % of total spending excluding staff, depreciation and financing costs	Secondary copyright spend as % of total spend
Schools	0.12%	0.03%
Further education	0.28%	0.08%
Higher education	0.11%	0.04%
Central government	0.13% ³⁴	0.05%
Businesses ³⁵	0.0005% ³⁶	0.0006%

Source: PWC

The cost of securing licensed access to audiovisual content under the ERA scheme is similarly modest; the sectoral costs per student, per year are as follows:

Primary: 32p
 Secondary: 57p
 FE: £1.07
 HE: £1.68

Onerous requirements for collating data and reporting usage is a burden on licensees and can start to erode the value they gain from the blanket licensing approach. Equally CMOs need to balance the pragmatism of the collective approach against an ability to demonstrate transparency in the way that prices are arrived at.

Transparency

ALCS is part of a group of UK CMOs that have come together to develop principles reflecting good practice. The aim of this process is to establish a core set of industry standards that reflect the diverse nature of the CMOs operating in the UK. One of the key features of this is transparency in the way that CMOs engage with licensees when negotiating and developing terms for licensing solutions. In the interests of balance this should be a two-way process. Currently licensees have the right to refer the terms of an existing or proposed licensing scheme to the Copyright Tribunal. An IPO review which was supported by a subsequent parliamentary inquiry,³⁷ recommended that the Tribunal should be balanced

³⁴ Does not account for depreciation and financing costs.

³⁵ Annual Business Survey data excludes business costs of financial services firms.

³⁶ Does not account for depreciation and financing costs.

³⁷ House of Commons Innovation, Universities, Science and Skills Committee: *The work and operation of the Copyright Tribunal*. (Second Report of Session 2007–08)

in the treatment of licensing societies and licensees. We agree with this approach. Although CMOs are corporate entities they collectively represent the interests of many individual rightsholders, such as writers.

The move towards increased transparency also encompasses the relationship between CMOs and their individual members. ALCS is governed by a Board of writers, the vast majority of whom are elected by the membership. The Board is responsible for internal rules governing the operation, such as apportionment of income. Through the Distribution and Membership Committee Board members work with external experts and statisticians to achieve the fairest possible systems.

As CMOs move towards more digital licensing within the borderless online use-environment the ability to monitor the usage of works, or even parts of works, becomes a greater challenge. This is important not just for supportable and transparent pricing models but also for fair, meaningful distribution schemes. ALCS is active in various international consortia developing the next generation of standards and identifiers for copyright works.

Case Study: ISNI

What is ISNI?

The International Standard Name Identifier ('ISNI') is a number that relates to creative identities.

Simply put, it distinguishes between two different instances of the name 'John Smith', and allows that distinction to be understood by all users, in all domains, unambiguously.

Less simply put, it is an identification number that links sets of data and systems together, allowing information to be shared between disparate organisations without human intervention. It crosses linguistic and character-set boundaries and makes it easier to present information about creative products from diverse cultures. It helps different sectors of the creative economy to share both data and the work that goes into processing it. It has been developed under the auspices of the International Organization for Standardization, with contributions from a broad representation of cultural, creative and academic bodies, including national libraries, collective management organisations, book and music publishers, record labels, as well as representatives of performers, media data aggregators, and film companies.

What ISNI does for users

Libraries, retailers, search engines, collective management organisations and record labels (among others) will be able to exchange unambiguous and meaningful information about the people and companies that contribute to the media industries.

This will help librarians and other cataloguers of our cultural heritage to share information and make accurate contributor information available to users. It will offer greater efficiency and accuracy in licensing content across borders by improving information standards and reducing the need for human intervention. It will enable online retailers to offer more precise search results to their customers, and to link creators across linguistic and pseudonymic variations.

How ISNI works technically

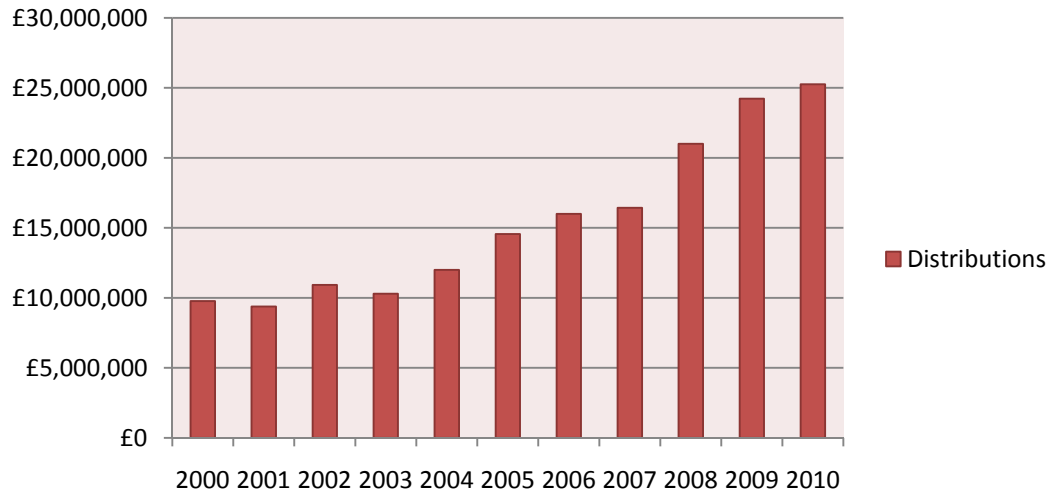
ISNI is based around a database and a set of data-matching processes that take information from diverse and previously unconnected information storage systems. It compares, standardizes and cleans the data, storing the non-private aspects in such a way that it is available for future use. The result of this process is a database of 'identities' (the names by which companies, people and groups are professionally known) and associated unique identifiers. Contributors to the ISNI system are then notified of the unique identifiers that are related to the 'identities' that they have contributed. Contributors can then store the identifiers in their private systems and quote them when publishing or exchanging data. The result of these processes is a broad group of very different organisations that are able to understand and refer to the identities of people and companies in a standard way.

How we are making it happen

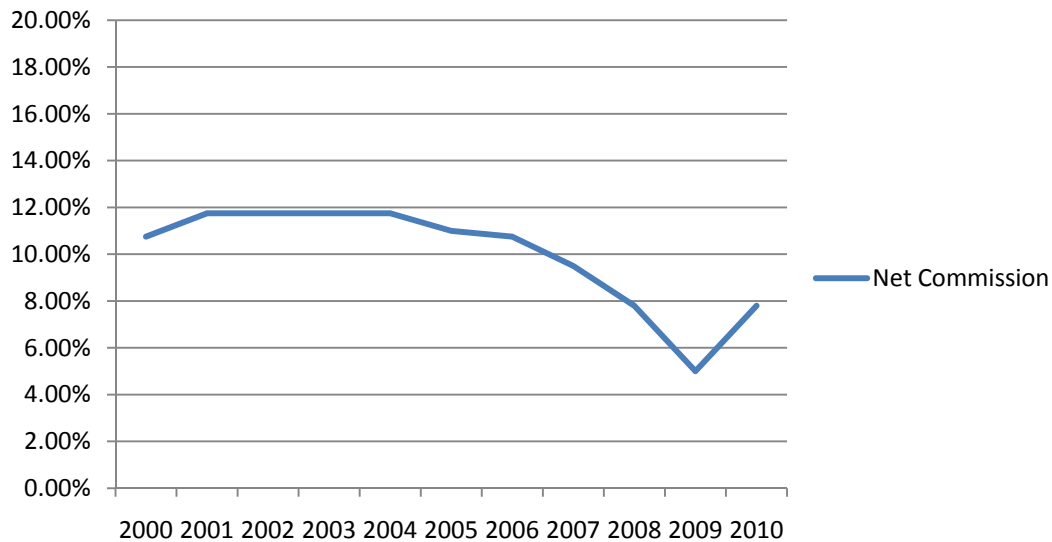
After several years of consultation, information sharing and co-operative technical design, a broad consortium comprising national libraries, international CMO federations, and media corporations has established the not-for-profit *ISNI International Agency* ('ISNI-IA') as a UK registered company, based administratively at ALCS in London, but active worldwide. Funded by consortium members, ISNI-IA will complete the development of the innovative ISNI technical system by mid-2011.

In terms of costs to authors ALCS, like most CMOs, is run on not-for-profit basis with any surplus income returned to the members. The charts below provide a ten-year comparison of the amounts distributed to writers against the costs to those writers in terms of commission fees.

Distributions



Net Commission rates



Source: ALCS.

7. What non-legislative changes could improve practices around copyright to improve overall outcomes?

ALCS has worked on a number of projects with young people to present copyright not as legalistic barrier but as a set of principles that underpins the creation of the books, music and films they enjoy. Our hope is that through a better understanding of these principles, young creators will be aware of the value in their own creations and innovations.

Case study: Raising copyright awareness

One key element of ALCS' remit is to raise awareness about copyright - what it means, what it does and how it benefits creators, readers and viewers.

ALCS is keen to get a clear message across, at an appropriate age, about the benefits of copyright, so that young people can make informed choices and see what value copyright has to ensure they benefit from their own creativity or the creativity of others. For the past 5 years ALCS has supported the CILIP Carnegie and Greenaway Awards and provided copyright awareness packs (including student and teacher notes), activities and competitions to engage students involved in the 'shadowing' scheme (around 90,000 young people are involved annually).

This year we have also commissioned the National Schools Partnership to produce a set of resources for schools. Aimed at raising awareness about copyright and how it affects the career of a 'creator', the programme - entitled 'CopyWrite!' - focuses on 4 key creative careers: that of a novelist, scriptwriter, journalist and publisher.

Our objectives include raising awareness amongst the target audience of the importance of copyright to those working in the creative industries; providing an understanding of the principles of copyright and why it exists; building an understanding of the choices and decisions that young people may have to make if moving into any given career as a 'creator' and helping the target audience relate the concept of copyright to their own aspirations.

ALCS was keen to ensure that the resource communicated to students in their own language so that they don't feel 'preached to' by teachers/ALCS; it also had to appeal to the target audience with creative look and feel; it had to be accessible and have differentiation for differing student abilities and the programme needed strong links to the National Curriculum - whilst always coming back to the issue of copyright.

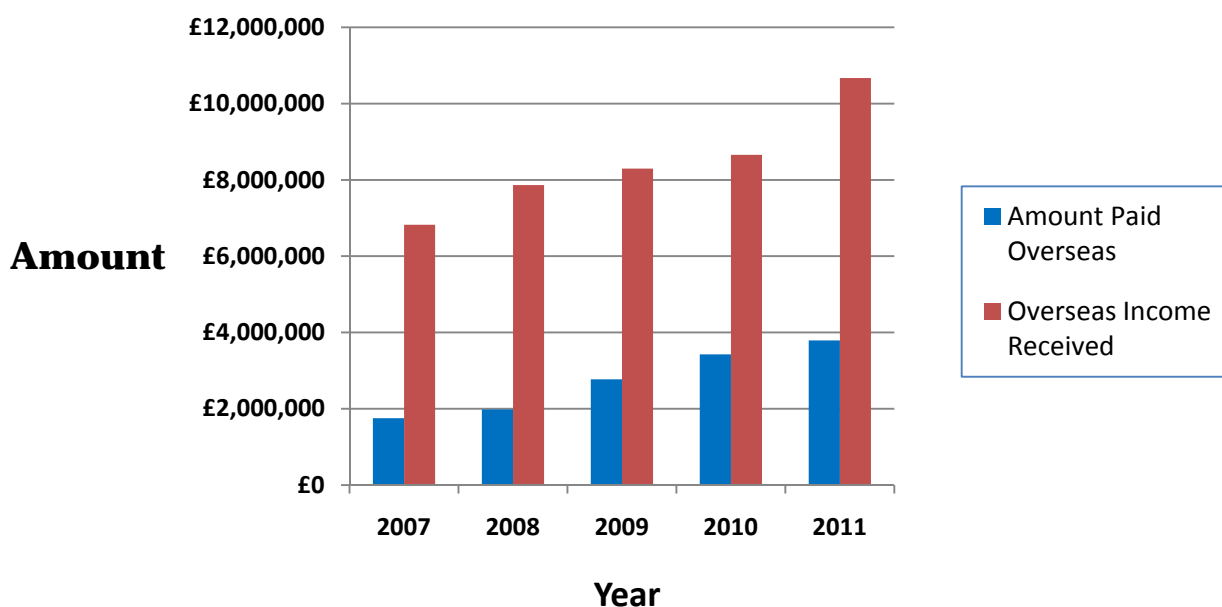
Copywrite! is aimed at key stage 3 and 4 students, fits in with the national curriculum and provides a mixture of video clips and classroom activities to provide an 'off the shelf' learning experience for students. Writers involved in this programme include: novelist Sophie Kinsella (*Shopaholic* series), scriptwriter Toby Whithouse (*Being Human*, some *Dr Who*), journalist Danuta Kean and Bloomsbury Publisher, Richard Charkin (publisher of *Harry Potter* series).

The programme also includes a creative writing competition for students to engage with whilst promoting a positive copyright message. For more details visit www.copywrite.org.uk

9. To what extent are the international rules around copyright more or less important than those in the UK? How should the UK approach this matter?

In our response to Question 1 we highlighted the importance of the international copyright framework in setting out guiding principles such as the need to balance access to content with respect for the rights of creators and other rightsholders. Another such principle enshrined in international copyright treaties is the principle of national treatment. This underpins the international licensing networks referred to earlier in this paper which enables access to overseas content in the UK and ensures that the use of UK works overseas are remunerated appropriately.

DCMS figures reveal a growing demand for UK creative products internationally with an estimated £17.3bn worth of exports in 2008³⁸. The international popularity of UK content is reflected in the secondary-use revenue ALCS collects on behalf of its members. Under the national treatment system ALCS, like most other UK CMOs, is a net beneficiary of the international repertoire exchange system.



Taking a longer-term view, increasing use of content within the borderless on-line environment will require CMOs to reassess current structures; partnerships and services will need to evolve to offer multi-territory rights clearances for international repertoires. Both the CLA and ALCS are currently working with international partners to develop models to deliver licensing services to meet these requirements.

³⁸ DCMS Creative Industries Economic Estimates (December 2010)