



Copyright in a digital world:

What role for a Digital Rights Agency?

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Introduction

The Authors' Licensing and Collecting Society Limited ('ALCS') is the UK rights management society for writers of all genres of literary and dramatic copyright works including fiction, journalism, plays, poetry, academic texts, TV and radio scripts and story-lines, dramatisations, translations, abridgements and adaptations.

Established in 1977 and wholly owned and governed by the writers it represents (of whom there are currently over 66,000), ALCS is a not-for-profit, non-union organisation. Since its foundation, ALCS has paid writers over £190 million in fees and today it continues to identify and develop new sources of income for writers.

ALCS is grateful for the opportunity to contribute to this consultation and would be pleased to provide further information or assistance as required.

After the General Comments our response follows the paragraph headings set out in Annex A.

General Comments

1. We support the aim set out in the Ministerial Introduction to create an environment in which the creation of digital content is rewarded and innovation is encouraged. Original ideas creatively expressed by writers, whether in books, TV and film productions or computer games, are an essential driver for various sectors of the creative industries. An environment in which writers can feel confident that their work is valued is essential to support and sustain the creation of new high-quality content.
2. The proliferation of government reviews on copyright and IP in recent times has created a perception that certain issues are too complex or contentious to tackle. The Gowers Review initially suggested the possibility of legislative measures to solidify agreements between rights holders and ISPs aimed at combating unlawful on-line use. This idea was endorsed by the DIUS/ BERR/ DCMS paper 'Creative Britain', and the need for legislative measures seemed to be further supported by the findings of last year's BERR consultation on P2P file-sharing. We hope that a structured timetable towards this legislation will encourage the broad consensus needed to ensure that these measures are effective and accepted.
3. We realise that this paper is aimed at a conceptual level, throwing up various suggestions and ideas for debate. However there is a danger that a new industry grouping could try to do too much, replicating systems already working in various sectors and losing focus on its core aim to deliver an agreed and workable code to support the proposed new legislation.

Consumer education and information

The key measure of success for any information/ awareness campaign is its level of audience engagement. An invaluable outcome from this process would be agreement between all stakeholders on a way forward for delivering messages about the value of creativity, and the consequences of abusing access to content, *at the point of distribution*. Distributors rely on the supply of creative content to attract subscribers and advertisers to their networks. Reaffirming the value of this content in a positive way - including highlighting routes to legitimate access - should be a common goal. Messages must be tailored to their audience - serious, repeat infringers need to be made aware of the reach of legal penalties; others, representing what the paper refers to as 'mainstream attitudes to copyright', may respond more positively to advice on the technical or social implications of their actions.

Attempts by a new grouping to reach a broad consensus on how to deliver messages should also recognise and draw on the existing work in this area. Alongside various individual and collective industry initiatives, the UK-IPO CREATE group already provides a co-coordinating role. Furthermore the proposed SABIP research project, looking into attitudes and behaviors in the digital economy, may well provide useful supporting information.

Encouragement of commercial offerings

While the availability of legal offers is a key part of the process of combating illegal use, we are not sure that a new body trying to co-ordinate industry efforts in this area is necessary. Various collective and individual rights management structures already exist across the different sectors. These are well supported by creators and other rightsholders, who provide clearance for access to large-scale repertoires of copyright works.

While the processes for rights clearance are well established, the necessary entry-points into the system may not, in all cases, be as clearly defined. The paper suggests that a level of support for companies entering the rights clearance process would be helpful. Co-ordination of information is perhaps the missing link here. It may be that a grouping of stakeholders could develop an on-line information portal, designed to guide a prospective user through links to the various bodies working in each sector, explaining the differences between them where necessary.

Such a function could be undertaken by a new industry grouping, such as a Rights Agency; alternatively this facility could be offered through a partnership between industry and the UK-IPO.

Voluntary rights registration and rights fund

The existing rights management mechanisms already operate on the basis of individual creators and other rightsholders voluntarily depositing information on works and rights with the organisations representing their sector. A further tier of registration duplicating these processes may lead to confusion for both users and rightsholders.

On a more fundamental level we are concerned that a formalised rights register may lead to the misperception that registration is a prerequisite of protection and that works that do not appear are 'rights free'.

The paper suggests that a Rights Agency could progress the work on a solution to address issues surrounding the use of orphan works. This process has already taken place. Through the British Copyright Council a significant grouping of bodies representing creators and other rightsholders approved a model to permit access to such works using the existing licensing frameworks. The BCC submitted this model to the UK-IPO towards the end of last year. We understand that the UK-IPO is now taking this model forward within the copyright department of the European Commission's Internal Market Directorate.

Guarantor of quality – a kite mark for digital content

Although the notion of a kite mark is superficially attractive, the obvious danger with such a standard is in authenticating its usage to ensure that abuses do not occur.

On a more positive note, in addition to offering information about rights clearance, the on-line portal we referred to earlier could also direct potential users - both individuals and businesses - to licensed sources where legitimate content can be accessed.

To a certain extent a visible badge of authenticity such as a kite mark is likely to have a stronger role in highlighting the link between rights and creativity in everyday on-line usage. Technical solutions that filter out content from unrecognized sources may well have a more direct part to play in actually reducing the volume of traffic in unlicensed content.

Self-regulatory enforcement role

We believe that this is the core activity that an Agency could most usefully undertake. The responses to the recent BERR consultation suggesting a co-regulatory approach to deal with unlawful file-sharing flagged up the different concerns and issues of various stakeholders. The plans for new legislation add

certainty and authority to these proposals. They also provide a strong incentive for co-operation between all stakeholders to work together to design a code to operate effectively alongside these legislative measures.

The paper asks how an industry body could achieve 'sufficient authority' to agree a code. The authority underlying a code will to a great extent be measured by the breadth of support it enjoys. If a code is recognised by a body comprising all rightsholders and ISPs as being fair and workable, the approval and endorsement of Ofcom and consumer groups should be a realistic goal. Conversely if there are significant gaps amongst the groups buying into the process of developing a code it is unlikely to succeed.

In terms of process it seems logical that a representative industry body would seek advice from Ofcom in designing the code, to ensure that its terms comply with section 121 of the Communications Act and other relevant regulations.

Tackling persistent civil infringement – a test-bed for technical

Measures

A cross-industry body, such as a Rights Agency, could provide a forum for testing and comparing notes on the application and effectiveness of technical solutions in certain contexts. To again stress the point about not creating a body to duplicate work currently being undertaken by other groups, there are various national and international bodies looking at DRM as an enabling mechanism, by developing standardized, interoperable systems of identifying works, their creators and owners.

Where proposed DRM mechanisms have a direct bearing on individual usage, we agree that a forum for involving consumers in the testing process would be useful.

A more pressing role for the Rights Agency lies in the discussions over the extent to which technology can and should be deployed under the proposed code. A direct connection between infringement and an impact on service provision will be an important factor in establishing a meaningful deterrent under the new legislation. In this regard the potential provisions of the code referred to in paragraph 4.6 of Annex B would be useful if underpinned by fair and transparent processes that lead up to an ISP taking these steps. Again we stress that the fairness and authority of the code will depend to a large degree on the breadth of support it receives at its inception.

Dispute resolution

Looking again at existing frameworks, the Copyright Tribunal has the potential to offer a more accessible service for disputes. The UK-IPO Tribunal review has set

out a reform programme which was supported by an inquiry by the House of Commons Innovation, Universities, Science and Skills Committee. Where the Tribunal is too weighty a mechanism for the 'technical, small, straightforward cases' the paper describes, the UK-IPO Mediation service may be able to offer a more suitable option.

Representation/ What might an agency look like?

The representation within the Agency should reflect its function. The immediate need for such a grouping is to gather consensus from all stakeholders in the supply of digital content to work together (and with Ofcom) to design and develop a code to support the proposed legislation. Supportive initiatives, such as the design and communication of complementary education projects and information portals may flow from this. The music and film industries have taken a lead in this process to date as the sectors most affected by growing trends in unauthorised on-line use. The advent of sites such as Scribd and the steady growth of sales for E-books and E-readers highlight the speed with which comparable on-line behaviors and networks can develop in other sectors.

Alongside comprehensive representative from bodies representing creators and other rightsholders, a Rights Agency should also aim to include a similar level of support from content distributors. Previous attempts in the UK and other countries to address issues around unlawful P2P distribution have often run into difficulties due to their inability to secure the involvement of all ISPs.

Put simply the agency should look like an inclusive forum focused on the immediate task in hand.

Costs/ How could it be funded?

Under the 'consumer education and information' heading the paper states as follows: "It is of course primarily in the long term interest of rights holders to engender behaviour change, and accordingly it may be seen as right that they should bear the majority of the costs required to bring that change about."

We do not feel that this statement should stand as an accepted principle upon which the work of the Rights Agency is taken forward.

Where a large section of the population has become accustomed to ignoring the law it is surely also in the interest of the Government to 'engender behaviour change.'

In the present economic climate, content 'for free' is particularly attractive. Along with many others the creators of that content are also struggling at this time. Recent research revealed that the typical income for a professional writer is one third below the national average wage, with many relying on second jobs; in the 25-34 age-group the average annual income from writing was just £5,000.

While the government often points to the success and vitality of the creative industries and their role in supporting an ailing economy, it is difficult for creators to accept that the government will not provide funding support for measures designed to address the serious threats posed to those industries.

On that basis we would suggest that as and when the plans for the Rights Agency move forward the question of funding should be analysed in more detail.