

UK Film Council
Submission to
Intellectual Property Office
Developing a Copyright Agenda for the 21st Century

February 2009

Executive summary

Balancing the rights of the creator and the consumer has become more complicated with the growth of digital technology and distribution. The UK Film Council appreciates the need to revise the current intellectual property regime and we see the following areas as being key:

- Rights clearances in the area of orphan works requires Government intervention to help make these works available to all, especially works in not-for-profit archives offering public access
- There should be a single set of copyright exceptions which are mandatory in all Member States. A statutory solution will ensure legal certainty and maximum access to the benefit of both audience and rights holders in a digital age
- We welcome the commitment made in the Digital Britain report to stem illicit peer to peer file-sharing with the intention to legislate, requiring ISPs and rights-holders to cooperate by using civil enforcement methods
- We believe that legislation to criminalise camcording in cinemas should be brought forward to make this activity an offence

Background

The UK Film Council welcomes the opportunity to contribute to the 'Developing a Copyright Agenda for the 21st Century consultation'.

The UK Film Council is the Government-backed lead agency for film in the UK ensuring that the economic, cultural and educational aspects of film are effectively represented at home and abroad.

One of the UK Film Council's policy priorities is to assist the film industry in combating copyright theft and infringement; and to help the Government put in place an IP regime that maximises access and the value of rights in the digital age. The UK Film Council provides public funding for the British Film Institute (BFI) which has made its own submission in relation to the UK IPO's paper. We support the arguments made in that paper, notably in relation to orphan works.

The issues

Q. Does the current system provide the right balance between commercial certainty and the rights of creators and creative artist? Are creative artists sufficiently rewarded/protected through their existing rights?

The UK Film Council has commented many times in response to reviews of the legal framework of copyright that it is important to strike a balance between the legitimate interests of the creators of copyrighted works and those of the citizen. However, it is clear that the current copyright regime does not always provide sufficient comfort for creators and copyright owners nor does it fully meet the needs of a knowledge economy, which is fundamentally predicated on easy access to information and knowledge which is central to developing new services able to add either public or economic value to society.

Q. Is our current system too complex, in particular in relation to the licensing of rights, rights clearance and copyright exceptions? Does the legal enforcement framework work in the digital age?

Rights clearances, and the licensing of rights, has become increasingly complex in the digital age, especially since the vast majority of contracts for film were put in place at a time when the internet had not yet been created as a mass communication medium. In particular, the UK Film Council wishes to stress the importance of addressing the issue of orphan works. The UK Film Council believes that a statutory solution to the problem of making orphan works available is essential to help ensure maximum access to the benefit of both audience and rights holders in a digital age. It believes that publicly owned archives, among others, urgently need such a solution if they are to deliver on their public purposes and to meet the changing expectations of audiences.

The implementation of the exceptions regime in national laws following the 2001 Copyright Directive was unsatisfactory and failed to meet any of the expectations of the legal framework of a Single European Market. Any alterations made must remedy this situation. Encouragement and guidelines are very weak and almost meaningless in implementing copyright exceptions. However, a contractual regime which overrides an exception can in some circumstances provide a beneficial regime for both rights holder and user.

For example the Educational Recording Agency in the UK enables schools and universities to record and retain important television programmes for further use in teaching in return for a per student fee. This may not always be the case, however, and education provides a useful terrain which enables a contractual relation to be established and monitored - and we would be loath to advocate contractual arrangements for all exceptions

It is very unclear what the reluctant European Commission has in mind in relation to 'aspects not covered by copyright exceptions'. Normal contractual negotiations are an available means for reaching agreement and although model licences and

guidelines can be useful they are not the responsibility of the Commission to devise or promulgate.

We believe there should be a single set of exceptions which are applicable in all Member States although of course the Member States will need to apply these in national law. Obviously there is an evolving set of expectations in terms of how the exceptions apply to new platforms but we believe the fundamental principles which underpin copyright laws should be maintained there as in older media.

We believe all exceptions should be mandatory. It is not practical for the European Union to have a legal framework which varies by territory in such an important area of economic and social activity.

It is important that exceptions which apply to the work of not-for-profit bodies offering public access like Archives and Libraries should be amended to enable them to carry out the important long-term roles in preserving and making available our heritage in terms of ideas and artefacts. It would be imprudent to rely on publishers to develop online access to their catalogues given the ever-present possibility of business failures.

There is a particular issue in relation to format shifting for material held by public organisations. It is important in an era when technological changes are frequent, that format shifting of the holdings of publicly responsible organisations charged with preserving the heritage or making material available for legitimate educational purposes be allowed to ensure continued accessibility to the content they hold.

Q. Does the current copyright system provide the right incentives to sustain investment and support creativity? Is this true for both creative artists and commercial rights holders? Is this true for physical and online exploitation? Are those who gain value from content paying for it (on fair and reasonable terms)?

The UK Film industry is a significant contributor to the UK's creative economy (£3.2b to UK GDP in 2006). The distribution of feature film content is being developed with the emergence of new digital online services. For these models to have a fair opportunity to thrive, the growth of unauthorised film file consumption needs to be tackled.

We welcome the commitment made in Lord Carter's Digital Britain report to stem illicit peer to peer file-sharing (actions 10, 11, 12 and 13). This represents the best way forward in our view. The intention to legislate, requiring ISPs to collect anonymised information on serious repeat infringers for rights-holders to pursue by civil enforcement is a positive move.

We will make a submission to the consultation on the potential for a Rights Agency to bring industry together to agree how to provide incentives for legal use of copyright material; work together to prevent unlawful use by consumers which infringes civil copyright law; and enable technical copyright-support solutions. As regards how a funding model will be developed between rights owners and ISPs by Government to support this system, we are most interested in seeing these proposals.

Q. What action, if any, is needed to address issues related to authentication? In considering the rights of creative artists and other rights holders is there a case for differentiation? If so, how might we avoid introducing a further complication in an already complicated world?

We have yet to formalise a view on this issue.

Other remarks

Regarding feature film, the single most damaging act that is the catalyst for a chain of copyright thefts and infringements is the act of camcording feature films in the cinema. This breach of copyright is the material source for online and offline film theft and infringement with 90% sourced to camcording (with the UK contributing to 24% of all worldwide camcording in Q1 of 2008).

We believe that legislation to criminalise camcording in cinemas should be brought forward to make this activity an offence. FACT report a 54 per cent year on year increase in illegal recordings sourced to the UK in 2008. The establishment of a clear offence of attempting to record a film in a cinema would sweep away the confusion that surrounds current legislation.