

# BRITISH COPYRIGHT COUNCIL

## Response to the DCMS/BERR “Digital Britain – the Interim Report”

The British Copyright Council is an association of bodies representing those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, films, sound recordings, broadcasts and other material in which rights of copyright or related rights subsist under the United Kingdom’s copyright law (Copyright, Designs and Patents Act 1988 as amended) and those who perform such works.

The British Copyright Council is an NGO Observer Member of the World Intellectual Property Organisation (WIPO). Our members include professional associations, industry bodies, trade unions and collecting societies which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many sole traders and SMEs as well as larger corporations.

While in general we support the universal availability of broadband and other digital services, our principal interest in the “Digital Britain” initiative and, in particular, in this Interim Report is in content and in content providers, in the form of creators, performers and their business partners. Our creative industries have an essential role to play as providers of attractive content for the successful roll out of broadband and other digital services.

We appreciate the Report’s recognition of the UK’s creative strengths in the economic and cultural contribution made by its creative industries. As we stated in our response to the DIUS consultation on © - the Future, “We are also pleased that Government acknowledges the fundamental importance of the copyright system, not just to the smooth functioning of those industries but as a major contributor to the UK’s economy, as the means through which creative endeavour is rewarded and recognised and as an incentive to create and innovate.”

With this in mind our response is focused on Section 3 – Digital Content, Actions 10 to 13.

### **Action 10: Measures to address the challenges for digital content**

We welcome the intention to address challenges for digital content and we welcome much of the thinking behind action 10. The existing copyright framework is “fit for purpose” in the digital age but we recognise there is a need for greater access and would be pleased to engage in discussions on how the system can deliver access to protected works on fair and reasonable terms and also on how we can best ensure respect for those works.

We reject any suggestion that creative content providers seek in any way to prevent the dissemination of their works. In fact, the very opposite is true. For the vast majority, the main purpose of the creation and performance of their works is to have them disseminated with the result that new business models are constantly being developed and are evolving across the creative industries.

### **Action 11: Potential for a Rights Agency**

We agree with the Report that all the issues outlined in the introductory section of Action 11 need to be addressed and in this we include the Memorandum of Understanding with ISPs which is covered by Action 13 and also referred to in Actions 11 and 12. We welcome recommendations which will deal with the problem of illicit file sharing which is a major inhibitor of the development of new on-line business models.

We await with interest further proposals on the development of a Rights Agency. As this Interim Report recognises in its commentary on Action 12, it is very difficult to bring people with such disparate interests together and produce something valuable. How much more difficult then will it be for a Rights Agency whose spread and scope appears, from this recommendation, to be virtually all embracing.

Many of the points highlighted in Action 11 are already being worked on by organisations and companies active in the field of copyright. For example, digital rights management systems are already being used and are constantly being reviewed, evaluated and further developed, to keep pace with technology, by the UK's copyright and collecting societies. In this context, we also note the publication, this week, by SABIP of the "Strategic Priorities for Copyright" with the intention of carrying out research in many of the areas mentioned in the outline recommendation.

We feel that, rather than setting up another Agency, Government could make a more valuable contribution by harmonising existing initiatives behind a single purpose. However, as the Report recognises in relation to the Memorandum of Understanding it is not easy to achieve harmony across such a broad range of interests. An Agency of the type proposed in this Report must have sufficient weight to ensure that all market players, and not merely those who volunteer, sign up to any self-regulatory measures. Groups which are prepared to work with Government to develop and adhere to such measures must not be placed at a commercial disadvantage to those which do not.

We do have concerns about the very real potential for duplication. We also have concerns about how the Rights Agency initiative would be funded and staffed, and on what basis it would be set up but we will await publication of further proposals before commenting further. We would particularly welcome involvement in any further discussion on the proposed nature of, and scope for, such an Agency.

### **Action 12 – New Approach to Civil Enforcement**

We have seen BERR's response to its consultation on legislative options to address illicit Peer-to-Peer filesharing. We supported BERR's original proposal of a co-regulatory approach which we felt would provide a voluntary system which could work for small scale right holders (e.g. creative freelancers and sole traders) as well as for larger interests. We also felt it would offer a less confrontational approach when dealing with small scale infringers of copyright and put a greater onus onto ISPs to take responsibility for the content they carry. We are disappointed by the response of ISPs to this option.

We understand that BERR is now taking forward the legislative option and we now feel we have no option but to support this. We support the proposal contained in Action 12 of the Digital Britain report on the possibility of funding a new approach to civil enforcement and legislation requiring ISPs to notify alleged infringers of rights that their conduct is unlawful.

However, we would reiterate the comments we made in our response to the DIUS consultation on © - the Future:

"3.6 As far as enforcement of rights is concerned, in the digital context we emphasise the need to bring penalties for on-line and physical infringement into line and to consider further Internet Service Provider (ISP) liability....."

and

"3.7 As far as civil enforcement is concerned, we highlight the problem which freelancers, sole traders and small and medium sized enterprises, in particular, face in enforcing their rights.

This is true of the analogue environment but the problem in the digital environment is compounded by the costs of tracing offenders and enforcing judgements against them. In whichever environment the offence arises for creative artists, it is the cost and complexity of enforcing rights which are beyond the resources of most. This is a point we have made to Government on many occasions.”

We also believe there is a need for further discussion on the subject of legislative action which is promised “subject to reasonable levels of proof from right holders”. It is the practical difficulties which face many right holders when attempting to secure proof i.e. securing access to data concerning illicit file-sharing and available only from ISPs, which led, in the first place, to attempts to develop industry protocols. Care must be taken to ensure that legislative action does not become “toothless”, leaving right holders with nothing more than the *status quo* if this caveat applies too heavily to any new law.

### **Action 13: - ISPs**

See our comments under Action 12 above. We support the intention to require ISPs to collect anonymised data on repeat offenders and to make personal details available to right holders on receipt of a court order. In our view, the term “repeat offenders” indicates an awareness of the offence which we do not think should be dependent on how “serious” the offence is.

As far as an independent regulator is concerned, we believe that OFCOM is best placed to fulfil that role.

We have found much of the Interim Report stimulating and far seeing and we look forward to being involved in further discussion on the subject before the final report is published.

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## **BRITISH COPYRIGHT COUNCIL**

### **List of members:**

**Association of Authors' Agents**  
**Association of Illustrators**  
**Association of Learned and Professional Society Publishers**  
**Association of Photographers**  
**Authors' Licensing and Collecting Society**  
**British Academy of Composers and Songwriters**  
**British Association of Picture Libraries and Agencies**  
**British Computer Society**  
**British Equity Collecting Society**  
**British Institute of Professional Photography**  
**BPI (British Recorded Music Industry Ltd)**  
**Broadcasting Entertainment Cinematograph and Theatre Union**  
**Chartered Institute of Journalists**  
**Copyright Licensing Agency**  
**Design and Artists' Copyright Society**  
**Directors' and Producers' Rights Society**  
**Educational Recording Agency**  
**Equity**  
**Mechanical Copyright Protection Society**  
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