

Response to the Digital Britain Interim Report by the Publishers Association

March 2009

Introduction

The publishing sector as a whole is the largest creative industry in the UK. The Publishers Association (the PA) is the leading trade body representing consumer trade, academic and educational publishers in the UK. The PA's members represent approximately £4bn (80%) of the £5bn turnover within these parts of the overall publishing sector. Collectively the creative industries – of which the copyright industries form the dominant part – contribute over 8% to the UK's GDP.

The main actions outlined in the Digital Britain Report which concern the PA and its members are Actions 11–13. The majority of these actions amount to a commitment to examine an issue in greater detail in the final Digital Britain report, or bring forward a consultation on a specific measure. With this in mind we will respond to these actions briefly, and we look forward to further opportunities when we will be able to provide more detailed comments.

Overview

The PA broadly welcomes the issues and themes which the Digital Britain report seeks to address. It is of course impossible for the report to encapsulate a discrete workstream, as there are already other consultations in the public domain examining tangential and overlapping issues. There are also numerous government departments and bodies responsible for formulating and executing public policy in these areas, an issue which remains unresolved despite the creation of the post of Minister for Intellectual Property.

The PA would like to see a government which emphasises the centrality of the copyright framework in debates about the future of the content industries; which comprehends the vital role this framework has played in making the creative economy 8% of UK GDP; and which supports its continued importance as the cornerstone for the future of the content industries. The PA's recent response to the UK IPO consultation, *Copyright – the future*, identified a number of issues which both government and industry have a responsibility to address and resolve, often collectively. Many of these recommendations are significant in the context of ideas proposed in the Digital Britain report.

Government should:

- Encourage and enable publishers to continue developing innovative business models and licences to bring their content to wider audiences and enable it to be used fairly and flexibly, and to rely on remuneration for doing so
- Strongly encourage a tripartite collaboration between content providers, business intermediaries and partners such as search engines, and regulators to develop and implement tools which enable automated machine-to-machine permissions
- Encourage publishers to deliver consumer choice, competition and diversity in digital markets

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- Enforce existing copyright legislation and address loopholes in the legislation where they exist to ensure that publishers and creators are not put at risk for making their content available online
- Introduce exceptions only when primary licences or collective solutions prove insufficient to deliver the public interest or social needs, and frame exceptions only within the limitations of the Berne 3 step test
- Avoid costly and unnecessary barriers to copyright protection such as registration systems, which are likely to be contrary to the UK's Berne and TRIPS treaty obligations

Publishers should continue to build on existing initiatives that:

- Develop a variety of licensed offers to extend consumer access and choice
- Invest in machine-readable usage rights and licensing technology to enable a functioning marketplace
- Build clarity of expression, transparency, and balanced usage rights into their licences
- Enable an efficient means to accommodate reasonable requests for repurposing or commercial re-use
- Empower format shifting to enable interoperability of content for personal use
- Invest in establishing voluntary collective methodologies that enable licensing of legitimate secondary usage for educational, research or professional purposes

We believe that this diverse range of recommendations can be delivered through a joined-up approach on two fronts, support and enforcement. Support, by fostering a culture of synergy and collaboration between the diverse interests brought to bear upon our industry: consumers, the research community, information managers and technology providers. Support for industry to continue developing its own dynamic and progressive solutions: open standards, frameworks for accessibility, investment in technologies to enable the application of copyright to the digital age – all designed to empower easy access to content for consumers and other users, and to reward creators and publishers for making it available.

At the heart of this approach must lie a policy of effective enforcement which safeguards these initiatives to ensure that industry-led investments and creators' efforts are afforded the protection they deserve. Making more legal content available is not a sufficient solution to widespread copyright infringement, and the new business models which enhance digital access can only be developed if they are supported by the simultaneous delivery of effective online enforcement. Failure to deliver this approach may result in short-term gains for consumers in the form of free and easy access to content. But these perceived gains will ultimately cause irreparable damage to the cultural and economic output of Britain's creative economy, at an immeasurable and irrecoverable cost to both the consumer and UK plc.

Responses to specific actions

Action 11 – creation of a Rights Agency

As we have already noted in the section above, whilst we believe that copyright remains fit for purpose in the digital age, it is incumbent on both government and publishers to ensure that copyright continues to be relevant and applicable in a rapidly evolving environment. Action 11 refers to a number of potential initiatives necessary to address this. Whilst we wholeheartedly support the initiatives listed, we struggle to see how these aims, or indeed those others identified by the PA in the paragraphs above, justify the need to create a new body, the Rights Agency, specifically to address them.

The term 'agency' implies the delivery of specific administrative functions; the suggestions offered in the Digital Britain Interim Report would reside more appropriately within working

groups and other similar forums where discussions of this nature are already taking place. We would also suggest that progress on certain issues has not stalled to date because of the lack of a suitable forum in which to tackle them and where progress has been made, as on the current Memorandum of Understanding, a specific body has not been necessary to advance this. The effort which would go into setting up such an agency would be more effectively expended on addressing specific issues using existing resources.

In this context we would urge the Minister for Intellectual Property to broker discussions around specific issues such as the exploration of new technical approaches, including common standards. The PA has long been a vocal supporter of Automated Content Access Protocol, a technical solution which is outlined in the report. As the report correctly notes, ACAP has “yet to command the assent, let alone active support, of all the necessary players along the internet value-chain”. We believe that government must take a lead here, initiating discussions between the content industries and content aggregators and steering them towards mutually beneficial solutions. Yet, these negotiations, although vital to progress, do not justify the establishment of a new Agency, and we would suggest that they can be just as easily and effectively carried out without one.

We look forward to commenting further on this when a more detailed proposal emerges.

Action 12 – industry response to civil enforcement

It is unclear to what extent the suggestions made under Action 12 would be incorporated into the functions of the proposed Rights Agency. As we have already said, we do not believe the establishment of such a body to be necessary, and we are concerned that discussion about its form and function might distract from the more pressing concern of what needs to be delivered. In spite of this we fully recognise the need for an industry response to civil enforcement that places an equal emphasis on both consumer education and enforcement and protection. As we have already noted, the implementation of technical solutions such as ACAP would assist hugely in the delivery of these objectives. It is also important for both industry and government to make the cognitive link between the existence of copyright and culture of creativity and high quality content that it fosters and protects. There is considerable value in ensuring that all the content industries are aligned in promulgating this message.

We understand that both the IPO and SABIP are conducting research into consumer attitudes towards copyright as part of their current workstreams. We look forward to the results of this research, which we believe will disclose a more nuanced and insightful picture of attitudes than that put forward by consumer groups, and would suggest that government shares this information with distributors and rightsholders as a first step towards discussing the potential for a collective approach amongst the content industries.

Action 13 – peer-to-peer file sharing

In the PA’s submission to the Department for Business, Enterprise and Regulatory Reform’s consultation on legislative options to address illicit peer-to-peer file-sharing, we expressed disappointment that a purely voluntary solution had proved impossible to achieve. We also fully supported the proposed co-regulatory approach outlined in the consultation document, which we believed had the capacity to be both proportionate and effective. As this proposal did not attract widespread support, we accept that government’s only option is to initiate legislative action aimed specifically at addressing unlawful peer-to-peer file-sharing.

We broadly support the proposed action outlined in the Digital Britain report, although we believe it is important that ‘serious repeat infringers’ is defined in such a way that government and industry’s response to infringement, whilst robust, also remains proportionate and does not entrench a culture of resentment between consumers and rightsholders with the latter

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being seen as unnecessarily aggressive when dealing with isolated examples of unlawful activity. In this context we suggest it is vital that an effective programme of consumer education forms a large part of any programme of enforcement.

We note the intention to consult separately on this proposal, and look forward to offering detailed comments when a more clearly defined proposal is published.

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