

Gowers Review of Intellectual Property
Zone 4/E1
HM Treasury
1, Horse Guards Road
London
SW1A 2HQ

27th April 2006

Gowers' Review of Intellectual Property

1. The Chartered Institute of Public Relations (CIPR) is the representative body of the UK public relations industry. With over 8,500 individual members, the CIPR is the largest professional body for public relations' practitioners in Europe. The CIPR protects and enhances the reputation of public relations and is responsible for promoting the standards of excellence expected of its members in their professional relationships and business dealings.
2. The CIPR welcomes the opportunity to submit evidence to this Review. This submission does not attempt to answer all the questions posed by the Review, nor to address each area of interest. Instead, we limit our comments to some observations, and concentrate on the area of intellectual property as it relates to newspaper copyright.

General Comments

3. The CIPR recognises that intellectual property rights are valuable and justifiable. Indeed, both our Members as individuals, and ourselves as a corporate body, exert those rights. The issue is the extent and enforcement of intellectual property rights, and their impact upon others and upon other things we value –such as free movement of information, freedom of expression, effective UK economic performance etc.
4. We doubt that the current law regarding IP (and its enforcement) is fit for the 21st Century. In many ways, this Review indicates that the Treasury is also cognisant of that fact. Methods of doing business and of communicating information have changed beyond all recognition in recent times. The Internet is the most obvious example of this change. As the terms of reference for this Review recognise, there is a balance to be struck between consumers and rights-holders, and between the rights of innovators and the need to compete globally. We do not seek to comment further on this very broad and complex area, but we do feel strongly that the correct balance has not been struck with regard to newspaper copyright.

Newspaper Copyright

5. At present, the intellectual property rights of newspapers are exerted via the Newspaper Licensing Agency. We believe this to be a thoroughly unsatisfactory state of affairs. That is why we lobbying for a change in the law.
6. The NLA is a private company owned by the national newspaper groups. It sells licences to copy newspapers, itself setting the price and terms of such licences. It acts as de facto regulator of newspaper copyright. We believe the latter is a function it should not fulfil; and we have reservations about how it fulfils the former function too.
7. Our members repeatedly complain to us about the NLA's bullying tactics, and about how it behaves as if it were a Government agency rather than a private sector organisation. In attitude, it takes the view that organisations are guilty of newspaper copyright infringement unless they can prove otherwise. In doing so, it labours our members with a burden both of proof and of bureaucracy. Our members are particularly exercised by the NLA's hectoring demands that they must sign statements they do not need a licence –and by the NLA's repeated insinuation that our members are under a legal duty to do so.
8. We believe that the NLA occupies an indefensible position as the monopoly supplier of blanket licences to copy, the representative of the newspaper groups, and the effective regulator of newspaper copyright. We believe that the Government has been remiss in allowing this situation to build up over a large number of years, and that it should intervene and itself regulate newspaper copyright. We are open-minded as to the vehicle for such regulation. It may be that an at-arms-length body already exists which could take on this responsibility; it may be that a new at-arms-length body should be established; it may be that a Department such as the DCMS should assume this responsibility. But we are convinced that the status quo is intolerable, and that a greater degree of regulation is essential.
9. The NLA's position as a private body seeking both to defend newspapers' intellectual property rights, and simultaneously to maximise their revenue from the deference of such rights, distorts the enforcement of newspaper copyright.
10. First, it encourages the NLA to be concerned primarily with revenue generation rather than with other laudable aims such as the country's economy competitiveness, the free flow of information or freedom of speech (we acknowledge that this bias is natural to a private company –but the NLA's private company nature is fundamental to this problem). This encourages the NLA speculatively to 'fish' for much higher licence fees than could ever possibly be justified in any regulated industry. Though the public bodies concerned are keen to remain un-identified, it is nonetheless the case that three such bodies have approached us to complain at receiving bills for between £190,000 and £250,000. These were purely speculative bills, subsequently negotiated down to a fraction of their initial magnitude. They

give the lie to the claim that the NLA operates in a fair and transparent manner (should the Review wish, we would be happy to speak with these public bodies so as to ascertain if they would be willing to be identified –confidentially- to the Review).

11. Secondly, it leads the NLA to act in a blatantly unjust manner. The example cited most often by CIPR members is the NLA's insistence that the former must purchase licences to copy articles which they themselves have placed. The Review will appreciate that many newspaper articles are based upon news releases and stories issued by PR professionals. In a surprisingly large number of instances, those stories are little more than a cut and paste of the releases. It is absurd that a PR company should be forced to pay for a licence in order to copy and send to their client a story placed by that company on their client's behalf.

E-Clips/Database Project:

12. Aside from these general observations about newspaper copyright and the NLA's activities, the CIPR is deeply concerned by the NLA's E-Clips/Database Project. This project would introduce a system forcing end-users to access newspaper content digitally, thereby cutting out scanning, paper copying and pdf links. End-users would receive a link from their clippings agencies (or from the NLA themselves) and, by clicking on the link, would be taken to the press clipping on the NLA database.
13. Charges for accessing articles would vary according to the title accessed (i.e. viewing an article from the FT would be more expensive than viewing one from The Sun), with an obvious requirement for the NLA to monitor precisely who accessed what and when. Each link would stay live for a year –accessing the clipping subsequently would incur another fee. The NLA would also reserve the right to remove articles from the database at their discretion, and certainly in cases of libel or 'possible libel'. This Database was due to be in operation by September 2005, but has been delayed due to significant opposition, not least from the CIPR.

CIPR concerns:

14. We have four broad concerns about this project:
 - *Cost.* The NLA admits that this proposal is not solely about improving the quality of service they offer, but is instead a revenue-raising tool. We are concerned that costs could rise considerably in the future (and we do, of course, consider them to be much too high already). In particular, we have concerns around reduced competition leading to much higher costs (see below)
 - *Completeness.* The NLA's proposal would give them complete control over which articles were accessible, as they intend utilising their power to delete or amend articles. They

argue that this power would be used responsibly, primarily regarding libellous or 'potentially libellous' articles. This is an extremely broad category. We are concerned that this power could be abused.

- *Competition.* Initially, the service offered by the NLA could be attractive to our members and other PR professionals. They (the NLA) might be able to offer a cheaper service than current cuttings providers offer. It is therefore possible that they could drive the cuttings agencies out of business. Were this to happen, there would be obvious dangers not only of prices rising substantially in the longer-term, but also of the NLA assuming an even more dominant position with regard to the control and distribution of information.
- *Confidentiality.* Any move to predominantly digital accessing of cuttings would require rigorous monitoring of who accesses what and when. While this might not be a major concern for, for instance, local authorities, it is extremely troublesome for corporate and financial institutions. We are especially concerned at this possibility given the wider commercial interests of the NLA's owners.

MPs' Attitudes to the NLA

15. Appended to this submission is the detail of an independent polling report submitted by Communicate Research. It shows that a majority of MPs oppose the status quo around newspaper copyright, and do not believe that the NLA should retain its monopoly. We would urge the Review to examine these results in detail. They will form the basis of our subsequent Parliamentary lobbying efforts.

CIPR Proposals

16. It would be wrong of us to submit our exact proposals before discussing them with legislators. However, certain principles are clear:

- The NLA cannot act as both de facto regulator and financial profiteer.
- Charges need to be fairer and open to appeal.
- In the interests of the free flow of information on which the global economy today depends, no one private body should have such power over information. In particular, they should most certainly not have the power unilaterally to delete newspaper articles, as if they had never been published.
- The use of commercially sensitive information, obtained through the newspapers' monitoring of who is scanning what and when, needs to be subject to much greater control and scrutiny.
- A more subtle pricing mechanism needs to be found, so that special account can be taken of, for example, those on whose releases newspaper articles are based, or indeed cash-poor but well-intentioned charities who serve a public good.

- The NLA –should it continue to exist- must not be allowed to enjoy a position where it could, at will, become not just the sole provider of licences to copy, and the de facto regulator of newspaper copyright, but also the provider of such press cutting services itself.

Conclusion

17. In essence, we believe that the NLA is both unsuited and fundamentally unable to fulfil the duties which have come to be placed upon it –in many ways, placed upon it almost by oversight. We would urge that this Review examine its activities more stringently, with a view to either the NLA's significant reform, or else its abolition.
18. We hope the Review finds these comments helpful. We warmly welcome its work and trust that our suggestions will be of use. We would of course be happy to expand on this submission further should that be useful.

Yours sincerely

Francis Ingham
Head of Public Affairs
The Institute of Public Relations

PARLIAMENTARY PANEL SURVEY - MARCH 2006

Q1. A blanket licence to copy newspaper cuttings can at present only be obtained from the Newspaper Licensing Agency (NLA), a private company owned by a group of newspapers. This effectively creates a monopoly in terms of access to newspapers' published output, and groups such as the Chartered Institute of Public Relations are lobbying for a change to the system. Would you agree or disagree with each of these statements about this system?

I am familiar with the NLA and the current system for licensing copyright

Base: All MPs

	PARTY				REGION						DATE OF BIRTH				MARGINALITY				LENGTH OF SERVICE						GENDER		
	Con	Lab	Lib Dems	Other	London	South	Wales	Scot & NI	Mids & East	North	Pre-1940	1940-1949	1950-1959	1960+	0.1-9.9%	10.0-19.9%	20.0-29.9%	30%+	1986 or before	1987-1991	1992-1996	1997-2000	2001-2004	2005+	Male	Female	
Unweighted Total	153	51	75	23	4	12	36	9	14	42	40	5	53	57	38	58	40	26	29	20	15	26	51	18	23	136	17
Weighted Total	153	46	84	14	9	17	31	9	21	37	38	5	53	59	36	53	37	25	38	19	16	27	51	18	22	137	16
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Agree	36	8	21	5	2	5	6	4	2	12	6	2	11	17	6	14	10	7	5	7	2	7	12	5	3	32	4
	23%	18%	25%	35%	17%	29%	21%	40%	9%	34%	17%	40%	21%	29%	16%	26%	27%	29%	14%	35%	15%	26%	24%	25%	14%	23%	24%
Disagree	80	28	38	6	8	6	20	2	15	17	19	1	29	28	22	26	21	14	19	8	10	12	29	9	11	69	11
	52%	60%	45%	46%	83%	33%	65%	26%	72%	47%	51%	18%	55%	47%	60%	49%	56%	56%	50%	41%	66%	44%	57%	49%	53%	50%	69%
Don't know/ not stated	37	10	25	3	-	7	5	3	4	7	12	2	13	14	9	14	6	4	14	5	3	8	10	5	7	36	1
	24%	22%	30%	19%	-	38%	15%	34%	19%	19%	32%	42%	24%	24%	24%	26%	17%	15%	36%	24%	19%	30%	19%	26%	33%	27%	6%

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Licensing Agency (NLA), a private company owned by a group of newspapers. This effectively creates a monopoly in terms of access to newspapers' published output, and groups such as the Chartered Institute of Public Relations are lobbying for a change to the system. Would you agree or disagree with each of these statements about this system?

Government rather than a private company should oversee newspaper copyright enforcement

Base: All MPs

	PARTY				REGION						DATE OF BIRTH				MARGINALITY				LENGTH OF SERVICE						GENDER		
	Con	Lab	Lib Dems	Other	Lon- don	South	Wale s	Scot & NI	Mids & East	North	Pre- 1940	1940- 1949	1950- 1959	1960 +	0.1- 9.9%	10.0- 19.9 %	20.0- 29.9 %	30%+	1986 or before	1987- 1991	1992- 1996	1997- 2000	2001- 2004	2005 +	Male	Fe- male	
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	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Agree	58	12	39	6	2	7	11	8	7	11	14	3	21	26	8	18	14	11	16	9	6	14	19	5	5	55	3
	38%	26%	46%	40%	17%	38%	34%	89%	35%	30%	38%	63%	39%	44%	23%	33%	38%	42%	42%	46%	40%	52%	36%	26%	25%	40%	19%
Disagree	68	27	30	5	6	9	15	-	11	21	12	1	24	22	21	26	15	10	17	8	7	8	22	11	11	59	9
	44%	58%	35%	40%	64%	52%	48%	-	53%	56%	32%	17%	44%	37%	59%	49%	41%	39%	45%	42%	46%	30%	42%	61%	52%	43%	54%
Don't know/ not stated	28	8	15	3	2	2	6	1	2	5	12	1	9	11	6	10	8	5	5	2	2	5	11	2	5	23	4
	18%	16%	18%	20%	19%	9%	18%	11%	11%	14%	31%	20%	17%	19%	17%	19%	22%	18%	13%	12%	14%	18%	21%	12%	23%	17%	27%

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OFCOM should be given responsibility for overseeing newspaper copyright

Base: All MPs

	PARTY				REGION						DATE OF BIRTH				MARGINALITY				LENGTH OF SERVICE					GENDER			
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Agree	80	14	50	8	7	8	14	5	14	17	22	2	30	28	20	25	16	12	26	9	9	18	27	8	9	72	8
	52%	31%	60%	57%	81%	48%	43%	57%	67%	46%	59%	35%	56%	48%	56%	48%	45%	49%	69%	49%	59%	67%	52%	44%	40%	53%	49%
Disagree	34	19	13	1	2	7	9	1	2	11	5	1	12	16	5	13	10	6	4	5	4	5	10	5	5	32	2
	22%	41%	15%	8%	19%	38%	29%	11%	8%	30%	12%	22%	22%	27%	14%	25%	27%	25%	12%	26%	24%	20%	20%	27%	23%	23%	15%
Don't know/ not stated	39	13	21	5	-	2	8	3	5	9	11	2	12	15	11	15	10	7	7	5	3	3	15	5	8	33	6
	25%	28%	25%	35%	-	13%	27%	32%	25%	24%	29%	44%	22%	25%	30%	28%	28%	26%	19%	25%	17%	13%	28%	29%	37%	24%	36%

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I believe it's acceptable that the NLA should have sole rights to sell newspaper copyright licences

Base: All MPs

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Agree	23	14	7	2	-	2	9	1	-	8	3	2	7	10	4	9	6	6	2	2	3	6	5	4	3	21	2
	15%	30%	9%	13%	-	9%	29%	11%	-	23%	7%	45%	13%	17%	11%	16%	17%	23%	6%	9%	22%	22%	9%	24%	13%	15%	11%
Disagree	93	17	60	9	7	12	9	6	18	20	28	2	34	36	21	31	17	15	30	12	10	15	36	10	11	87	6
	61%	37%	72%	62%	81%	72%	29%	66%	89%	53%	73%	35%	64%	62%	59%	58%	47%	60%	81%	65%	62%	54%	70%	53%	53%	64%	40%
Don't know/ not stated	37	15	16	4	2	3	13	2	2	9	7	1	12	13	11	14	13	4	5	5	3	7	11	4	7	29	8
	24%	33%	19%	26%	19%	19%	41%	23%	11%	24%	20%	20%	23%	21%	30%	26%	36%	18%	13%	27%	16%	24%	21%	24%	34%	21%	49%