

# **SUBMISSION OF THE COPYRIGHT LICENSING AGENCY LTD. TO THE CONSULTATION ON THE UK IMPLEMENTATION OF THE DIRECTIVE ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

## **1. Introduction**

- 1.1 The Copyright Licensing Agency Limited ("CLA") welcomes the Patent Office consultation on the UK implementation of Directive 2004/48/EC of the European Parliament and of the Council on the Enforcement of Intellectual Property Rights ("Directive").
- 1.2 CLA is a member of the Alliance Against IP Theft and this submission is supplementary to the submissions made by the Alliance Against IP Theft, which CLA has had the benefit of reading and contributing to.

## **2. CLA**

- 2.1 CLA was founded in 1983 as a company limited by guarantee by the Authors' Licensing and Collecting Society Limited ("ALCS") and the Publishers' Licensing Society Limited ("PLS").
- 2.2 ALCS and PLS are CLA's two members and themselves represent authors and publishers of most books, journals, magazines and other periodicals published in the UK.
- 2.3 ALCS and PLS obtain mandates from their members to administer and exploit on a collective basis the photocopying and scanning of extracts from these copyright works. ALCS and PLS have appointed CLA, on a non-exclusive basis, as their agent to undertake this operation.
- 2.4 CLA has also entered into an agency agreement with the Design & Artists Copyright Society Ltd ("DACs") whereby DACs has authorised CLA to include within CLA licences artistic works appearing within published books, magazines, journals and other periodicals.
- 2.5 CLA has signed reciprocal rights exchange agreements with organisations in twenty other countries in the EU and elsewhere, enabling it to offer users in the United Kingdom a multi-national repertoire of published works.

2.6 CLA negotiates and grants copyright licences on behalf of the authors and publishers that it represents. However, the rights taken by CLA do not include an assignment or a licence of copyright from such authors and publishers and therefore CLA is not entitled under current UK law to enforce such copyright. CLA differs from many other UK collective rights-management bodies in this respect. The rightsholders remain free to issue and manage their own copyright and issue licences as they wish and may choose to exclude some or all of their works from the ambit of the CLA scheme.

### **3. Implementation of the Enforcement Directive: the Transposition Note**

3.1 In this paper we will focus on those provisions of the Transposition Note for implementation of the Directive which relate to Article 4 of the Directive.

3.2 Article 4 provides that persons entitled to apply for the application of the measures, procedures and remedies necessary for the enforcement of intellectual property rights include intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

3.3 The Transposition Note for implementation of the Directive in the UK states that no action will be required to implement Article 4 into UK law. The reasoning provided in the Transposition Note is that collective rights management bodies or defence bodies may be permitted to bring or defend claims if national law requirements under Part 19 of the CPR are satisfied.

### **4. CLA's view**

4.1 CLA disagrees with the view set out in the Transposition Note.

4.2 Sections 96, 101 and 101A of the Copyright, Designs and Patents Act 1988 (the "Act") provide that an infringement of copyright is actionable only by the copyright owner, exclusive licensee or, in some limited circumstances, non-exclusive licensee. Since CLA is not the copyright owner or exclusive licensee and is unable to rely on its general mandate to take action as a non-exclusive licensee, it has no automatic rights to enforce the copyright of the authors and publishers that it represents, whether under Part 19 of the CPR or

otherwise. In this regard we echo the comments made by the Alliance Against IP Theft in their submission.

- 4.3 CLA is a “licensing body” as defined in Chapter VII of the Act and should therefore be regarded as being an “intellectual property rights management body” which is “regularly recognised as having a right to represent holders of intellectual property rights” as specified in Article 4 of the Directive.
- 4.4 In short, there is no provision of UK law which would give automatically to CLA locus standi to take action in protection of the copyright interests it is mandated to license and protect.
- 4.5 In the past, where CLA has sought to take such action, our legal advice has indicated that, under current UK law principles, such action cannot take place unless CLA has the requisite copyright interest. Where multiple rightsholders have been affected by infringing acts, this would require CLA to obtain separate and discrete mandates/assignments from the rightsholders concerned. Commonly that is simply impractical: in a case, for example, where immediate injunctive relief is sought, CLA’s lack of locus standi and need to engage in time consuming requests for mandates/assignments from rightsholders renders the possibility of prompt and effective action impossible.
- 4.6 Yet, in many cases, the benefits of collective action on behalf of our rightsholders are manifestly in their interest. Indeed, commonly, the expense associated with taking effective infringement proceedings is prohibitive for many rightsholders members acting alone.
- 4.7 Moreover, we believe the ability of CLA to take action in protection of our rightsholders’ interests, notwithstanding our current lack of status (as referred to at paragraph 4.2 above), is not only in the interests of our rightsholders, but also furthers the interest of developing effective, transparent and competitive collective rights management societies to the mutual benefit of rightsholders and users. This is for the following reasons:
  - 4.7.1 For rightsholders, the knowledge that CLA and other similar societies could take action on their behalf is, we believe, likely to enhance their desire to use collective management services. This supports the promulgation of convenient, inexpensive but simple

collective licensing structures where individual licensing would be impractical or prohibitively expensive.

4.7.2 By empowering collective rights management via non exclusive arrangements such as that operated by CLA, there is an enhanced opportunity for alternative and competing models for collective management to flourish (i.e. the monopoly position enjoyed by some collecting societies in respect of the rights they are mandated to exploit on behalf of their members, necessary in order to take legal action on a collective basis, is avoided).

4.7.3 Those compliant organisations who take a licence would not remain at an unfair competitive disadvantage compared to those organisations who flout the law relying on the evidential and procedural difficulties faced by CLA in enforcing its members' rights.

## **5. CLA conclusion**

5.1 In our submission, a professional organisation in charge of the management of rights, or, (in the language of Article 4(c)) an “intellectual property collective rights management body which is regularly recognised as having a right to represent holders of intellectual property rights”, in the position of CLA (ie a non exclusive licensee of rights) must, in order to satisfy the points set out in paragraph 4.7 above, be entitled to rely on its general mandate in order to take copyright infringement proceedings.

5.2 Since UK law does not provide CLA with locus standi to take action on behalf of its rightsholders in reliance on its general mandate, CLA submits that amendments are required to UK legislation to enable it to do so.