



**GOWERS REVIEW OF INTELLECTUAL PROPERTY**

**CALL FOR EVIDENCE**

**RESPONSE FROM THE DIGITAL CONTENT FORUM**

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To: Gowers Review of Intellectual Property  
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## **Introduction**

Since its inception in 2000, the Digital Content Forum (DCF) has grown substantially in membership and influence, reflecting the way in which digital content itself has grown in importance, and underlining its position as a key driver in the UK economy.

DCF's membership includes trade associations and representative organisations from digital and traditional media industries whose business interests lie in the creation and commercial exploitation of digital content. Current membership includes representation from the music, film, web design, internet publishing, computer games, newspaper, periodical publishing and advertising industries as well as book publishers, picture libraries, TV producers and others.

The DCF welcomes the opportunity to respond to the Gowers Review into the UK intellectual property framework and agree with the reviewer that intellectual property is crucial to the success of the creative industries, which are increasingly important for the UK's economic competitiveness in the global economy.

The DCF submission is an ideal opportunity for the creative industries to put IP in the best possible light and promote the role IP plays in the everyday lives of creators. The flexibility of the current IP system, increasing support for IP enforcement, the need for greater IP educational awareness and the redefinition of the Patent Office's role are the key themes addressed in this submission.

Once some background and context has been provided, the DCF response will address those questions, outlined in the call for evidence, which are most relevant to our members. These include:

### **General questions:**

- Section 1: How IP is awarded
- Section 2: How IP is used
- Section 3: How IP is licensed and exchanged
- Section 4: How IP is challenged and enforced

### **Specific questions:**

1. Copyright exceptions - fair use/fair dealing
2. Copyright - digital rights management
3. Copyright - orphan works
4. Legal Sanctions on IP infringement

### **Other Issues:**

1. E-commerce Directive - extension of limitation of liability to content aggregators, hyperlinks and local tool services
2. EC Commission's review of the Database Directive

## **Importance of the UK Digital Content Industries**

Digital content industries provide one of the great success stories of Britain. At the heart of the sector lies a diverse range of companies that combine creativity, innovation and application with new modes of production and distribution, ensuring that the content they produce is relevant to consumers in a digital age. New forms of digital content are appearing as traditionally divergent industries come together. In this context, understanding of common issues such as intellectual property and innovation are critical for the success of the sector.

The UK's digital content industries also play a leading role in the UK's social and cultural life. They are a vital component of the UK knowledge based economy and one of the leading growth sectors in the UK. The creative industries have grown by an average of 6 per cent per annum between 1997 and 2004, and contribute £54.8 billion to the UK economy every year. They account for over 8% of GDP, employ over 2 million people and contribute over £11bn to the country's balance of trade.<sup>1</sup>

Government has demonstrated a greater understanding of the economic contribution of the creative industries. Secretary of State Tessa Jowell has spoken about the need to transform the widespread misconception that the creative industries are a "fluffy, fringe part of the economy"<sup>2</sup>. James Purnell, minister for creative industries, has called for Britain to become the "world's creative hub"<sup>3</sup>.

The proliferation of activities aimed at boosting the creative industries highlights the importance that government now attaches to this area of economic activity. In particular, the Creative Economy Programme, launched in November 2005 in order to develop a strategic vision for the creative industries, illustrates the government's commitment to raising the profile of this sector.

## **Importance of Intellectual Property Rights**

The Gowers Review correctly recognises that the UK's intellectual property framework underpins the UK's creative industries. An effective IP regime allows individuals and companies to protect their creativity and ensure a reasonable return on their investments.

The Creative Economy Conference, which took place during the UK Presidency of the EU in October 2005, brought together key stakeholders to consider the future of the creative economy and value of intellectual property. One of the working groups - "Value for All and More of It" - concluded that:

*"Copyright is crucial. In this new era, everything becomes a subset of IP. We believe that copyright has been a highly effective mechanism to generate creative wealth in the industrial mechanical age and the concepts of copyright will continue to do this as they adapt to the online era"*

The government has increasingly acknowledged IP as an important part of the discussion. In a recent speech for the Social Market Foundation, Lord Sainsbury explained that intellectual property was no longer an obscure area of law and was vital to debate on economic policy. He outlined the mutually enforcing relationship between innovation and intellectual property. Without IP, innovators could not hope to win financing for their work.

Although DCF members would generally agree that the UK's IP framework broadly strikes the right balance between rights holders and consumers, this does not mean that the government can sit back. There is still room for improvement and DCF urges the government to continue to support IP domestically, in the European Union and internationally. Government must acknowledge that protection and enforcement of IPR assets are increasingly central to the competitiveness of the creative sector.

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<sup>1</sup> Statistics taken from a speech by the Rt Hon Estelle Morris, Minister for Arts, Westminster Media Forum Seminar, Intellectual Property and Rights Ownership, 9<sup>th</sup> December 2004.

<sup>2</sup> Speech to Bloomberg, launching the Creative Economy Programme Website, 14<sup>th</sup> March 2006.

<sup>3</sup> Keynote speech to the IPPR - "Making Britain the World's Creative Hub" - 16 June 2005.

The strength of the current UK IP system lies in its flexibility, permitting creators to exploit their ideas and their creativity. Such a flexible system, however, must be robust; able to cope with the development of new technologies and promote innovation. The IP framework must remain flexible enough to apply to different sectors with distinctive business models. We must also remember that the intellectual property regime within the UK has continued to evolve in recent years reflecting initiatives at EU level. For copyright the EC Copyright Directive and the EC Enforcement Directive have been particularly important in shaping new Regulations now implemented within the United Kingdom which have helped to ensure that the framework addresses advances in digital technology and means of communication. The IP system, then, has shown its ability to evolve and adapt.

DCF believes the Gowers review is an ideal platform to ensure that the flexibility of the UK IP system (as outlined above) is maintained and that it remains fit for a digital age. DCF would like to see a proper balance struck between the benefits and incentives for the creator - and the consumer. These are not mutually exclusive objectives. Rights' owners benefit from consumers being able to access and purchase products in the manner they wish.

## **IP Crime and Enforcement**

Of the various threats facing the creative industries today, IP theft is one of the most challenging. IP theft does not only damage the companies whose products have been unlawfully used and copied, but also the consumers who are sold inferior and unsafe goods. Members from the Alliance against IP Theft (AAIPT) have compiled evidence that illustrates the extent of the problem:

- Typically a major release of a new film on DVD loses 20-30% of sales through counterfeiting and piracy, amounting to an average of £4m lost per "blockbuster" title and up to £1.5 million in lost box office sales.
- The audio-visual industry annually loses over £800 million through copyright theft.
- The music industry lost £654 million during 2003 and 2004 through illegal downloading.<sup>4</sup>

IP theft also affects the IT industry and the UK software publishers are fighting to protect their IP rights. Recent research indicates that 27% of software within UK businesses is illegal or pirated and 50% of all SMEs in UK are unaware of the legal obligations of having software licenses<sup>5</sup>. According to the Business Software Alliance, £1 billion is lost to the UK Software Industry each year<sup>6</sup>.

Digital technology, and file sharing, have brought with them opportunities for the unauthorised use of copyright works, including articles and magazines, at levels which would have been unimaginable 50 years ago. Research undertaken by DCF members the British Phonographic Industry (BPI) indicates that the cost to British music of illegal file sharing reached £1.1bn in the three years to 2005<sup>7</sup>. The speed and anonymity of access to unauthorised material in the on-line environment has provided substantial challenges to all sectors of the creative industries.

One of the main concerns of the creative industry is that IP crime has, for too long, been considered as secondary to other offences. Film piracy, for example, is seen as a less severe

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<sup>4</sup> Alliance against Intellectual Property (IP) Theft response to the Culture, Media and Sport Select Committee Inquiry into New Media and the Creative Industries.

<sup>5</sup> Figures taken from "FAST and furious software police", an article which appeared in an independent supplement about Intellectual Property, distributed in the Times, 13<sup>th</sup> February 2006.

<sup>6</sup> Business Software Alliance/IDC piracy report, 2005

<sup>7</sup> BPI research - <http://www.bpi.co.uk/index.asp>

crime than shoplifting and credit card fraud<sup>8</sup>. This strongly suggests that theft of content is not viewed as seriously as theft of a physical product, and this is a problem that industry must overcome with support from government and law enforcement agencies.

The industry must also tackle the lack of public awareness about the many organised and associated crime units behind counterfeiting and piracy. The government has recognised the increasing links between IP theft and other criminal activity. 2004's Operation Zouk saw the Department of Work and Pensions (DWP) Counter Fraud Investigation Service (CFIS), industry Anti-Piracy Units, Trading Standards and the Police come together to uncover persons involved in the production and sale of counterfeit goods. This operation proved to be successful and resulted in the seizure of over £3billion worth of pirated DVDs and CDs<sup>9</sup>.

The Patent Office and regional Trading Standards agencies are committed to linking authorities' intelligence and making arrests, but also in educating the public about the risks of IP crime. The work of the IP Crime and On-line Infringements Working Group (IPCOI), which was chaired by DCF's Angela Mills Wade, was also pivotal in enabling not only weaknesses within the current legal framework to be considered and addressed, but also in securing recognition from the government of the importance of helping people, both users and creators, to appreciate the value of intellectual property as central to the future health of the creative industries within the UK. Their Recommendations (**see specific questions - legal sanctions on IP infringement**) are subject to consideration by relevant Government departments and the DCF would urge the Review team to request an update on progress. The Government has since set up a new group - the Creative Industries Focus Group, to *inter alia* oversee implementation of the Recommendations of IPCOI, as part of their IP Crime Group, also chaired by Angela Mills Wade. The DCF also urges the reviewer to note and support the valuable activities being undertaken by the Alliance against IP Theft (AAIPT), who too will be submitting a response to this review.

## **IP Educational Awareness**

The future growth of the creative industries is dependent on the exploitation of their IP but an understanding of and value for creativity needs greater awareness amongst consumers. The DCF encourages the government to improve public education about what "intellectual property" actually is and why it is important to them. It is essential that the public understand better how intellectual property is relevant to their lives both culturally and potentially economically.

DCF members agree that it is important to educate young people about IP so they respect the time, energy and resources that have gone into their latest purchase. Young people come into contact with IP all the time. A mobile phone, for example, has dozens of patents associated with it, which represents the innovative work of just as many people. The Patent Office Think Kit, which is already in over 80% of secondary schools, has proved a useful educational tool and shows students how innovative organisations make the best possible use of intellectual property (patents, trade marks, designs and copyright). By working through a series of case studies, children learn how important it is for business to protect their creativity in an ever expanding global economy<sup>10</sup>. The work now being undertaken to extend the Think Kit concept to provide information for use in primary schools and the tertiary education sector is welcome. Activities by the Patent Office to develop its educational initiatives about IP should continue, linking with industry where appropriate.

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<sup>8</sup> OTX research into Digital Piracy in the UK between March 04 and Sept 05

<sup>9</sup> Patent Office Annual Enforcement Report 2004

<sup>10</sup> Patent Office - <http://www.patent.gov.uk/about/marketing/thinkkit/index.htm>

DCF members British Music Rights (BMR) believe IP education should not only be offered for creators and business but also be taught to students. As ITC skills become the third area of adult basic skills (alongside literacy and numeracy) it will be increasingly significant to draw attention to copyright issues as part of the education system in primary, secondary and higher education. BMR suggests that as media literacy becomes more important in today's society, knowledge about IP and copyright will have a significant role to play. IP education will enable more young people to understand the value of their own creativity. Such an aspect has never been a feature in the school curriculum. This was a concern echoed by the former Minister for Arts. Referring to IP education, Estelle Morris commented:

*"I don't know a school - and I visit a fair few - where they really prioritise teaching children about intellectual property...Because, as a nation, we've not had a programme about education and informing people, and we've got ourselves into the position where we've not even persuaded most people yet that it's wrong to take somebody else's ideas."<sup>11</sup>*

This startling statement is the motivation behind such initiatives as British Music Rights' "Respect the Value of Music" project, which has been introduced into secondary schools. These lesson plans were designed to be used by secondary school music teachers to help create a better understanding amongst 11-14 year olds on how the music industry works, what it means to be a creator and how they might earn a living from their creativity through copyright<sup>12</sup>.

DCF would highlight the work being developed by the Creative Industries Forum on Intellectual Property. The Educational Working Group within the Forum recognised that:

*"Intellectual Property Rights are an intangible concept that is difficult to grasp and generally very poorly understood. Improving the communications and educational messages, and the way they are targeted at specific audiences, as the way to improve understanding, are therefore central to the whole IP agenda. A snapshot of current communication activity shows that there are many agencies and organisations communicating about IP, but that this communication lacks a consistency and co-ordination of message. The working group's primary focus therefore, has been to consider the tone and theme of IP communications and their appropriateness to particular audience"*

The Group agreed that messages should be positive and empowering. The Group therefore developed a Statement of Principles, the "CREATE" statement, to capture and enunciate the importance of IP as a social, creative and economic tool. The CREATE statement simply outlines the key issues:

C - Creativity  
R - Respect for Rights  
E - Education about why rights affect everyday lives  
A - Access to works on fair terms  
T - Trust between creators and consumers  
E - Economic benefits from intellectual property, stimulating job creation, business and economic growth.

It is hoped that the Review will endorse further work to encourage the adoption and promotion of the CREATE principles in the context of the citizenship curriculum in schools and more broadly within industry and Government in the future.

<sup>11</sup> Speech by the Rt Hon Estelle Morris, Minister for Arts, Westminster Media Forum Seminar, Intellectual Property and Rights Ownership, 9<sup>th</sup> December 2004.

<sup>12</sup> BMR press release, 30<sup>th</sup> November 2004.

Whilst DCF members endorse the work of the Patent Office, BMR and The Creative Industries Forum, we would urge greater involvement by some of the key Government Departments. In particular, any IP educational initiatives need support from the DfES to encourage better understanding of the importance of the value of intellectual property within education as a whole. It is hoped that the Review team will encourage further involvement from DfES in this respect.

Improving trust in the intellectual property system between rights owners and users, within industry and between companies and consumers is central to the DCF response. Coordinated support to improve education and awareness about the value of intellectual property and the role that it plays within the economy, in supporting jobs and providing reward for innovation, is urged by all DCF members. Improving trust should also be addressed through encouraging improved media literacy across the whole of society, and through industry becoming more transparent about the way in which it explains to consumers the conditions which attach to the licensing or authorised use of copyright works.

### **The role of the Patent Office**

The Patent Office generally does a good job in administering UK copyright, including consulting stakeholders. The DCF encourages the Patent Office to continue to reach out and respond to all sectors of the creative industries and to continue to promote the message of the importance of the creative industries in the UK and intellectual property rights which sustain them. As mentioned above, DCF members fully support the latest initiatives in improving the education of UK citizens about the role and importance of intellectual property rights. DCF members also fully endorse the Patent Office-led National IP Crime Strategy, which brings together all enforcement bodies, other government departments and industry to tackle IP theft strategically in the UK. DCF members strongly encourage rigorous enforcement and education schemes along these lines.

However, it is worth pointing out that the name "Patent Office" is too narrow for its current remit and does not convey the importance of copyright in the digital age. This is echoed by the Publishers Association (PA) and members of the European Publishers Council, which agree that the historic name 'The Patent Office' sends an outmoded message in a digital age, particularly to those whose primary concern is not patents but copyright.

There is also a fear that the Patent Office's dual remit to address both consumer and industry issues leads to the weakening of IP policy. Furthermore, given the cross departmental implications for policies in the area of IPR and related rights, DCF would support better co-ordination of government policy across relevant departments, particularly in the area of copyright through a dedicated Ministerial function. The creation of a department or agency whose primary purpose is obviously the promotion and protection of IPR may easily be achieved by a simple rebranding of the Patent Office into an Intellectual Property Institute or bureau.

### **CALL FOR EVIDENCE**

### **GENERAL QUESTIONS**

#### **Section 1: How IP is awarded**

Most DCF members agree that there are no barriers to obtaining copyrights as such because registration of such rights is not required. It is a fundamental principle of the international copyright system under the Berne Convention, to which the UK is a party, that copyright works

should be protected from the moment of creation and that no formalities or costs should be imposed.

However, lack of education about IP rights can operate as an informal barrier to obtaining, and therefore exploiting, IP rights. For example, many people think that inclusion of a copyright notice (e.g. "© Wayne Full 2006") is a prerequisite to claiming copyright whereas, in fact, it only operates to raise a rebuttable presumption of ownership. Also, while there are numerous sources of free or paid for information about IP available on the Web and elsewhere, there is a lack of readily accessible information about IP which is both practical and targeted to particular groups.

The need for more focused IP education is a recurring theme in DCF's response to the Gowers Review. DCF welcomes all initiatives aimed at increasing IP education. DCF believes that lack of sufficient IP education undermines trust in the IP system as a whole. DCF would draw the reviewer's attention to some of the educational work being undertaken by its members. The Publishers Association (PA) arranges regular seminars on IP, partly to obtain guidance and feedback from their own members but primarily to provide education and awareness. As mentioned earlier, the British Music Rights (BMR) has established a very successful schools programme - 'Respect the Value of Music'.

In addition industry initiatives such as the information on copyright licensing published by the Rights Industry Forum Schools Working Group (see [www.licensing-copyright.org](http://www.licensing-copyright.org) ) will continue to be important.

While DCF acknowledges the importance of the Patent Office's "Think Kit" scheme and the success of Lord Sainsbury's Creative Industries Forum in promoting IP, DCF would welcome an on-going, properly funded programme, backed by government, in delivering appropriate IP information to the public or SMEs, helping them understand how, where and when IP fits into their lives, or businesses and how it adds value to them.

## **Section 2: How IP is used**

Intellectual Property can be used in a multitude of different ways. IP turns a creative work into a tradable asset. How you trade it - or choose to trade it - is a business and personal choice. And while the choices available are multiplying in the digital age, IP continues to provide the foundation for all trade in creativity.

Given the breadth and cross membership of the DCF, different members use different types of IP depending on the needs of their own sectors. Although DCF would urge the Review team to refer to DCF members' own submissions for detail on this subject, some examples have been outlined below from different creative sectors to illustrate the diversity of IP use:

### **Music - British Music Rights (BMR)**

For the composer and songwriter (represented by groups such as BMR), copyright is the essential means by which, as creators, they have control over the use by others of their creative work. Through copyright the composer and songwriter have the exclusive right to authorize others to copy their work; issue copies of their work to the public, perform, show or play their work in public; adapt their work; broadcast their work and make their work available On-line. Copyright is also, of course, the means by which the majority of music writers are able to earn royalties, usually by registering their works with the appropriate collective management society.

### **Computer Games - Entertainment and Leisure Software Publishers Association (ELSPA)**

The two categories of IP used in the Games Industry are copyright and Trade Marks. In the case of an interactive entertainment product IP subsists in the software programme, operating the game, but other facets of copyright will be present in a game, notably film sequences and sound recordings. The games publisher, the platform provider, and indeed the game's name and characters are normally registered as trademarks. These generally appear on the game's advertising, packaging and on the screen when the game is played. Often ELSPA members find it is easier to enforce trade mark rights as there are less burdens regarding proof of ownership than with enforcement of copyrights.

### **Publishing - Publishers Association (PA) and Periodical Publishers Association (PPA)**

Although the Publishers Association and Periodical Publishers Association only occasionally own or use IP commercially themselves, they often speak on behalf of member publishers and identify the following types of IP as the most commonly used:

1. Copyright in both literary and artistic works, since text and illustrations are the most commonly needed content for modern-day publications. Copyright in software programs is also increasingly important, and also in musical or dramatic works used in multimedia compilations.
2. Typographical copyright in published editions - this is the only form of legal protection available for publishers of public domain material e.g. Milton and Shakespeare
3. Neighbouring rights such as Moral Rights, allied to copyright but usually owned as personal rights by authors - these are important to protect the authors' integrity and right to be credited.
4. Trade Marks - often important to protect mastheads, brands, names, titles, logos or other distinctive signs used in publishing (which copyright may not protect itself).
5. Database Rights - vital to protect substantial investment in valuable commercial databases which the new EU copyright standard (requiring evidence of the author's "originality") is unlikely to protect.
6. Publication Right in unpublished works in which copyright has already expired (unlikely to be a major factor until common law copyright expires in 2039, but will be important thereafter).

### **Section3: How IP is licensed and exchanged**

Again, due to the cross industry nature of the DCF, we would urge the reviewer to refer to DCF members' own submissions for detail on this subject. However, DCF would highlight some examples of how IP is licensed and exchanged by different creative sectors, to illustrate the diversity in this area.

#### **Publishers Association (PA)**

In copyright, it is usually very easy (both individually and collectively) to negotiate licenses to use others' IP provided (a) there is no commercial or moral rights conflict, or threat to normal exploitation, and (b) reasonable market rate remuneration for author and publisher. One factor which occasionally emerges is the issue of orphan works - what to do if, despite the best efforts of the potential user or licensee, the rights holder simply cannot be found, from whom to seek permission? Also note that many non-profit users are routinely granted licenses at well

below market rates, and in the case of some – such as Visually Impaired People – were usually granted permissions free, until they obtained a full copyright exemption altogether, under 2002 legislation. In addition, it should not be forgotten that many non-profit uses may count as ‘fair dealing’, or be otherwise exempt under UK copyright law, and so may not require licenses at all.

### **British Association of Picture Libraries (BAPLA)**

The Picture Library industry exists to facilitate the licensing of rights in images. Most of its licensing is conducted on an individual transactional basis within business to business environments. The transactional licensing practices used are highly developed and designed to preserve creators’ essential rights to determine the context in which their work is used. This aspect of control is of fundamental importance to the industry, where images are produced for a variety of reasons and to sometimes particular personal and moral agendas. As facilitators of licensing, BAPLA members’ transactions aim to ensure that creators’ agendas do not clash with those of end-users.

As facilitators, BAPLA members are required to protect the interests of photographers and other visual creators, by protecting the rights in images and the value in these rights, but they are also required to address the needs and expectations of end-users. Huge investments have been made by BAPLA’s members to facilitate research and licensing models. BAPLA has helped to standardise practices to the benefit of members, creators and end-users alike.

### **British Music Rights (BMR)**

Composers, songwriters, publishers and societies license an enormous range of commercial uses of music from live events, recorded music, films, adverts, broadcasts, shops, pubs, restaurants, schools and online and mobile music services, and are always looking for new opportunities to promote their music and make it available as widely as possible.

### **European Publishers Council (EPC)**

In terms of copyright, it is relatively easy for EPC members to obtain permission from third parties, where required, to use their copyright material for commercial purposes.

In some cases, principally reporting news or current events, a specific exception applies and, as a result, no permission will be required. It is appropriate to note that in view of the fact that all but one of the exceptions in the Copyright Directive were voluntary, reliance cannot be placed on the UK fair dealing exception for reporting news and current events on a pan EU basis.

For EPC members, rights acquisition and clearance is dealt with primarily on a ‘one to one’ contractual basis through copyright assignment, licences and permissions.

Rights clearances are also obtained through collecting societies. In the case of the publishing industries, this is required to a limited extent and is dealt with via the Copyright Licensing Agency are also obtained where required in order to photocopy, scan and email extracts from third parties’ books, journals and periodicals.

In the case of the radio and television, rights clearances through collecting societies is a more significant activity, in view of the inclusion of performers’ rights, musical works, films and other third party material in broadcast programmes.

EPC members, as owners and users of IP, strongly endorse all initiatives which make it easier and more cost effective to clear rights, provided that rights holders have the freedom to

choose the rights which they wish to mandate to collecting societies.

EPC members welcome the principles contained in the European Commission's Recommendation of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services. Recital (8) puts it very succinctly: *"In the era of online exploitation of musical works, however, commercial users need a licensing policy that corresponds to the ubiquity of the online environment and which is multi-territorial."* This is applicable to the online exploitation of all works, not only musical works.

Difficulties can arise in relation to rights clearances where the owners of works cannot be traced. This is where rights management information has an important role to play.

#### **Section 4: How IP is challenged and enforced**

The main problem with enforcing copyright in the UK and internationally is cost. Cost of enforcement is a major barrier. Both in the UK and internationally, the costs of enforcing copyright can be very high - perhaps for SMEs prohibitively so. Bringing a fairly routine copyright enforcement case in the UK can easily cost £50k -£60k, and more if it is contested or substantially defended. Injunctions are not easy to obtain without overwhelmingly strong evidence, and often require a cross-undertaking in damages, which may be well into six figures if the defendant is a large company.

Increasingly, there is also a problem of public perception and awareness, in that many people - particularly younger people - in the internet age believe that with rapid connectivity everything that can be viewed on-screen or downloaded is free - or should be. This presents a major education challenge both to rights holders and the government, if valuable IP rights, important to UK creativity and GDP, are not to be devalued and evaded.

DCF supports the use of alternative dispute resolution procedures including mediation and arbitration. In the field of arbitration, DCF also supports 'ad hoc' industry-focused solutions such as the Informal Disputes Resolution procedure operated by The Publishers Association. DCF also actively supports the development of voluntary procedures that can provide speedy and cost effective resolution of disputes e.g. the pilot 'Notice and Take Down' procedure developed by The Publishers Association.

#### **SPECIFIC QUESTIONS**

##### **Copyright exceptions - fair use/fair dealing**

It is important to place any discussion about exceptions into its legal context.

- All exceptions have to pass the 'three step test' in Article 9 (2) of the Berne Convention (and repeated in Article 5 EC Copyright Directive) which allows reproduction (i) in certain special cases; (ii) provided it does not conflict with normal exploitation of the work and (iii) does not unreasonably prejudice the interests of the author. In short, it must not conflict with normal commercial exploitation.
- DCF is not opposed to due consideration being given, in appropriate circumstances, to additional exceptions where it can be demonstrated that there is genuine and specific need which is not already being met but which meets both the Berne '3 step' test and reflects the other requirements now established under Article 5 EC Copyright Directive. An example was the exception for the visually impaired introduced by The Copyright (Visually Impaired Persons) Act 2002.

- At the same time, it should be remembered that, through the combined effect of the Internet, the Web and broadband delivery, there is an unprecedented quantity and quality of information made freely available to consumers and other users.
- Any further examination of exceptions should take full account of these factors.

In DCF's view, the current exceptions are generally well balanced. They have been subject to extensive debate over the years. Also, they have been subject to scrutiny by the Courts e.g. as regards the scope of the exceptions for fair dealing for news reporting contained in section 30 Copyright Designs and Patents Act 1988, as amended.

The DCF understands the call for clarity in relation to private copying but does not believe such clarity can only be achieved with the introduction of a general private use or private copying exception. Clearer licensing agreements, greater educational awareness over the conditions of purchase, or greater communication from the licence holder as to how that purchase can be used, are all possible solutions, and are currently being explored individually by our members (along with the pros and cons of a private copying exception). Please refer to those submissions for greater detail on these individual positions.

However, in relation to private copying, there are a number of issues to which we draw the Reviewer's attention:

- Any private copying exception must be accompanied by fair compensation.
- Any exception must abide by international legislation. Under the Berne Convention any exception would need to comply with the three step test and the requirements of Article 5 EC Directive.
- Proper attention must be given to the risk that a new defence for clear piracy is created. As has already been evidenced in other countries with a private copying exception, attempts have been made by commercial undertakings to abuse the exception as a defence in piracy cases.

The DCF, therefore, believes given the difficulty in finding one solution which fits all industries and business models, industry should be encouraged to develop a workable solution.

In a recent speech Lord Sainsbury said: *"Above all, Government must resist calls to dictate to creators how they should exploit their rights"*. The DCF agrees and recommends the Review's conclusion reflects this.

## **Copyright - digital rights management**

First and foremost, certainty of definition and clarity of what is understood by Digital Rights Management is crucial, not only for the application of technology but also for the underlying political and legal framework. It is therefore of utmost importance that when using the term 'Digital Rights Management' policy makers and legislators are unambiguous as to the meaning that they attach to this term. In this respect it is useful to consider the legal framework for the protection of the so-called 'DRM' which refers to two distinct elements:

- **Technical protection measures**, securing content and enforcing usage rules through digital means e.g. encrypting, watermarking
- **Rights management information**, identifying and describing intellectual property and specifying the rules under which it can be used.

Our concern is that in many cases, it is not clear which of these two aspects of Digital Rights Management are being addressed, and we would ask the government to ensure that this is clarified each time since different considerations often apply to each; in particular since the

controversy on Digital Rights Management is de facto limited to the application of technological protection measures.

The DCF supports calls for clear labelling about the effect of Digital Rights Management as expressed at the Creative Economy Conference in October 2005. Whilst the DCF acknowledges that consumers need to have clearer information about what they are buying including the limits to its use, DCF does not accept the consumer argument that the use of digital technology should be freer and that DRM technologies will ultimately hurt creative expression and damage consumer rights. In their response to the All Party Internet Group inquiry into DRM, the National Consumer Council argued that "DRM tools over-enforce the legitimate rights of rights owners and hence disturb the balance between private rights and the benefits of public access and/or use<sup>13</sup>" - a statement DCF refutes if only due to its simplified terminology.

DCF's own response to the All Party Internet Group inquiry into DRM made a number of key recommendations on how the use of digital rights management technologies should be regulated in the future.

### **Recommendations**

- Government and Parliament should continue to monitor developments in the way that new technical protection measures and rights management information systems are being brought to market, including through further consultation with all stakeholders (including the more developed UK mobile market).
- Government should support improved education and awareness about the real scope of products which might fall under the generic description of "Digital Rights Management" in order that consumers are better informed about the ways in which such products can work to improve efficiency and provide for consumer choice.
- Additional legislative intervention over and above the framework recognised within the EC Copyright Directive is premature and will potentially impede the development of technical protection measures and electronic rights management systems which will in the longer term best serve the development of new products and services within a digital communications environment.
- Rely, and build upon on the vast research and work already done by numerous organisations in the UK (e.g. the Broadband Stakeholders Group in 2003) and in the EU (High Level Working Group on Digital Rights Management in 2004) and encourage further research which helps to test and develop information and themes emerging from earlier studies about the use of technical protection measures and electronic rights management systems. Themes include:
  1. How Digital Rights Management will further the development of new business models to deliver digital content to consumers and users according to their demands.
  2. How Digital Rights Management systems need to be applied in a responsible and transparent way to ensure acceptance by consumers.
  3. The best ways of promoting continued co-operation and open dialogue between the stakeholders, be it on a more general level with individual consumers and commercial users, or on a more specific level between right holders and specific interest groups such as visually impaired people and libraries.

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<sup>13</sup> NCC response to the APIG inquiry into DRM, 6<sup>th</sup> January 2006

## ▪ Copyright - Orphan Works

Orphan Works are of particular concern to DCF members operating in the publishing sphere and the Picture Library industry.

### Publishing

“Orphan works” is not an expression currently used within the Copyright, Designs and Patents Act 1988. However, the issues raised in the recent US Copyright Office Report, in relation to the licensing of copyright works which cannot be identified or located by someone who wishes to make use of a work in a manner that requires permission of the copyright owner, should be taken into account in the current UK review.

If provisions can be introduced which balance the onus on prospective users to undertake a “reasonably diligent search” to identify rights owners, and seek licences and reducing the remedies available to rights owners for use of their works when they cannot be identified through such “diligent search”, this may help improve transparency, and help reduce perceived barriers to access to copyright works that might be described as “orphan works”.

### Picture Libraries

Many important image collections have been built up over many years (sometimes centuries) as collections of objects. The IP aspects of these objects have, in many cases, not been an issue in relation to these collections, and have therefore only more recently begun to be addressed, as the asset value of the collections has begun to be appraised and new publishing and trading activities have been initiated. Members from BAPLA who own or manage significant archive collections or operate within a museums or galleries environment are very familiar with the issues, including costs, involved in sourcing and agreeing authoritative permissions in these collections. These difficulties are a product of the ease with which IP is awarded and the lack of formal requirements to register IP ownership, but are a trade-off against the enormous value to BAPLA members of these features of the UK rights regime.

BAPLA argues that the term ‘orphan works’ is misleading. It suggests that the creator of a given work is no longer in existence, whereas it is more frequently the case that the creator is simply hard to trace. One of the reasons creators are hard to trace is that the practice of media producers and publishers in crediting creators is often extremely poor. In a recent survey<sup>14</sup>, for example, 68% of images in UK newspapers appeared without a credit, in breach of their creators’ moral rights and, in many cases, the contractual terms of the licence under which the images were supplied.

BAPLA has worked hard, with successive ‘Credit where Credit is Due’ campaigns, to promote good practice in relation to this issue, in support of creators moral rights but also in support of the very real commercial issue, that proper credits are essential to the building of creators valuable reputations, and to the tracing of permissions, when other end-users wish to re-use images in other projects and contexts. BAPLA would greatly support and appreciate a strengthening of the moral rights provisions in the regulatory framework, particularly in respect of the commercial issues this would address.

BAPLA would not support any specific ‘orphan works’ provisions which would loosen the requirements to seek proper permission from the legitimate rights-holder or limit the liability of end-users in respect of their responsibilities in respect of others’ rights. This is because such

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<sup>14</sup> BAPLA ‘Credit where Credit is Due’ Survey, 2006

a move would undermine the basis for trading in our industry as well as fundamental principles of rights and ownership.

- **Legal Sanctions on IP infringement**

- (a) **Are you aware of any inconsistencies or inadequacies in the way that the law applies legal sanctions to infringement of different forms of IP or to different circumstances?**

The IP Crime and Online Infringements Working Group (IPCOI) has made detailed recommendations to government highlighting inadequacies in the law.

All key recommendations are re-iterated below and supported by DCF members. DCF urges that these recommendations be pursued simultaneously and consistently with the key message that Government support for the creative industries is matched by acceptance of the need for stronger deterrence against IP crime and online infringement. Without this, there is an absence of coherence in the Government's commitment to the sector.

In turn, the creative industries should support independent research that has the confidence of other stakeholders to validate and improve recommendations flowing from this key message and so as to encourage support from other stakeholders for stronger deterrence.

The key recommendations address the following issues:

- **Deterrence**
- **Defining infringement and response**
- **Independent research**
- **Sentences and Damages**
- **Criminal Offences**
- **Enforcement by Trading Standards officers**
- **Anonymous Evidence**

#### **Deterrence**

- Copyright crime and all online copyright infringements should be addressed in a context that deters illegal activity in the first place. Deterrence will be achieved through a combination of making available and promoting legitimate products and services which meet consumer demand as well as effective enforcement action and meaningful remedies. The balance between the different responses will vary for different types of infringement.
- Activity that deters illegal behaviour includes developing new services that are attractive to consumers, an area being explored by the Business Opportunities Working Group, and collaboration on appropriately targeted IP awareness campaigns, an area being explored by the Education and Communication Working Group.

#### **Defining infringement and response**

- Targeting criminal enforcement at the most damaging activity enhances the ability to respond effectively. The Government, the creative industries and other stakeholders should all support a clearly understood response to IP crime and online infringements with an appropriate statutory framework and suitable mix of enforcement action and deterrent activity both in this country and elsewhere.
- Matrices of the type developed for copyright infringement (see the Annex) can inform

decisions on what is the appropriate framework and should therefore be developed for other IP areas, in particular for rights in designs which are crucial to some sectors of the creative industries.

### **Independent research**

- The effectiveness of the key message is maximised when there is support from all stakeholders, including consumers. Support is more likely to be delivered where the evidence base about the impact of IP crime and online infringement, including the harm for the creative industries and other stakeholders, is arrived at by independent research.
- The creative industries should actively engage with consumer representatives to validate their approaches to research and so maximise confidence in its independence. Existing and future research can improve the evidence base on consumer perceptions and behaviours which can in turn feed into the development of a common vocabulary, appropriate awareness raising and new business models.

### **Sentences and Damages**

- IP crime has become easier and more profitable in recent years, and with help from new technology, is on the increase. There is currently no guidance to criminal courts on the levels of penalties to impose in such cases.
- The group recommend that the Sentencing Guidelines Council is requested to review this area of the law and to provide guidance. Criminal courts will often see the issue of compensation as too complex to deal with in their proceedings and leave the rights holder to pursue a separate civil claim.
- Part 9 of the Enterprise Act closed the civil gateway, prohibiting government bodies from sharing information with rights owners who wished to take action against infringers of intellectual property. The DCF supports the Government's enabling clause in the Company Law Reform Bill, currently going through Parliament, which will allow this gateway to be reopened.
- The experience of rights owners is that the monetary awards made by the courts - in the form of damages or an account of profits - do not provide adequate compensation or in particular adequate deterrence. In this respect, the UK lags behind other jurisdictions that provide for deterrent levels of damages in the form of minimum statutory damages (such as in the United States), multiple damages (such as in Poland and Greece) or punitive damages (such as in Japan and Australia). We hope that the government will encourage Courts to consider Regulation 3 of the Intellectual Property (Enforcement, etc.) Regulations 2006 implementing the Enforcement Directive, i.e. that damages should be appropriate to the actual prejudice the right holder suffered as a result of the infringement, including the moral prejudice caused.
- This is the backdrop against which there is particular concern that the way in which Section 97(2) of the Copyright, Designs & Patents Act 1988 has been applied in practice by the courts has not sufficiently reflected the gravity of the infringements in issue in the scale of the additional damages awarded. The Copyright, Designs and Patents Act 1988 should therefore be reviewed so that in practice damages awarded constitute a genuine deterrence to infringement, whether this is achieved by statutory change, judicial guidance or otherwise.

### **Criminal offences**

- The Government should review whether the copyright offences and other factors relevant to their proof should be remodelled, having regard to the difficulty of proving the offences in the absence of presumptions about ownership of copyright and copyright licences.
- The Government should also review whether the offences, copyright or otherwise, are effective for catching all gross abuses of copyright (including commercial rental piracy and abuses by companies), whilst remaining proportionate, consistent and deterrent.
- Furthermore, covert acts preparatory to infringement, such as unauthorised recording of public performances (camcording) should be addressed.
- Finally, the Government should review whether it is appropriate to create criminal offences that apply to infringements of designs which are protected by a right other than copyright, such as UK unregistered design right.

#### **Enforcement by trading standards officers**

- The Government should take action to bring section 107A of the Copyright, Designs and Patents Act 1988 into force, to provide for enforcement of the copyright offences by trading standards officers.

#### **Anonymous evidence**

- The Government should explore the possibility of enhancing the response from the court to an IP infringement where at least some of the evidence has been provided by a person who has legitimate reasons for not wanting their name to be disclosed. I
- In particular the Government should address the position of whistleblowers by assuring them of confidentiality where they have a genuine fear of the consequences should their name become known by the alleged infringer.

#### **(b) Should criminal sanctions on online infringements be the same as those relating to physical infringement?**

There is no justification for treating illegal dissemination of copyright material in the online environment as any less serious than the equivalent activity in the physical world. The maximum penalty for the offence of infringing copyright by communicating to the public (see section 107 (4A) of the Copyright, Designs and Patents Act 1988) should therefore be brought into line with that for unauthorised distribution of physical copies (see section 107(4)), i.e. it should be up to 10 years in prison and/or an unlimited fine.

### **ADDITIONAL ISSUES**

#### **E-commerce Directive - extension of limitation of liability to content aggregators, hyperlinks and local tool services**

The Gowers Review will be aware that in June 2005, the DTI issued a Consultation Document on the Electronic Commerce Directive ("the Directive"). DCF's responded to this consultation and set out the reasons for opposing any further extensions to the exemptions from copyright liability beyond those already contained in the UK Regulations which implemented the Directive.

## Key Points

1. The current legal framework under the Directive and (in the UK) The Electronic Commerce (EC Directive) Regulations 2002 ("the Regulations"), strike an appropriate balance between content owners and users and provide adequate exemptions and exceptions for legitimate users.
2. Since the Directive's adoption in 2000, many service providers have flourished and developed the range of tools they provide to users. The growth of Google, eBay, Yahoo, Amazon, iTunes and others is clear proof that electronic commerce is flourishing. As the Commission's First Report on the Directive acknowledged, there is, as yet, no evidence to show that the absence of the additional liability limitations referred to in the Consultation Document is acting as a serious inhibitor of growth
3. Conversely, for the purposes of intellectual property law, extending the exemptions from liability provided for under any of Articles 12 to 14 to new user groups would erode the 'permissions-based' approach on which copyright is built. There is an alarming, growing trend amongst certain sectors of the user community which seeks to reverse the 'norm' under the international copyright treaties under which the acts covered by copyright cannot be done without the permission of copyright owners. This trend is apparent in the approach taken by Google in its 'Google Print' project.
4. Given the widespread disregard of copyright on the Internet, often with the tacit or explicit encouragement of commercial providers of information society services, the DCF believes that there is a significant risk that if further exemptions from liability are introduced for use of copyright works or other intellectual property as suggested in the Consultation Document, this would further undermine the very notion of copyright and the permission-based culture on which it is built.
5. There is a dearth of case law in area of existing limitations of liability. However, the case law which does exist shows that, with some qualifications, in respect of the scope of the sui generis right, Courts within the Community are able to strike a reasonable balance between rights holders and users within the existing framework of Articles 12 to 14. DCF considers that it is therefore premature to introduce further limitations. More time must be allowed for case law to develop within the existing legal framework.  
For example in:
6. *Verlagsgruppe Holtbrinck v. Paperboy*, a decision of the Federal Court of Justice in Germany, September 2003, which decided that deeplinks were permissible; and
7. *The Axel Springer Verlag* case, a decision of the Federal Supreme Court in Germany in July 2004 in which a betting agency unsuccessfully sued Axel Springer for unfair competition for publishing links to illegal websites.
8. Furthermore, case law outside the Community demonstrates the same point. Whilst, such decisions are not binding on Courts within the Community, the global nature of the Internet and the Web mean that Courts within the Community are inevitably finding guidance from other Courts, wherever located. In that context, it is noteworthy that the US Supreme Court decision in *Metro Goldwyn-Mayer Studios Inc. v. Grokster Ltd* this year dealt with the difficult area of technological devices which can be used for infringing and non-infringing ways.

The Court used the notion of distribution with the object of promoting infringing use as the key criterion. It decided that "*the inducement rule...is a sensible one for*

*copyright.” Accordingly, it held that “one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement is liable for the resulting acts of infringement by third parties.”*

9. The Directive’s “horizontal” approach to limitations on liability was crafted at a very early stage in the development of the Internet and the Web. Since then, there have been substantial developments in the technologies underlying hyperlinking, search engines and content aggregation services, as well as the amount and variety of content to which they index and make available, and the ways in which they work. The Member States that have applied additional provisions to the concept of liability of hyperlinkers and location tool services may not be correctly focused to take account of the way that the concepts have evolved since the Directive was adopted.
10. Due to the emerging and rapidly changing technology in this area, the DCF therefore believes that the extension at this time of the limitations on liability in Articles 12 and 14 of the Directive concerning the use of intellectual property to providers of hyperlinking, location tools or content aggregation services would risk providing unwarranted protection for piracy-directed technologies which would undoubtedly be designed to satisfy any general definition that might be adopted. Put simply, the “horizontal approach” has reached a dead end.
11. However, the on going review of the Directive, should take account of the way that the market place is starting to distinguish responsibilities for different types of hyperlinks, location tool services and aggregation services, taking into account the economic intentions of those providing the links or services, the practical business procedures which are developing and the importance of the protection and respect for copyright and intellectual property rights.
12. The DCF recognises that developments in the delivery of content online have raised genuine concerns amongst certain legitimate content aggregators. These concern the emergence of activities within an “information society service” which involves receipt of information from a third party for inclusion in the service within “aggregated content” in such a way that the service provider has no practical means of gaining actual knowledge of whether the information is misleading, defamatory, or in contempt of court, unless and until the service providers is provided with knowledge or awareness of a potential claim. These concerns relate in particular to their exposure to criminal liability arising from the automatic (i.e. ‘machine to machine’) distribution of content which they receive under licence from third parties, aggregate and re-distribute without any form of human intervention.
13. DCF considers that the proposal to create a narrowly defined exemption from liability to meet these concerns merits further analysis. One of the ways to do this is in conjunction with the expected Department of Constitutional Affairs consultation on the wider issues raised by the Law Commission in its scoping study in relation to the liability of ISPs and concerning online archives originally published in December 2002. However, there is unanimous consensus amongst DCF members that such an exception should not affect criminal or civil liability for copyright infringement

For all of the above reasons, and subject only to the comments in paragraphs 10 and 11 above, the DCF therefore concludes that the demonstrable risk of causing substantial damage to rights holders by the introduction of unwarranted extensions to the limitations of liability contained in Articles 12 to 14 of the Directive significantly outweighs the perceived but unproven risks to service providers seeking the types of extensions specified in the Consultation Document.

### **EC Commission's review of the Database Directive**

Databases are at the heart of almost every aspect of the diverse magazine business and its competitiveness and profitability. Databases facilitate publishers in both their marketing strategies and their use of advertising space.

A recent UK study by GfK NOP on "*Professional Media: connecting business*", which was commissioned by the Business Information Forum, shows that the business and professional media sector is worth €25 billion to the UK economy.

This sector is almost entirely database-driven through data capture, analysis and sales, and subscription-based marketing. The UK is acknowledged as representative of business to business activity throughout the EU and the developed world, and the value of the business and professional media industry in the EU is estimated to be well in excess of €200bn, having more than doubled over the past eight years.

Data provided by key members in confidence to PPA, shows that as much as 30 per cent of their costs involve the creation, compilation and maintenance of databases, which grossed up, suggests an annual investment of at least €60bn across the EU.

A recent survey of magazine publishers by FAEP, the Brussels-based organisation representing national magazine publisher associations indicates that:

- 80% of publishers make their data available as a database;
- 50% published more databases in 2005 than in 2000; and
- 80% have increased the amount of data content in databases since 2000.

DCF members, such as like PPA, do not concur with suggestions that the creation of the *sui generis* right has had adverse effects on competition. Conversely, PPA considers that the introduction of the right has provided a catalyst to publishers - particularly the business and professional sector, but also SMEs less equipped to self-manage rights protection - to invest more heavily in the production and use of databases.

PPA notes with interest that US publishers are currently lobbying for the introduction of the *sui generis* right in the USA.

PPA believes there is ample evidence to demonstrate that, in its entirety, this Directive has played an extremely important role in the development of the EU information society and made the EU a more desirable environment in which to develop this important industry sector.

### **Final Conclusions/recommendations**

#### **IP Education:**

- Improving trust in the IP system should be addressed through encouraging improved media literacy across the whole of society, and through industry becoming more transparent about the way in which it explains to consumers the conditions which attach to the licensing or authorised use of copyright works.
- Children should be educated about IP from the earliest age. Support and backing should be given to such initiatives as British Music Rights' "Respect the value of Music" project and the Patent Office's Think Kit.
- Government should endorse the CREATE statement and encourage its adoption into the citizenship curriculum in schools.
- DfES should become actively involved in improving IP education and awareness.

#### **IP Enforcement:**

- DCF urges that the recommendations of the IPCOI (see above) be pursued simultaneously and consistently with the key message that Government support for the creative industries is matched by acceptance of the need for stronger deterrence against IP crime and online infringement. Without this, there is an absence of coherence in the Government's commitment to the sector.
- DCF would draw attention to the Alliance against IP Theft submission, which too makes some important points regarding IP enforcement.

#### **Role of the Patent Office:**

- DCF members recommend that the government supports the Patent Office to continue its rigorous enforcement and educational work.
- Rebranding the Patent Office as an IP Institute or bureau would assist transparency—since the historic name “Patent Office” sounds outmoded in a digital age and is too narrow for its current remit.

#### **Private Copying**

- The DCF understands the call for clarity in relation to private copying but does not believe such clarity can only be achieved with the introduction of a private copying exception.
- Clearer licensing agreements, greater educational awareness over the conditions of purchase, or greater communication from the licence holder as to how that purchase can be used, are all possible solutions, and are currently being explored individually by our members (along with the pros and cons of a private copying exception). Please refer to those submissions for greater detail on these individual positions.

#### **Digital Rights Management**

- Government and Parliament should continue to monitor developments in the way that new technical protection measures and rights management information systems are being brought to market, including through further consultation with all stakeholders.
- Government should support improved education and awareness about the real scope of products which might fall under the generic description of “Digital Rights Management” in order that consumers are better informed about the ways in which such products can work to improve efficiency and provide for consumer choice.
- Additional legislative intervention over and above the framework recognised within the EC Copyright Directive is premature and will potentially impede the development of technical protection measures and electronic rights management systems which will in the longer term best serve the development of new products and services within a digital communications environment.
- The Government should refer to, and build upon on the vast research and work already done by numerous organisations in the UK (e.g. the Broadband Stakeholders Group in 2003) and in the EU (High Level Working Group on Digital Rights Management in 2004) and encourage further research which helps to test and develop information and themes emerging from earlier studies about the use of technical protection measures and electronic rights management systems

#### **Orphan Works**

- DCF believes that the issue of “orphan works” warrants further review.

### **E-Commerce Directive - extension of liabilities**

- DCF is opposed to any further extensions to the exemptions from copyright liability beyond those already contained in the UK Regulations which implemented the Directive.

### **EC Commission's review of the Database Directive**

- The EC Commission's review of the Database Directive has raised concerns for many DCF members. It is not thought that the Commission has been able to fully consider the variety of ways in which the sui generis rights has application. Database protection does not just have application to entirely new databases. Given the limited data available to the Commission, a fuller regulatory impact assessment would be warranted before the Commission proposes taking any action other than to leave the provisions of the Directive as they are.
- DCF would refer the Review team is to the individual submissions from DCF members on this issue, with particular note to the Periodical Publishers Association's (PPA) Response.