

COVER SHEET FOR RESPONSES

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Please indicate below which issues are covered by your response. Not all issues will be relevant to all respondents – please feel free to skip questions that are not relevant to you.

General Questions covered:	
How IP is awarded	<input type="checkbox"/>
How IP is used	<input type="checkbox"/>
How IP is licensed and exchanged	<input type="checkbox"/>
How IP is challenged and enforced	<input type="checkbox"/>

Specific Issues covered:	
Current term of protection on sound recordings and performers' rights	<input checked="" type="checkbox"/>
Copyright exceptions – fair use and fair dealing	<input checked="" type="checkbox"/>
Copyright – digital rights management	<input checked="" type="checkbox"/>
Copyright – orphan works	<input type="checkbox"/>
Copyright – licensing of public performances	<input type="checkbox"/>
Copyright – designated archive status	<input type="checkbox"/>
Patents – utility patents	<input type="checkbox"/>
Pharmaceutical Supplementary Protection Certificates (SPCs)	<input type="checkbox"/>
Trade Marks – international issues	<input type="checkbox"/>
Designs – registered designs and unregistered design rights	<input type="checkbox"/>
Legal sanctions on IP infringement	<input type="checkbox"/>
Parallel Imports / International Exhaustion	<input type="checkbox"/>
Coherence between competition policy and IP policy	<input type="checkbox"/>

Have you raised any other issues in your response?

Y N

Details of accompanying documents (Please continue on additional sheet if necessary)
4 page statement of Intel Corporation attached

Please TICK BOX if you DO NOT want your response posted on the Gowers Review website.

**COMMENTS OF INTEL CORPORATION SUBMITTED IN CONNECTION WITH THE GOWERS
REVIEW OF INTELLECTUAL PROPERTY**

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Intel Corporation commends the Chancellor of the Exchequer, Mr. Gowers and the entire Review team for your inquiry into the important policy issues raised by the Gowers Review of Intellectual Property, and welcomes the opportunity to provide comments. Our comments begin with some brief information about Intel Corporation, and then turn to certain specific issues raised by the Review team in the February 23rd Call for Evidence. While Intel Corporation has interests across the range of issues raised in the Call for Evidence, we have limited our comments to three specific copyright issues.

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About Intel Corporation. Intel Corporation is the world's largest semiconductor manufacturer. Among other things, we provide the "building blocks" at the heart of the worldwide digital economy, including desktop, mobile, and server computers, digital entertainment devices, and networking and communications products. Intel has been a technical innovator for over 30 years and has a significant interest in robust intellectual property protection. Intel is among the world's most prolific producers of patentable technologies. Our trademark symbolizes innovation in the technology world. As the owner of a vast array of copyrighted works, Intel is acutely aware of the importance of protecting copyrights as an incentive to creativity. Intel employs more than 8,000 software engineers whose efforts are dedicated to generating copyright-protected software.

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Current term of protection on sound recordings and performer's rights. Healthy copyright policy strikes a careful balance between creating incentives and rewards for copyright owners and providing benefits to the public. As a creator, owner and user of copyrighted works and other forms of intellectual property, Intel respects and relies on this balance. Copyright term extension is a complex issue. While we understand the desires for uniformity and recognize the growing tendency for one country after another to extend its copyright terms to match those in other countries, Intel believes, that repeated extensions of the copyright term – even if each such extension is itself only incremental and limited in time – will ultimately undermine the optimal balance.

There is a symbiotic relationship between the development and deployment of digital computing, networking and communications technologies and the wealth and robustness of the content that people are able to access, communicate and use. Consumers rely on digital technologies created by Intel and other companies to gain access to and use content in new and compelling ways. The continued viability and expansion of these technologies depend on readily available content that is of potential use and relevance to the public. Thus, as a participant in efforts to promote the progress of science, innovation and creativity, Intel has the opportunity to observe the importance of a robust and constantly-refreshed public domain.

The availability of rich new public domain content inspires new creation, innovation, and progress. At no time in history has the promise of the public domain been more tangible than today, made possible through digital technologies available to all. The capacity and accessibility of connected computing and networking technologies, the creative tools made possible by digital computing, and the eventual software contributions to an already engaged open source community, give unprecedented new meaning to the phrase “public domain.” While it is inherently difficult to determine where to draw the line, Intel urges policymakers in the U.K. to evaluate incremental copyright term extensions with an understanding that digital computing, networking, and communications technologies have created an historic opportunity to give the phrase “public domain” new meaning.

A healthy and vibrant public domain is necessary to speed the rate of technological innovation and network build-out, as it provides a rich archive of materials that can be shared and distributed without restriction. The value of works in the public domain thus has become increasingly important to the development and deployment of creative next-generation digital technologies and tools. New technologies that can be applied to public domain content in unrestricted ways will ultimately benefit both new and existing content creators and content consumers. Development and innovation during the “information revolution” will flourish when there is reasonable access to public domain content that can be used in any and all creative ways, without restriction and without harm to the artist, author or proprietor who is no longer living or who has already benefited from the work. In this context, the more robust the public domain, the more robust the discourse, the communication, and the interaction with creative and informational material.

In this very real way, the growth of digital technologies and the promise of improved communications tools directly benefit from the continued vitality and growth of the public domain. If the public domain – material that is available to all on an unrestricted basis – steadily decreases in value due to the lack of new material, the need, and demand for a full range of new technologies and innovation will also decline. One cannot exist without the other. Intel has observed continued evidence of a fundamental truth of intellectual property – that the continued growth and vitality of the public domain is essential to the promotion of science, the arts and new creative efforts.

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Copyright exceptions: fair use. Intel believes adding the basic principle of “fair use” to English copyright legislation is in the public interest and promotes important societal values such as education and speech. Intel believes that the principle of fair use can also play a critical role in promoting technical innovation, and that the principle should be meaningfully established in the digital environment. A copyright

regime that does not include a robust fair use doctrine lacks a fundamental balancing point protecting the interests of consumers and technical innovators: for example, innovative device features that enable interesting and useful applications that rely on private non-commercial copying by consumers within the “digital home” may not be produced, or may be produced only with sub-optimal, inefficient functionality. Intel believes that a well-balanced copyright regime should permit consumers to make reasonable personal uses of content they have legitimately acquired. The challenge of the legislator is to strike the right balance.

Copyright owners can choose to set technological limits using digital rights management (DRM) tools, but we believe that those limits must meet consumer expectations or the digital offering will not be successful. Further, DRM solutions give content owners the opportunity to enable flexible uses, including copying, of the purchased content.

Intel believes that, in a digital environment, copyright levies are a particularly poor mechanism for compensating copyright owners. Levies regimes seek to replace the real market value of a copyrighted work and its associated permitted uses with an artificial value in the form of an indirect tax. Intel believes that whatever bundle of rights a consumer obtains with respect to content she lawfully acquires, whether express and controlled by a digital rights management system or provided by the law (express or implied), should be included in the price at the point of sale. It would not be in the interest of either right holders or consumers in the United Kingdom to create the sort of levies systems which exist in many European countries. These systems are widely regarded as being inefficient and distort the market; create national monopolies; lack in transparency; and are unfair to both rights holders and consumers. In fact, the European Commission recently announced its intention to initiate the reform of levies systems with a view to phasing out levies in the digital environment.

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Copyright – Digital Rights Management. Intel believes that rights holders should be free to use technical protection measures to support new digital business models. We believe that creative offerings that give consumers flexibility, portability, and choice—all of which can be enabled by existing content protection and DRM tools—will succeed in the marketplace and benefit both consumers and rights holders. Ultimately we believe that market forces can drive development of business and technical models that (a) provide new, compelling services for consumers that preserve or extend existing consumer content usage models, (b) protect content owner interests and encourage content owners to make content available in a digital environment, and (c) create an environment of robust technical innovation. Intel believes that in a thriving marketplace, the content protection and DRM solutions that gain market acceptance will be those that balance the interests of consumers, rights holders and technical innovators. If consumer expectations are not reasonably met by such protected offerings, they will not succeed. Governments can ensure that this market dynamic happens within a framework that functions effectively and that protects key public policy interests.

A critical ingredient of a well-functioning market is consumer knowledge. Consumers must be able to make fully-informed marketplace decisions, and should not be surprised by DRM functionality. Intel believes that consumer notice requirements in

connection with content protection and DRM are not only appropriate, but will in fact help drive both the deployment of new business models and consumer acceptance of content protection and DRMs generally.

Intel recognizes that the use of content protection and DRM tools can raise challenging public policy questions when their use is over-reaching and/or against public policy. One public policy consideration of particular interest to Intel is ensuring that any legal infrastructure designed to support content protection and DRM technologies does not inhibit technical innovation. We recognize and agree that maintaining the integrity and security of a DRM is important both from a practical and a business perspective. However, an example of the challenges this creates is that current laws designed to protect DRM systems in some jurisdictions also prevent device manufacturers from enabling private uses of content that are otherwise legal under applicable copyright law. Such laws may create significant opportunity costs for consumers and technical innovators (e.g., innovative device features that enable interesting and useful applications that are lawful within the "digital home" may not be produced, or may be produced only with sub-optimal functionality), and may in fact discourage consumer acceptance of content protection, DRMs and new business models.

However, Intel does not believe as a general matter that legislatures should mandate particular content protection systems, or mandate particular device designs or features with respect to content protection. Further, Intel generally does not support "policing" mandates, believing that the role of traditional law and rights enforcement should address acts of infringement by pirates large and small.