



37-41 Gower Street London WC1E 6HH
Tel: +44 (0)20 7299 7730
Fax: +44 (0)20 7299 7780
Email: pls@pls.org.uk

28 April 2006

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

Thank you for this opportunity to contribute to the Gowers Review of Intellectual Property.

Background

The Publishers Licensing Society was established 25 years ago by the UK publishing industry. Its role is to:

- oversee a collective licensing scheme in the UK for book, journal, and magazine copying
- stimulate innovation and good practice in rights management
- clarify the relationship between traditional copyright management practices and those needed in the digital age

We very much welcome the Gowers Review and its objectives.

Introduction

Our submission focuses on copyright licensing – particularly collective licensing for book, journal, and magazine publishers – and innovative technological approaches to simplifying copyright management for both creators and users.

The PLS is committed to working in partnership with organisations representing creators and the creative industries. We have had the opportunity to see and comment upon – and **hereby express full support for** -- the submissions made by the Alliance Against IP Theft, the Association of Learned and Professional Society Publishers, the British Copyright Council, the Digital Content Forum, the Publishers Association and the Periodical Publishers Association.

The PLS is also committed to working in partnership with organisations representing users in order to find balanced and pragmatic solutions for the innovative management of publishers' copyright. In particular we are

developing close partnerships with the British Library, the Royal National Institute for the Blind, and organisations in the University sector.

General Questions

3. How IP is licensed and exchanged

Obtaining permissions and licences can be time consuming for both creators and end-users. The copyright framework is inherently flexible, and yet need not be so complex to administer. Harnessing new technology to decrease complexity and maximise flexibility should be a key aim for the UK, however much of the technology is still in its infancy and further research and development is needed. In order to nurture new technologies to increase the flexibility – and decrease the complexity - of copyright management the UK needs:

- More cooperation and trust between creators and users
- A real commitment from all stakeholders to build digital infrastructure based on open international standards
- Time and funding to develop appropriate infrastructure

Undoubtedly submissions will be made to the Gowers Review by groups who express frustration about licensing, or who demand additional exceptions and/or regulation. As the creation of digital infrastructure will take some time, something is needed to ease these tensions in the short term.

Educational programmes could be helpful to decrease frustration in the short term. For instance potential users of copyright material often approach publishers for permissions with no clear understanding of what copyright is or why permission or a licence is even needed, and with unrealistic understandings of the costs of creating high-quality digital information and the need for any organisation to make a surplus for reinvestment. It can therefore be challenging for these users to articulate their rights requirements. Publishers are very creative and talented people, but unfortunately are not mind readers! Without a clear articulation of requirements it is difficult to grant permissions quickly or to keep administration down. A coherent educational programme about IP at primary, secondary, and especially tertiary levels - and also within business and government - would reap rewards quickly. Such an education programme should include both information about why copyright exists, and what rights are available, but also pragmatic information about finding rights owners and clearing/licensing rights.

In universities there are new programmes to make academics more aware of their intellectual property rights; however these are too often tied to “advocacy” campaigns by administrators keen to reduce their expenditure on collections. A balanced educational campaign specifically designed to promote informed choice by creators and users would be far more constructive. Individual choices should not be so constrained by the interests of institutions with which they are affiliated.

Collecting societies continue to have real potential to facilitate the discovery of works and also contact details for the current rightsholders of those works. Collecting societies can also simplify copyright licensing by issuing more one:many and many:many licences, and by working creatively in partnership with one another to develop broader one-stop-shops. In the literary sector rightsholders have a choice about which collecting society to work with, if they choose to do so at all, and so we are not plagued by the competition issues of concern with respect to the collective licensing of music in Europe. Collecting societies must, however, continue to develop licensing solutions that do not impede the normal commercial exploitation of works.

4. How IP is challenged and enforced

Relevant to collective licensing is the Copyright Tribunal which will be the focus of a separate review by the Patent Office. The PLS will comment more fully in that review. Our key message will be that a less adversarial and more affordable system is desired, and also the right for the Tribunal to be accessed by both rights holders and users.

Specific Issues

Copyright exceptions – fair use / fair dealing

The UK has a well established system of exceptions that conform to the Berne Convention. Exceptions should not be extended further, and must not conflict with the normal exploitation by the rights owners of a work in copyright.

Private copying happens, and rightly so. This is an area that has never been entirely clear in the UK. We feel strongly that this can best be handled through voluntary licensing – primary and/or collective – and therefore is no need for an exception or levies for private copying. Voluntary licensing arrangements ensure that appropriate terms and remuneration are negotiated between rightsholders and users, and thus can help greatly to build trust.

In general we see the biggest barrier to the use of copyright material to be a lack of trust between rights holders and users, and a lack of understanding or perhaps respect for the fact that rightsholders have the right to choose how to exploit their works just as consumers have rights to make informed choices about what it is they purchase. **Choice and trust** are essential touch stones in moving forward with a fit and fair copyright system for the digital age.

Copyright – digital rights management

We made an APPIG submission to the DRM inquiry, and note that the Gowers Review Team has access to this information.

We strongly believe that the use of digital rights management technologies should not be regulated as they are in their infancy and hold great potential to improve flexibility for creators and users.

Technological protection measures (a sometimes controversial subset of DRMs) are not often used by the publishing industry. We hear anecdotal evidence that there are sometimes problems for users through the use of technological protection measures, and of course it is in publishers' interests to listen and respond to these instances. It is also true that technical protection measures are often deployed without any problems. In this area of emerging technological infrastructure this is perhaps unsurprising: DRM technology will be entirely transparent to users when working well, and only visible to users if it is not working well.

The PLS is very proud to be working in partnership with librarians, publishers, and standards bodies to develop a new generation DRM: standards for the communication of rights metadata. ONIX for Licensing is the working name for this important international standard.

ONIX for Licensing is a collaborative response to a real challenge: as the number of digital resources in library collection grows, libraries have increasing difficulty complying with the widely differing licence terms applied to resource by their creators and publishers. Librarians and publishers are working together to develop ONIX for Licensing as a standard XML format for expressing and communicating licence terms.

ONIX for Licensing can be used to express any sort of publishers' licence – for profit publishers, not for profit, big, small, in-between – and is compatible with both the approach taken by the Creative Commons initiative and similar initiatives in the music and film industries. The key to interoperability is the use of open international standards, and the involvement of all stakeholders in developing these standards.

The development of ONIX for Licensing is overseen by an international group of librarians, publishers, and library system vendors and is established under the auspices of the relevant UK and US standards bodies. This governing board monitors and makes recommendations regarding the further development of standards relating to electronic resources and license expression, including but not limited to ONIX for Licensing. It is very actively engaged in the development of the ONIX license messaging specification at present. For further information please see http://www.niso.org/committees/License_Expression/LicenseEx_comm.html

Other Issues

Copyright – Orphan Works

The PLS was created as a voluntary collective licensing scheme for publishers' photocopying rights. We therefore have 25 years' experience in collecting royalties for publishers, locating them, and paying revenues collected on their behalf under collective licensing schemes. We believe that collecting societies can and should be tasked with holding revenues in escrow for the rightsholders, and actively searching them out. Collecting societies should also be tasked with creating comprehensive signposts to rights holders and their

works, including an explicit signpost when rights holders have decided that they wish for their works to pass into the public domain.

Copyright – Extended Collective Licensing

In the digital era there may be greater risk to collecting societies in agreeing blanket licences for digital uses. The extended collective licensing solutions developed in Scandinavia, and deployed recently in Canada, are potentially an interesting way for this risk to be managed in the UK.

Conclusion

The succinctness of this response does not adequately reflect our deep passion for publishing, copyright, innovation, partnership and the important spectrum of issues highlighted by the Gowers Review of Intellectual Property. We hope that those involved with the review will appreciate both our brevity and the fact that we have not duplicated the sterling efforts of our partners whose submissions we fully endorse (see above for the list).

The PLS is not a lobbying organisation, but an organisation to stimulate innovation and good practice in rights management and to clarify the relationship between traditional copyright management practices and those needed in the digital age. In this capacity we would be delighted to support the Gowers Review in any way. This might involve – but is not limited to – clarifying any of the points made within this or other submissions, engaging in debates or consultation events, and/or working in partnership to collect any specific new data relating to licensing or rights-related technology in the UK publishing industry.

With best wishes,

Dr Alicia Wise
Chief Executive