

I note that the Committee for Economic Development has recently issued a report : http://www.ced.org/docs/report/report_ecom_openstandards.pdf

This report mentions many of the same themes as my submission :

'The Council recognized the importance of protecting the interests of initial creators, authors, songwriters, inventors but also saw a critical role in the historically balanced intellectual property scheme for the vast number of potential follow-on innovators who build upon earlier innovation by standing on the shoulders of giants' (page 9)

'Consistent with the position it has taken in its earlier reports, the Council recommends that any legislation or regulation regarding intellectual property rights be weighed with a presumption against the granting of new rights. The burden of proof should be on proponents of new rights to demonstrate with rigorous analysis the necessity of such an extension, because of the benefits to society of further innovation through greater access to technology.' (page 13)

'The Digital Millennium Copyright Act should be reviewed with the aim of guaranteeing access under the Fair Use doctrine to digital information that has been the subject of some form of access control and of fostering open innovation and interoperability involving products subject to the Acts protection.

Proposed legislation or regulations regarding intellectual property rights should be subject to the Adelphi Charter test, which establishes a presumption against the grant of any new rights, requires that proponents of new rights bear the burden of proof, and calls for rigorous analysis of the impact of the proposed changes.' (page 51)

Chris Brand

----- Original Message -----

Thank you for the opportunity to contribute to this process.

My main concern is the term of copyright protection, particularly regarding sound recordings. I have read in the press that Cliff Richard thinks that this term should be extended.

I believe that the term should not be extended. A lot of very good music is currently being created in Britain by "mashing up" existing music. A lot of this is currently of borderline legality.

This type of work should be encouraged. It is a valuable new form of creativity. It will flourish best when the copyright term for sound recordings is shorter. In general, there does not currently appear to be a shortage of - people willing to accept the copyright bargain offered to musicians - that they

get a certain term of copyright protection, after which their work becomes available for everyone to freely use. Given that there is no shortage, and that lengthening the term of copyright protection is unlikely to encourage many people to pursue a career as a musician, there is no rationale to extend the term of copyright protection.

I have tried to find any research showing that increasing the term of copyright protection encourages creativity and have failed. As far as I can see, any such connection is mere speculation. The term of copyright protection has been increased several times in the past without having proof that doing so would help achieve the aims of copyright. This should not happen again. The most important thing when changing laws is to do no harm. Extending the term of copyright harms the users of copyrighted works as well as the follow-on creators who are influenced by those works or who want to use those works as the basis for their own works (either by preventing such use or by making it more expensive).

Fundamentally, a longer term of copyright would help those who have already created works by harming those who are going to create works in the future.

People die without water, but too much water will drown them. Similarly with copyright, some is necessary to encourage the creation of works, but granting too many rights to rightsholders for too long will drown the creators of the future.

Put simply, the term of copyright protection should not be increased in the absence of reasonable evidence (not hearsay) that doing so will significantly encourage the creation of works. Any evidence indicating that the current scheme is working well should not be taken as evidence that more rights or longer terms for rightsholders would produce a system that works even better. Causality also must be demonstrated. Showing a correlation between increased GDP and decreased piracy doesn't show that one causes the other or, if so, which causes which.

Having said that, if the term of protection is to be extended, it is vital that any such extension not be retroactive. They did this in the USA, resulting in businesses that were relying on works entering the public domain no longer being viable. The simple fact is that changing the copyright bargain retroactively is unfair to everyone, particularly the ordinary British citizenry, who would have some of the rewards that copyright gives them taken away (or at least delayed significantly). It is also clear that extending the term of copyright for works that have already been created can only harm the creation of new works, not encourage it in any way (because the works in question have already been created).

Other issues I'd like to address :

DRM. Users need protection from DRM schemes. The Sony "rootkit" fiasco shows the dangers inherent in any DRM scheme (they all try to protect "content" by giving the user both the encrypted data and the keys to that data

but trying to prevent that same user from decrypting the data themselves. (By definition, this means restricting the user's access to parts of their own computer).

Companies should be free to use DRM schemes only if the user is fully informed of any restrictions on use of the content imposed by the scheme and there is some mechanism whereby the protection is automatically removed when the term of copyright expires. We do not want to end up in a situation where the historians in 200 years time cannot access any of today's culture.

Companies that use DRM schemes should forego any royalties from "private copying" mandatory licensing schemes. There should be no legal protection for DRM schemes. If interoperability is important enough to users or competitors, there should be no legal impediments to them spending the R&D effort to break a DRM scheme. Granting legal protection simply encourages the use of trivially weak DRM schemes which are just a symbolic gesture sufficient to trigger the legal protection.

Fundamentally, DRM schemes usually seem to be about preventing competition rather than protecting content, and should be treated accordingly by the law. Cartels such as the one that licenses the DVD CSS scheme are bad for the free market because they restrict competition and prevent companies (or individuals) from addressing the needs of users (for example, the need to play DVDs on Linux PCs).

The UK seems to have adopted a copyright scheme that grants many of the same rights to rightsholders as in the US, but with many fewer rights being granted to users. This is patently unbalanced. I would prefer to see fewer rights for rightsholders while preserving the same rights for users. Failing this, if rightsholders have similar rights as in the US, users should too. This implies that the UK should move to a "fair use" scheme rather than the existing "fair dealing".

I hope that the review will take a positive step to redress some of the damage that has been done to users and future creators in the last decade or so by governments worldwide allowing more and more of our culture to be locked up for longer and longer.

Chris Brand