



Advancing Industry's View On Intellectual Property Since 1920

Gowers Copyright Consultation
Copyright and Intellectual Property Enforcement Directorate
UK Intellectual Property Office
Concept House
Cardiff Road
NEWPORT NP108QQ

Ref: PP01/08

February 2008

Dear Sirs,

On-Line Inspection of Files at the UK Intellectual Property Office

The recently announced consultation on proposed changes to the UK copyright exceptions prompts us to write to you on a closely related matter which we believe should be included within its remit.

At the July 2007 meeting of the Patent Practice Working Group, the Federation along with other user groups was advised that the UK-IPO is unable to make its electronic case files relating to the prosecution of patents and trade marks available on-line as to do so would be an infringement of the copyright in the various letters from applicants, attorneys and third parties contained therein. This is because, in its current form, section 20 on the 1988 Copyright, Designs and Patent Act (CDPA) reserves to the copyright owner in these documents the right to communicate them to the general public. Sections 47 and 48 of the Act set out reliefs from this reservation but they are not applicable to the UK-IPO in its capacity as disseminator of these documents

The consequence of this is that the UK-IPO is currently unable to provide a very important and valuable service not only to innovators and other users of the IP system, but also to the general public; a shortcoming which apparently does not occur in connection with the same services provided by similar public bodies outside of the United Kingdom (for example by the European Patent Office.) The Federation believes that it is vital and in the public interest that the UK-IPO takes action to resolve this anomaly as soon as possible, action which in any event would be completely in accordance with the Government's policy of making patent information accessible to the public and helping innovation to flourish in the United Kingdom.

Upon closer inspection of the problem, the Federation believes that the law has got into this position as a result of the changes made to the CDPA in 2003 by

Fifth Floor, 63-66 Hatton Garden, London EC1N 8LE
Tel: 020 7242 3923 Fax: 020 7242 3924
admin@tmpdf.org.uk www.tmpdf.org.uk

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Statutory Instrument 2003/2498. The effect of this instrument was to change the narrow wording of the original section 20(d), which read 'to broadcast the work and include it in a cable programme service' to the far broader 'to communicate the work to the public' without making any compensating savings (exceptions) elsewhere.

Clearly under the original wording of section 20(d) this situation would not have arisen so we believe it is entirely appropriate and indeed a necessity that such changes in the law are made at the earliest possible opportunity

Yours sincerely,

Tim Frain, President TMPDF

CC: Sean Dennehey UK-IPO.

NOTE: TMPDF represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. This paper represents the views of the innovative and influential companies which are members of this well-established trade association; see list of members below.

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