



Copyright in a digital world: What role for a digital rights agency? (Consultation paper)

Digital Britain - Interim Report, Section 3.2

IP Federation response to the consultation paper and report (March 2009)

Ref: PP06/09

As creators, owners and users of intellectual property, the members of the IP Federation have considerable interest in the Digital Britain initiatives.

In view of the very limited time available, what follows can only be a brief and preliminary reaction to the consultation paper and to that part of the Interim Report concerning a possible role for a digital rights agency. We may make more extensive comments on this and possibly other issues covered in the report in due course.

There are, currently, a number of government initiatives in which issues concerning digital rights are under review. The recommendations of the Gowers Review of intellectual property have not yet been fully implemented. Both SABIP (Standing Advisory Board on Intellectual Property) and the UK Intellectual Property Office are undertaking studies in the copyright field which directly concern digital rights. These studies are being pursued over different and longer time frames than the "straw man" proposals for a digital rights agency in the current consultation. Furthermore, the Digital Britain Interim Report, the forerunner of this consultation, contains potentially related Actions which are still open, including Actions 11-13.

It is most important that the different studies should be fully coordinated and cross referenced, with no "jumping the gun" on particular issues. All these different, but overlapping, consultations make it extremely difficult for stakeholders to make a meaningful and co-ordinated response to any of them. In particular, it is difficult to comment fully on the current proposals for a Rights Agency until it is clearer what legislative initiatives are proposed under Action 13 in the Digital Britain Interim Report. This is extremely relevant as any initiatives pursuant to Action 13 would impact the role of the proposed Rights Agency.

The companies represented by the Federation participate in all aspects of the digital knowledge economy - as creators of innovative forms of content and methods of distribution, as inventors and producers of the equipment and systems used, as distributors and service providers and as users of final output in all its forms. We therefore sympathise with the aim of the Interim Report to encourage dynamic and innovative development. But it is necessary to balance fairly the needs of creators, innovators, distributors and users. There will be no innovation if the needs of innovators to obtain fair reward for their creations are not recognised. So rights management and enforcement regimes should afford maximum flexibility to users combined with fair reward for creators and distributors. ***The systems to achieve this should be considered separately from the measures needed to prevent counterfeiting and copyright piracy.***

It is important to recognise that many satisfactory arrangements for licensing copyright rights are already in place. Memorandums of understanding are being trialled. We are yet to be convinced that major restructuring of the law is needed. If it is, it will need to be initiated at international level.

Much action has to be international - at the very least pan-European. Local solutions to foreseeable problems may be ineffective. Useful and innovative content can be made available anywhere and licensing and other regimes, such as rules for ISPs, should be able

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to cope with this international dimension. New forms of cooperation in the private sector will probably be needed to handle digital rights collectively, on a pan-European or international basis. We therefore expect both government and private sectors in the UK to lead in seeking international agreement.

We have considerable misgivings about the proposals for a Digital Rights Agency, to be set up and operated by industry.

There could well be benefits in setting up a properly representative stakeholder forum which would meet periodically (e.g., twice a year) to discuss the challenges involved in the distribution of original/innovative content in digital format, while maintaining enforceable economic rights in acceptable ways, and make recommendations both to stakeholders and to government. However, it might be very difficult to establish a group that properly represents all stakeholders, including creators (individuals and companies), collective rights administrators, distributors and users, and to set a useful agenda, since the interests of those who should be involved vary so widely and will often conflict. The chances of agreement on many basic matters or achieving cooperation on the raft of initiatives suggested in the consultation paper might be slim.

Many of the difficulties alluded to in the consultation paper will be very real. Competition law is likely to view any coordinated action by industry, e.g., on collecting or settling payments, exchanging information or setting standards with suspicion. Individual companies might be loath to disclose new ideas, such as technical measures, for combating unlawful downloading. However, a discussion forum might be a suitable place for bringing existing industry groups with divergent interests together for general discussion and for highlighting whether any changes may be desirable in existing copyright and other law and even in the Berne Convention.

Such a stakeholder forum should not be referred to as an “Agency”, nor should it, as expressly suggested in the interim report and referred to in the consultation document, have responsibility for operating a digital rights system and enforcing the rights. Indeed, a government agency for dealing with intellectual property rights - the UK Intellectual Property Office (IPO) - already exists - with responsibilities for policy making, information and education, regulation and adjudication. It has a strong capability in copyright matters. There should be no need for a new Agency.

Far from representing all stakeholders, an officially recognised new Agency, with powers stemming from legislation, might be seen as acting on behalf of rights owners and tend to inhibit the development of new, market led business models. It might also restrict the development of satisfactory and legitimate working arrangements and understandings among private sector entities, e.g., collecting societies. It would not be pan-Europe and would be contrary to the EU Internal Market.

Before steps towards establishing any form of stakeholder forum are taken, we need to know the detail of the legislative measures already in prospect - as referred to e.g., in Action 13 in the Interim Report. ***The consultation referred to in Action 13 on detailed proposals should therefore be completed and reported on before any moves are made under Action 11.***

As regards funding, a light touch approach involving a properly representative stakeholder forum, meeting say twice a year, would not incur prohibitive costs. Bearing in mind that not only stakeholders but also government have a responsibility to ensure that the legal framework and other mechanisms are fit for purpose, it is also reasonable to expect that there would be a government contribution to the running of any forum.

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However, the responsibilities of the body envisaged in the consultation paper are indeterminate in scope and potentially expensive. The current economic climate makes such expenditure particularly difficult to justify, not least because the business disadvantages to our members from participation are more apparent than the potential benefits.

We trust that these comments will be fully taken into account.

IP Federation 31 March 2009

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The IP Federation (formerly TMPDF), represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below.

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