

30th June 2015

**BCC response to the DCMS Consultation Paper on
The balance of payments between television platforms and public service
broadcasters – Options for deregulation**

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the creative and cultural industries. Our members also include collecting societies which represent right holders and which enable access to works of creativity.

BCC Member organisations

Artists' Collecting Society . Association of Authors' Agents . Association of Illustrators . Association of Learned & Professional Society Publishers . Association of Photographers . Authors' Licensing & Collecting Society . BPI . British Academy of Songwriters, Composers and Authors . British Association of Picture Libraries & Agencies . British Equity Collecting Society . British Institute of Professional Photography . Broadcast Entertainment Cinematograph & Theatre Union . Chartered Institute of Journalists . Copyright Licensing Agency . Design & Artists Copyright Society . Directors UK . Educational Recording Agency . Equity . Incorporated Society of Musicians . MCPS . Music Managers' Forum . Music Publishers Association . Musicians' Union . National Union of Journalists . Professional Publishers Association . PRS for Music . PPL . Publishers Association . Publishers Licensing Society . Royal Photographic Society . Society of Authors . Writers' Guild of Great Britain

**General comments on this
consultation**

Our members are producers, creators and performers of, or are major contributors (referred to below as underlying rights holders) to the "world class content produced by the UK's public service broadcasters". It is in this context that the BCC responds to this consultation. However, the BCC's mandate covers only matters of copyright and related rights, so our response is limited to the proposal to remove s. 73(3) of the Copyright Designs and Patents Act 1988 (CDPA 1988), which we welcome, rather than to the wider regulatory framework.

**Q5. What do you think the
impacts of removing section
73 (CDPA 1988) will be?**

The BCC has some concerns that the following points have been ignored in the impact assessment:-

1. Some underlying rights owners have concerns to see how any repeal is properly linked with relevant provisions currently included within paragraph 19 of Schedule 2 CDPA 1988 (relevant to recognition of rights of performers).
2. The driver for proposals to repeal s. 73(3) is acknowledged as being the way in which some online players showing Public Service Broadcaster content have emerged and sought to rely upon s. 73(3) to avoid paying copyright fees for the inclusion of programmes in such online services.
3. The efforts that were made by such players to avoid paying copyright fees must be borne in mind when considering the relative value of rights relevant to the range of contributors to a radio or television programme when :-
 - (i) the programme is broadcast on a single service; and
 - (ii) when the programme is broadcast on one service but also relayed (reused) on a second service (which independently profit from the relay of programmes).

4. If that “relative value” is effectively now “back on the table” for negotiations between PSB’s and services involved in retransmission of services (following repeal of s. 73(3)) - the way that PSBs may have “relied upon” the existence of the “must carry” copyright provisions to argue that contractual clearances from underlying rights owners “have” to be included in the original programme fee, rather than market negotiations taking place on the basis that the additional value of a relay - should be taken into account when agreeing relevant fees to cover both an original broadcast and a cable relay that currently gets covered by reliance on s. 73(3) CDPA 1988.

In making these points, we note that the Impact Assessment makes reference only to the negotiations that take place between PSBs and cable operators and suggests that any detailed assessment of the potential impacts would ideally examine the copyright payments between different broadcasters and any cable operator. However it is stated that data is not available because it is commercial information.

It is accepted that, in practice, contractual negotiations with underlying rights owners provide for broadcasters to authorise approved re-transmissions either by licence or under the current statutory provisions. However, the increasingly commercial dynamic for assessing and agreeing fees/payments, that recognise the value of retransmissions relevant in negotiations between broadcasters and underlying rights owners in programmes to be communicated to the public, is an important issue that should not be forgotten.

It is the BCC’s view that, in addition to the legal reasoning for repeal of s. 73 (3) CDPA currently outlined in the Balance of Payments Impact Assessment, this quite separate issue must be addressed.

Q6. What transitional arrangements, if any, would be needed to accompany removing s73, what form might these take and how long would they be needed for to allow for cable platforms and Commercial PSBs to re-order their commercial relationships?

The BCC understands that interdepartmental discussions between DCMS and IPO, on the need for suitable “transitional provisions”, are already in hand and would welcome the opportunity for stakeholders representing underlying rights owners to be consulted over the detail of any transitional proposals linked to the repeal of s. 73(3) CDPA.

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