

14th August 2015

The Master of the Rolls and the Chancellor of the High Court
c/o Vennina Etori
Private Secretary and Legal Advisor to the Chancellor of the High Court
Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Email: Vannina.Etori@judiciary.gsi.gov.uk

Dear Sirs,

IPEC Proposed Reform of the Appeal Routes from the County Court

We understand that you are considering changes to the appeal routes from the County Courts to the High Court and Court of Appeal and that the appeal routes from the Intellectual Property Enterprise Court ("IPEC") may be altered as a result. We are writing to urge that the appeal route from IPEC remains directly to the Court of Appeal.

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 (including multinationals) within the creative and cultural industries. Our members also include collecting societies which represent right holders and which enable access to works of creativity. Information about BCC member organisations and the right holders they represent can be found at <http://www.britishcopyright.org/bcc-members/member-list>

Currently appeals from interim decisions of IPEC go to the general Chancery Division of the High Court and appeals from final decisions go to the Court of Appeal. We understand that the changes under consideration may result in all appeals going to the general Chancery Division of the High Court.

We consider it important that appeals from final judgments of IPEC continue to go to the Court of Appeal. Changing this so that all appeals, including final decisions, would be to the general Chancery Division, would be a retrograde step. It would be highly detrimental to IPEC and the position it is already establishing as a forum of choice for SMEs in intellectual property disputes, as well as IPEC's role in promoting England and Wales more widely as a forum of choice for such matters. We would refer you to this recent report <https://www.gov.uk/government/news/independent-review-finds-ipec-reforms-have-improved-access-to-justice> which established that there was great user satisfaction with IPEC and noted that the reforms have improved access to justice, views which the BCC fully endorses.

We outline briefly our reasons:

1. IPEC is a specialist list of the High Court. It is no longer a County Court, even though that is its derivation and even though it has a small claims track (which is also treated for technical reasons as being part of the High Court.) Its judges are expert in its specialist jurisdiction. Cases before IPEC can raise issues in which none of the Superior Courts have considered before and for which any review of the law should be undertaken by the Court of Appeal, without the extra delay and added costs of an

appeal hearing in the general Chancery Division of the High Court where the case is likely to be heard by a judge who has less specialist expertise than the judge at first instance in IPEC.

2. We understand that there is no proposal for the appeal routes from the Mercantile Court to be changed. When abolishing the Patents County Court and replacing it with IPEC, the Mercantile Court was taken as a model. Both of these courts should be treated in the same way.
3. IPEC has capped scale costs. This has led to small and medium sized enterprises (SMEs) feeling more confident about accessing justice as suggested in the report referred to above. Where appeals are necessary (and we understand that there are in fact very few), then the parties should not have to go through multiple layers of appeal before reaching the Court of Appeal, with the commensurate risk of additional costs going well beyond the cost capped scale (even if the court orders those appeal costs to be limited), and the additional concern that a dispute may not be finally resolved until a substantially longer period has passed.
4. Intellectual property is an international business. Intellectual property rights holders, wherever they are based, may choose the IPEC in preference to the Patents Court and the more general Chancery list over the courts of other European jurisdictions, because it is part of the High Court, but with a restricted procedure and a cost capping regime that in those respects is more akin to the procedure encountered in other European jurisdictions. Any perceived downgrading of IPEC may make this less desirable, with such litigation going to other jurisdictions.

IPEC has already proved very successful for users of all sizes. It would be a mistake to jeopardise its success and place users (many of whom are SMEs) at risk of added costs and delays because it is unintentionally caught up in a reform process not primarily aimed at IPEC or arising from any reported difficulty with the current practice.

Please do not hesitate to contact me at janet@britishcopyright.org should you require anything further.

Yours faithfully,



Janet Ibbotson
Chief Executive Officer