

About the British Copyright Council

The British Copyright Council (BCC) 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 provide licensed access to works of creativity. A list of our members can be found [here](#).

The BCC urges the government to prioritise these policy recommendations that have been developed with our membership, which collectively represents the voices of over 500,000 creators, spanning the creative industries.

Copyright protects innovation, expression and freedom of speech.

Copyright supports economic growth and jobs.

Copyright's 'real impact lies in how it is used

1. CREATORS' AND PERFORMERS' RIGHTS

- 1.2 The UK copyright regime provides a world-leading system which recognises and rewards creative work, ensuring fair remuneration for the work of creators, performers and other rights holders. Changes to this regime may risk a reduction in the quality and quantity of creative innovation and, over time, will diminish the value of creative work. For the UK to incentivise, protect and remain attractive to foreign investment, it must retain and grow its current, effective and strong protection of copyright and authors' rights. These hold significant economic importance to the businesses and workers in the creative industries – a core sector of the economy that contributed £115.9 billion to the UK economy in Gross Value Added in 2019. This contribution is greater than that of the aerospace, automotive, life sciences, and oil and gas sectors combined.
- 1.2 Most creators and performers operate on a freelance basis i.e. as individual small businesses. The latest DCMS figures show that 32% of the creative industries workforce as a whole is self-employed. This workforce needs appropriate business-level support, as well as an accessible

and effective legal framework that provides strong protections, so that it can continue to grow its contribution to this sector of the economy.¹

- 1.3 Creators and performers are also users of copyright works; for example, authors may include extracts, illustrations and photographs by others in their own work. Through the licensing mechanisms that it supports, copyright law creates market solutions to enable creators to monetise the exploitation of their work while simultaneously upholding the public interest in accessing and exploiting these works. Copyright and fair terms of contract for creators – including where appropriate mechanisms for the provision of equitable remuneration – are critical to the functioning of the market economy.
- 1.4 Creators and performers also seek a level playing field with their entrepreneurial partners, whether through collective agreements or individual negotiations. Building respect for IP and its rights holders through this equality of bargaining power is a much needed foundation for a fair IP marketplace that values copyright as an asset which enables all those involved to access, exploit, and protect creative work effectively.
- 1.5 Moral Rights, recognised within the 1988 Act, were established and developed primarily around the mechanics of the pre-digital environment. These rights should remain recognised in light of innovative technologies. Moral rights, just like economic rights, incentivise innovation which in turn drives economic growth and improvements in society.
- 1.6 While giving our support to the digitisation of library catalogues, budgets for such projects must include remuneration for additional exploitation of the rights in the underlying creative works as they are ingested and made available in collections. In the same way that the cost of the technical processes involved in digitisation projects is accounted for in the project budget, so should be the cost of remunerating authors and creators for the additional exploitation of their work.
- 1.7 The UK has been a world leader in examining the relationship between copyright and its relevance to the development of AI. In order for this success to continue, copyright protection must be maintained within the context of the development and use of AI applications in order to both compliment and facilitate innovation. Intellectual property rights and data are the fuel for AI development; and mechanisms to ensure that copyright works are not ingested into an AI without the permission of the rights holders are essential.
- 1.8 Recognition of human creativity and authorship is vital for holistic economic growth when making policies in relation to new technologies, with licensing as a key component to ensuring fair compensation to creators and performers.
- 1.9 The BCC is supportive of the Government's intention to ratify the Beijing Treaty on Audiovisual Performances, and there are a range of views within the BCC about how that is best achieved. Further consultation will be required (particularly in relation to Article 11) to ensure that this is done in a way which balances the interests of audiovisual performers with those who produce and invest in audiovisual works. In doing this it will be important to establish safeguards for the position of UK performers internationally whilst giving full consideration of perspectives, concerns and evidence from all affected stakeholders.

¹ DCMS Sector Economic Estimates (Nov 2022). Available from:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1055532/DCMS_Sector_Economic_Estimates_Employment_October_2020_to_September_2021.ods

- 1.10 Detailed research into market impacts on existing effective licensing mechanisms when considering any adaptation of the copyright system is critical to recognising copyright and IP rights as assets that have significant, domestic and global societal and economic value. Not to do so would be hugely detrimental to this world-leading sector of the British economy.

2. THE IMPORTANCE OF MANAGING LIMITATIONS ON COPYRIGHT EXCEPTIONS

- 2.1 The UK copyright framework has evolved and adapted to accommodate new technologies applied within both domestic and international markets, whilst ensuring that incentives to create and innovate are maximised. Any amendment to the scope of copyright exceptions and limitations requires real care to prevent conflicts with evolving normal exploitation of works in both primary and secondary markets and to recognise effects on the livelihoods of creators, performers and SMEs. All creators deserve fair remuneration for the exploitation of their work.
- 2.2 While supporting the underlying function of copyright exceptions as the main means by which the law strikes a balance between the rights of copyright owners and the interests of the general public, any such balancing act should take into account that access can already often be achieved by licensing through the copyright owner. Such licensing constitutes a valuable source of income for the rights holder. Where exceptions or limitations exist, or are introduced, any promise of recognition without the reality of reward poses an unreasonable economic premise for creators and performers.
- 2.3. Private copying remuneration systems have evolved in recognition of the greater uses that a protected work may be subject to as a result of the available technology. If commercial impact of such uses through new technology cannot practically be addressed at the time a service or hardware is sold, systems must be applied to enable rights owners to be compensated for such use. Such compensation supports users gaining greater value from use of the services and hardware – faster and more flexible access – and commercial entities are able to create business models around producing and supplying the necessary products to facilitate these enhanced uses. Such developments should not preclude reward for the use of copyright works.
- 2.4 Exceptions rely on key reference points regarding the context of the permitted use – personal, educational, non-commercial, etc. – applied on a flexible basis governed by the core principles of the Three Step Test. The Test is key for participation in global trade as prescribed by WTO regulations (namely under Article 9(2) Berne Convention, 9 and 13 TRIPS Agreement) and it should apply explicitly. Any new exception that may create imbalances in the commercial market – with accompanying implications for the level of returns received by the individual creators of works – must be reviewed through the requirements of the Three Step Test. If the use conflicts with a normal exploitation of the work and prejudices the legitimate interests of artists, grounds for the recognition of an exception or a limitation must be questioned and alternative market solutions investigated.
- 2.5 Cultural differences can allow for national differences in application of exceptions and limitations but in many cases the exceptions and limitations require a link to licensing or levy systems to make them compatible with the Three Step Test. National Treatment provisions should recognise and accommodate this.
- 2.6 Where exceptions or limitations on exclusive rights are necessary, we strongly support the principle of exceptions subject to license which contribute to the growth of capital, investment and jobs in this core sector of the economy. We welcome the UK Government's continuing support for this model and for building respect and knowledge of IP with wider society. We

suggest that Britain's leading copyright and IP framework should be promoted at International level through Britain's bilateral and international trade agreements.²

- 2.7 We support the principles behind extending the exception subject to licence provisions included within S.35 and S.36 CDPA to support distance learning linked to the operation of educational establishments.

3. VALUE OF LICENSING SOLUTIONS

- 3.1 We value the pre-eminence of exclusive rights and believe that where licensing arrangements are already in place and work well, they should not be interfered with. However, where licensing solutions are based upon statutory provisions supporting fair remuneration systems for right owners via collective management, it is important that National Treatment provisions are recognised and applied for the benefit of UK rights holders and countries around the world in which such systems are applied.
- 3.2 Policies which promote "free" access to works may misrepresent required recognition of rights in the works being accessed "freely" as far as users are concerned. Free" services appeal to consumers but the business models behind the delivery of creative work in the digital age – perceived as free by consumers – must be supported by an effective copyright regime to enable payments to be made to rights owners. It does not matter whether the ultimate user thinks they have "paid" for access. The important thing is for the creator to receive fair remuneration from others who benefit from the use of their work. Ensuring that copyright is treated as an asset by consumers, policy makers and entrepreneurs is crucial to the growth of durable/sustainable business models, and in attracting and sustaining investment and employment opportunities for creators and innovators.
- 3.3 There is no "one size fits all" solution for dealing with the exploitation and protection of copyright works. Different sectors of the creative industries will respond in different ways according to a range of factors.
- 3.4 Collective Licensing can provide access to vast repertoires of works for large numbers of individuals – for entertainment or education, but also for business and commercial reasons. Market solutions such as collective licensing schemes ensure equitable and fair remuneration for many different rights holders, exemplifying the necessary balance between exploitation of and payment for creative work.
- 3.5 Rather than developing additional exceptions to copyright, which may deprive creators of remuneration, policymakers should instead support market-led solutions such as collective licensing to provide effective equitable and fair remuneration to creators. In so doing, policymakers could provide creators and performers, as well as consumers and those wishing to exploit those rights, with an informed understanding of their rights and how best to apply these within the market, ensuring that any collecting society has a clear mandate from the vast majority of creators in the relevant sector and that rights holders are able to enter into agreements in an informed and equal bargaining position.

² *NB Deletion of provisions addressed under Hargreaves.

- 3.6 Rights management bodies have established networks of agreements that allow works to be easily exploited in a way that respects the rights of the author to control the exploitation of their works and receive equitable remuneration for said exploitation. These arrangements acknowledge cultural and legal differences in different territories. Measures aimed at providing one-size-fits-all solutions for cross-border access are unlikely to succeed.
- 3.7 Extended collective licensing solutions offered by Collective Management Organisations can have a value where a demonstrable need for such a solution arises in the absence of other efficient licensing or other market-led solutions (e.g. the licensing of orphan works). However, such mechanisms should not undermine existing primary markets and the right for right holders to opt out must be respected and supported.
- 3.8 We are not opposed to a general regulation of collecting societies. However promotion of standards established and authorised within the UK must also be advocated and promoted for adoption internationally and can usefully be advocated under IP Chapters within Free Trade Agreements entered into by the UK with countries around the world.
- 3.9 The British Copyright Council's collecting society members are committed to transparency and accountability and welcome discussions around regulation and other mechanisms aimed at ensuring accountability. Again, such discussions should be reserved to the national level.

4. ENFORCEMENT OF RIGHTS

- 4.1 Online copyright infringement is damaging the creative industries. It affects all creative industries and works: books, films, magazines and newspapers, artistic works, music, radio and television, theatre performances, and more. All of these works are having their real economic value reduced unfairly through online infringement. It is a problem that can and must be resolved. Delivery of solutions against the IPO enforcement strategy in consultation with industry stakeholders remains vital.
- 4.2 The current copyright enforcement system can fail to provide viable means for individual creators to enforce their copyright due to the complexity and inherent cost of engaging with the current processes.
- 4.3 Strong enforcement mechanisms are even more important in an online world that poses new challenges for creators, performers and SME's. The digital age has created a situation in which a large proportion of unlawful online activity occurs at a relatively low level, while the available legal sanctions –such as injunctions and damages awards – can require resources and a level of commitment that is more suited to larger-scale infringements. This places redress for aggregated, individual infringements beyond the reach of most.
- 4.4 Ease of use and transparency of the Small Claims and IPEC system help address these enforcement issues.

5. OTHER

5.1 Commercial v. non-commercial use

We are dedicated to protecting the commercial interests and rights of our members and are therefore opposed to any measures which would threaten individual livelihoods or remove revenue streams.

5.2 User-created content

The term “user-created content” is not new and appears frequently in copyright policy documents. However, technology is opening up the number of ways in which such interactivity will add to, and shape many creative works and online services based around them. There may be a role for user-created content in the digital world and it would be wrong to deprive creators of such work with the freedom to choose whether or not to benefit from the copyright system.

Creating new barriers for a creator to establish “professional status” or “commercial intent” before being entitled to authorise the rights in their work, based upon the principles of copyright, will not encourage creativity and innovation in the future. Instead it will create a division in society that will ultimately make copyright more “exclusive” rather than copyright works being made more available through transparent licensing regimes.

Furthermore, there are legal and practical problems in trying to identify a sub-tier of protected works that are created in a non-professional context. For example, many writers and photographers create valuable works in, effectively, a non-professional capacity. Their works deserve an equal and certain level of copyright protection. If all new work starts with the same rights, owners can make their own choices over how to deal with such rights.

5.3 Term of protection

IP Chapters within Free Trade Agreement can and should advocate adoption of high standards for the protection of copyright above minimum levels prescribed by existing international treaties. Copyright terms of 70 years rather than 50 years (whether after the death of the author or otherwise) should be advocated..

5.4 Tangible goods and the provision of on-line services

The principle of exhaustion should continue to only ever apply to the distribution right applied to tangible goods. Any concept of “digital exhaustion” should be resisted.

Copyright, particularly the right of communication to the public, must apply to ensure payments linked to use of works to be made in ways that reflect not only the permission for the material to be included within a particular service and made available to consumers, but also levels of use within a particular service, and value to those who choose to retransmit such services.

It is impossible to predict relative value for the inclusion of a work within a service. It will be to the benefit of both rights owners and consumers if the option of different price levels for different types of online access can be preserved, reflecting other market forces such as levels of use and linked value added services.

5.5 Public Lending Right

The British Copyright Council supports the Public Lending Right.

5.6 Exhaustion

International exhaustion of copyright and its application to the distribution right applied to tangible goods must be resisted. The BCC and its members have set out elsewhere the economic and wider harm to creative industry sectors should such an approach be suggested. Any change to the regime would have significant deleterious effects, reduce the total production

of creative innovation and overall, undermine the sector's economic importance, its growth, and its appeal to foreign investment. Significant societal detriment: fewer works, by fewer authors, for fewer people.

For more information about the British Copyright Council's programme of work please contact director@britishcopyright.org