

BRITISH COPYRIGHT COUNCIL

Copyright House, 29-33 Berners Street, London W1T 3AB
Tel: 01986 788 122 Fax: 01986 788 847 E-mail: secretary@britishcopyright.org

6th April 2010

Nick Munn
Deputy Director of Copyright Policy
Copyright & IP Enforcement Directorate
IPO
21 Bloomsbury Street
London WC1B 3HF.

Dear Nick,

Pre-Commercial Use

At the recent Joint Consultative Meeting between representatives of IPO and the British Copyright Council, held on the 9th March, Ben Hawes and yourself provided a briefing on three work strands being followed up in relation to IPO's Copyright Strategy and on which we understand that IPO intends to develop guidelines in consultation with stakeholders.

In response to questions from our members about difficulties in defining "non-commercial" use, the term "Pre-Commercial Use" came up.

Particular concerns had been raised over use of the expression "Pre-Commercial" as somehow being a status to be applied for certain copyright works which might attract wider exceptions and limitations to the exclusive rights than would otherwise apply for the owner of a copyright work.

You appeared to suggest that any development of such thinking was an issue on which stakeholders would be consulted and that it was a generic issue around barriers to innovation i.e. a form of use which would enable product development rather than being a status for works relevant to defining applicable copyright exceptions.

Though we do not agree with the suggestion that copyright is a barrier to technological innovation, given that licensing arrangements are available, we are interested in your interpretation. The single issue of technological innovation did not seem to lie behind the Secretary of State's initial announcements about consideration of distinguishing terms for use of "Pre-Commercial" works. These comments appeared to link to wider concerns about "Non-Commercial Use" and "User-Generated Content" which have been raised in relation to both IPO's work on the Copyright Strategy and in the Commission's earlier Green Paper on the Knowledge Economy.

We had, to date, understood the group of copyright works which might be linked to use of the term "Pre-Commercial" to be: "content made publicly available over the Internet, which reflects a certain amount of creative effort, and which is created outside of professional routines and practices" and, to which we would add "made neither for direct or indirect commercial use".

Is this not also the understanding of the IPO?

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I wondered whether you would be prepared to expand on your thinking so we can start to develop our views in preparation for the coming stakeholder consultation.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Janet Ibbotson', written over a light blue rectangular background.

Janet Ibbotson
Chief Executive Officer