

15th June 2016

Dr. Ros Lynch
Director,
Copyright & IP Enforcement Directorate
IPO
4 Abbey Orchard Street
London SW1P 2HT.

Ros.Lynch@ipo.gov.uk

Dear Ros,

The role of publishers in the copyright value chain

The British Copyright Council does not intend responding to the European Commission's public consultation on the role of publishers in the copyright value chain and on the 'panorama exception', firstly because the questions and survey format do not encourage the type of contribution that a representative body, such as the BCC, can make, but secondly, the existing provisions under the CDPA for recognition of rights in published editions (s.8), for first ownership of copyright as between employees and employers (s 11.2) and options for dealings with rights in copyright works (ss 90 to 93C), make it difficult for the BCC to present a consensus view on the specific questions raised. Nevertheless, the BCC has identified some points arising from the consultation and thought it would be helpful to submit these to IPO.

The BCC sees the 'role of publishers in the copyright value chain' and the 'panorama exception' as two quite separate and distinct subjects. The BCC has therefore written to IPO separately about each. This letter covers the 'role of publishers'.

The BCC can address this consultation only from the point of view of the UK where publishers are served by a combination of contract law and the laws relating to copyright (typographical arrangements) and to databases.

Purpose of the consultation

The BCC understands that the IPO will be in a position to submit comments to the Consultation soon after 23 June (despite the formal date for expiry of the Consultation period) and hopes that the IPO will take account of the BCC's views when developing its response.

It is important for the Commission to be clearer about the background to genuine concerns over current differences in application of copyright laws in different Member States with respect to recognition of the status of "publishers" as owners of reproduction rights, distribution rights and rights to authorise communication to the public of works that are published in the form of an edition.

These differences run the risk of publishers in some Member States being unable to assert rights in the same way as might already be possible under the laws of other Member States.

The copyright status of work recognised within published editions should not be undermined because:-

- (a) rules in Member States differ as to recognition over the title to ownership; or
- (b) aggregators use the differences to seek to apply exceptions in ways that take

unfair advantage of such differences, seeking to sidestep the legitimate licensing options that have been, or are being, developed within other Member States.

A better understanding of the Commission's interest and priorities in this issue is needed to give a clear focus for respondents to this consultation. The wide range of issues raised in the questionnaire, combined with this lack of clarity, risks confused responses from stakeholders and confused reactions to any proposal over what problems purported action is really seeking to address.

During internal discussions, the BCC identified three potential reasons for the consultation. They are:-

- Whether publishers are having problems licensing and enforcing their rights, perhaps arising from the way in which authors' rights are transferred to them in the first instance (and the different approaches currently dictated by divergence of rules in different Member States);
- Whether the judgment of the CJEU in *Svensson* has cast doubt on the possibility of licensing hyperlinks, for example, those links served by Google News. If so, how can such doubt be properly addressed by express recognition of rights of publishers for the purposes of Articles 2 and 3 of the InfoSoc Directive 2001/29/EC without undermining the rights that publishers already secure (whether by copyright law or under contract) under existing provisions.
- How the judgment of the CJEU in *Hewlett-Packard v. Reprobel* has raised questions as to the entitlement of "publishers" to levy income from private copying when the issue is tested against the currently differing rules for recognition of the rights of a publisher under EU copyright law.

The BCC has the following comments:-

The problems faced by publishers in the online environment are not based on their contractual entitlement to license their rights but on their practical ability to protect their publications, the value in their content and their rights in those publications, from unlicensed exploitation.

Unlicensed providers not only damage publishers and authors but also compete unfairly with legitimate service providers.

The current lack of clarity allows some online platforms to use artificial protection afforded by the E-Commerce Directive to extract and benefit from the value of publications whilst also preventing publishers from licensing their rights.

Any new Europe-wide neighbouring right for publishers must not interfere with the rights of authors in the publishing sector or diminish the rights that are already recognised in the work of publishers and the repertoire of rights which can be compiled and exploited within existing rules. Options for addressing the issues at a national level may warrant further consideration rather than to mandate the creation of a right at EU level.

UK Perspective

From a UK perspective, the BCC would like to see:-

- a clearer indication of what a Europe-wide publishers' right would look like;

- more information on how such a right would sit alongside the UK's existing publishers' right in the typographical arrangement of the published edition and other rights mentioned previously;
- more information about how any new right would operate in a complimentary way with the rights of those who currently contribute to publications.

I hope that the above is helpful. Please do not hesitate to contact me should you need anything further.

Kind regards.

Yours sincerely,

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

Janet Ibbotson
Chief Executive Officer

c.c. Dylan Foulcher, IPO