

Statement for the British Copyright Council
WIPO SCCR 21 November 2010.11.10

The British Copyright Council (BCC) is an association of bodies representing those who create, hold interests and manage rights in literary, dramatic, musical and artistic works, films, sound recordings, broadcasts and other material in which rights of copyright or related rights subsist under laws applicable in the United Kingdom, and those who perform such works.

The BCC welcomes the further study on the socio-economic dimension of unauthorised use of signals. This highlights the growing list of ways in which signals can be used without authority.

The study also indicates how new markets and opportunities for use are being opened up through the reuse of signals and the copyright works included in them.

They are potential uses and markets through which all creators should be able to secure remuneration for the use of their copyright works and related rights.

In particular, the important international recognition of the right to make a work available on demand is already supporting investment in new markets within many Member States.

However, the new markets are at different levels of adoption and implementation within WIPO Member States.

There have been suggestions that mandatory exceptions may help provide future certainty. But the other side of this is that mandatory rules remove flexibility to accommodate local national needs and development of new opportunities for copyright owners to authorise use of their work in new and innovative ways to promote education in the general sense.

This becomes of greater concern when debate over the future of exceptions and limitations goes beyond the needs of identified groups within society and addresses wider general concepts such as "education" and "research".

In addressing the general concept of "education" it may prove counter productive to long term national benefits if international provisions seek to refine or limit uses too early. By this I mean international law prescribing general exceptions and limitations to the making available right before any "normal" markets for the making available of works electronically on demand, have become established.

How can special cases be distinguished if no practical examples of "normal" cases exist at local level?

The concept of a more detailed list of optional (rather than mandatory) exceptions and limitations -more specific than the general wording of the three step test, but not removing opportunities for some flexible interpretation, has provided as helpful framework within the European Union. It has supported the development of national exceptions which recognise local cultural needs of those in education or undertaking non-commercial research.

Whilst all should have access to education, it is hard to see how an educational exception can be regarded as an exception when it in practice covers an entire market for a work.

Rather than any new Treaty reducing the flexibility of interpretation already open to Member States under existing Treaties, it is to be hoped that the work plans now being developed for the

Committee will preserve flexibility to meet the local priorities of local needs under national legislation.

This will allow distinctions to be maintained over the way in which exceptions and limitations apply to copyright users as private individuals, copyright users as commercial consumers and copyright users when linked to an educational establishment or recognised place of training.

Finally, the BCC continues to hope that the work of the Committee will lead to the adoption of a Treaty to provide international recognition for the rights of Audio visual Performers.

"You may be recognised one day" is a difficult message with which to continue to provide reassurance for so many performers around the world.

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