



**INTELLECTUAL**  
PROPERTY OFFICE

# Copyright works

Streamlining copyright licensing for the digital age

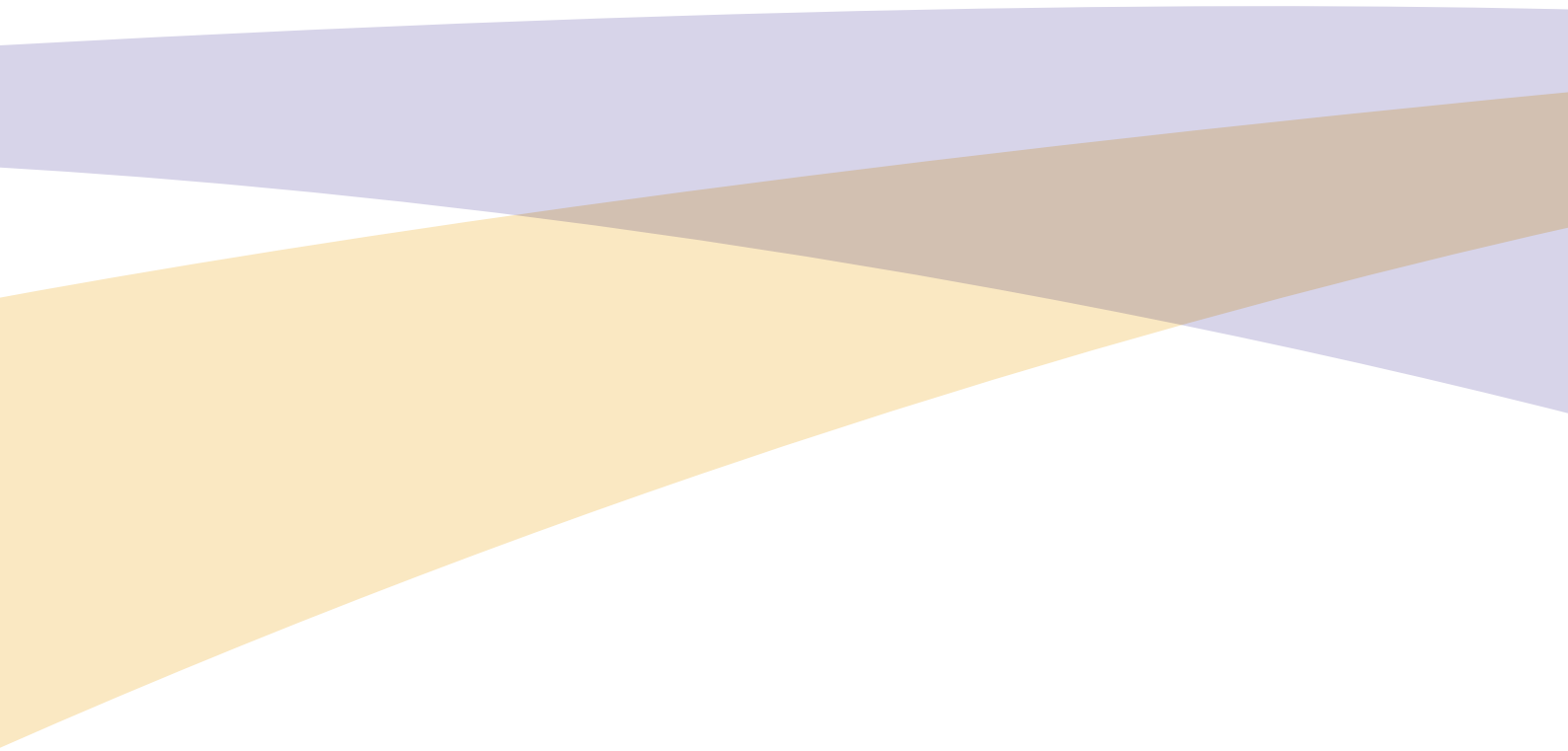
**An independent report by Richard Hooper CBE and Dr Ros Lynch**

**July 2012**



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# Summary, recommendations and statements of support

**1** Following a recommendation from Professor Ian Hargreaves<sup>1</sup> to establish a cross sectoral Digital Copyright Exchange, the Government appointed Richard Hooper CBE in November 2011 to lead an independent review. The review was conducted in two phases. Phase 1 – the diagnostic phase – concluded that a number of issues existed with copyright licensing which meant that it was not entirely fit for purpose for the digital age. Phase 2 – the solutions phase – sought to identify workable solutions to address the problems identified in Phase 1.

**2** In summary, we are pleased to report, after eight months' intense activity, working closely with a major subset of the UK creative industries (music, publishing, audiovisual, images) and with the two main affected sectors (educational institutions and archives/libraries/museums) that, in response to concerns expressed in the Hargreaves Review, the creative industries have responded proactively and are busy streamlining copyright licensing for the digital age. This was the key concern of the Government and of Professor Hargreaves.

**3** As a result, on the economic and cultural dimension, innovation and growth across the UK's creative industries and the UK's cultural institutions will be further stimulated. The UK's no.1 position in the e-world of the internet ahead of South Korea, China, Japan and the USA as measured by the Boston Consulting Group<sup>2</sup> will be further strengthened. The British music industry's premier position ("The UK has, for example, more digital services operating (70+) than any other country"<sup>3</sup>) will be further strengthened. Sweden, the USA, and the UK are the only net exporters of music in the world<sup>4</sup>.

1 IPO, *Digital Opportunity: A review of Intellectual Property and Growth*, May 2011

2 Boston Consulting Group, *The \$4.2 Trillion Opportunity*, 19 March 2012

3 IPO, *Rights and Wrongs*, March 2012, page 6

4 Data provided by Geoff Taylor, BPI

**4** As a further result, on the political dimension, some of the "excuses" that have been put forward over the years for "justifying" copyright infringement<sup>5</sup> on the fixed and mobile internet have been and are being eradicated, such as the fact that copyright infringing websites are easier to use by consumers than legal websites.

**5** There is however absolutely no room for complacency. The drive to streamline licensing processes further will be a constant for the creative and internet industries in the years to come. Like modernisation and innovation in any company or organisation, the task of streamlining never ends. All stakeholders in the creative industries must keep up momentum and have accepted that challenge.

**6** If the industry and public authorities follow the recommendations in this report, we believe that this will put the UK in a leadership position in relation to innovative solutions for copyright licensing.

**7** The main recommendation of our report is the creation of a not-for-profit, industry-led Copyright Hub based in the UK that links interoperably and scalably to the growing national and international network of private and public sector digital copyright exchanges, rights registries and other copyright-related databases, using agreed cross-sectoral and cross-border data building blocks and standards, based on voluntary, opt-in, non-exclusive and pro-competitive principles. The Copyright Hub will serve in the UK and beyond a wide range of copyright licensors (rights holders, creators and rights owners in both commercial and cultural worlds) on the supply side and a wide range of copyright licensees/users on the demand side.

5 We prefer the term copyright infringement to the more loaded term "piracy"

**8** The Copyright Hub's particular focus will not be on the low volume of customised, high monetary value licensing transactions at the top of the market (for example Universal Music Group's licensing of Spotify) but on the very high volume of automatable, low monetary value transactions coming mostly from the long tail of smaller users - the small digital start-up company wanting to use music and images and text creatively for its customers, the teacher in the classroom, a user posting a video on YouTube. Larger companies have told us that they also have requirements for access to easy to use high volume, low monetary value, low transaction cost copyright licensing systems, for example a broadcaster wanting a particular film clip or a publisher wanting a specific diagram or image.

**9** The Copyright Hub will have five main purposes:

- Act as a signposting and navigation mechanism to the complex world of copyright
- Be the place to go for copyright education
- Be the place where any copyright owner can choose to register works, the associated rights to those works, permitted uses and licences granted
- Be the place for potential licensees to go for easy to use, transparent, low transaction cost copyright licensing via for example digital copyright exchanges (DCEs), acting in effect as a marketplace for rights
- Be one of the authoritative places where prospective users of orphan works<sup>6</sup> can go to demonstrate they have done proper, reasonable and due diligent searches for the owners of those works before they digitise them

**10** Our diagnostic report, Rights and Wrongs, published in March 2012, set out the main issues that needed attention to improve copyright licensing's efficiency and effectiveness. Some of the work by industry on those issues was already underway and some of it was encouraged to get started. As this report is being published, new work is being proposed including new DCEs. The issues needing attention can be categorised under four main headings: data building blocks; reducing complexity and expense of licensing in relation to both organisations and processes; orphan works and mass digitisation; repertoire imbalance.

## Data building blocks

**11** This study has demonstrated the critical role that data plays in the licensing process. Without robust data, creators of copyright works are unlikely to all be paid accurately and on a timely basis. Good data also helps to facilitate more efficient licensing which in turn increases the size of the pie going to creators and rights holders. Work is already underway in the creative industries to address some of the data issues raised in this report but it is clear that this is a medium to long term process and that it will involve both investment of resources and a high level of commitment.

**12** We recommend that:

- Where international standard identifiers exist, e.g. in the publishing and music industries, that they should be used accurately and consistently to identify the work, its creator(s) and the accompanying rights.
- Where such identifiers currently do not exist, e.g. for cross-media content and in the images industry, that relevant organisations work together, drawing on existing systems and practices, to agree an approach that works for the industries as a whole.
- Recognising that the stripping of metadata on a commercial scale can already constitute a criminal offence as well as a civil infringement, we call on all web publishing organisations that regularly use and resize pictures, such as broadcasters and newspapers, to agree a voluntary code of practice in which they publicly commit to: (1) end the practice of stripping metadata from images and (2) refuse to use images for which there is no metadata attached. And to the extent that it seems appropriate, we recommend that the Government works with the images industry, technology developers and other interested parties to find a practicable solution to this problem.

**13** Identifying works, creators and rights allows much better databases to be created. In the UK and internationally it is generally agreed that the databases of who owns what rights for what in which country are not fit for purpose for the demands of the digital age even if they were adequate for the less complex demands of the analogue age.

**14** We are therefore supporting two main database projects which will also act as exemplars of what good looks like: the Global Repertoire Database in music publishing where Performing Rights Society (PRS for Music) has been a prime motivator and the Global Recording Database with a similar role played by Phonographic Performance Limited (PPL). The aspiration is for collecting societies around the world to be able to draw on one authoritative database which is kept updated (a key requirement for rights databases), replacing multiple databases where the data conflicts and is not kept up to date.

**15** Having achieved better data including better use of identifiers of that data, rights systems need to be able to talk to each other across sectors and across national borders because of the inherently mixed-media and borderless nature of the internet. All those who have taken part in and supported the review agree that licensing, historically, has been rather siloed within individual sectors.

**16** We are supporting the Linked Content Coalition (LCC), an international project that emanated from the European Publishers Council, but is now moving into new sectors beyond publishing. The LCC is all about developing a common language and a set of communications standards so proper interoperability is achieved, a very real and necessary building block for the Copyright Hub and its associated databases and DCEs.

## Reducing complexity and expense of licensing

**17** The central plank of this study has been the need for greater streamlining of copyright licensing to make it ever more fit for the ever changing demands of the digital age. In addition to the Copyright Hub and associated digital copyright exchanges which will clearly help reduce complexity and expense of copyright licensing, we focussed on two areas where licensing needed, in our view as set out in the diagnostic report, particular attention – in educational institutions and in the music industry.

### Educational institutions

**18** Our central argument here is that copyright licensing is not the core function of educational institutions and should therefore be streamlined to remove any additional burdens placed on schools and colleges. We recommend that:

- The organisations engaged in licensing content to schools and colleges should offer these licences for sale through an intermediary or aggregator thus in effect creating a ‘one stop shop’ for licensing for educational institutions. This will reduce the number of individual organisations that educational institutions have to deal with to obtain licences (currently around twelve) and should reduce the transaction costs involved in this process.

### Music industry licensing

**19** We support the efforts being made by the two music collecting societies, PPL and PRS for Music, to strengthen joint working arrangements thus enabling more joint licensing in the future especially for the smaller business users and making licensing easier and cheaper. We are happy to see a growing amount of that licensing being done by the societies on an automated basis via DCEs and their equivalents.

**20** We recommend:

- That the music industry continues to find ways to make the licensing of new digital services over the fixed and mobile internet easier, more automated where appropriate and more accessible. This is and will be done by new types of blanket licensing, by direct licensing and by combinations of blanket and direct licensing. The challenge of direct licensing is to keep the number of different organisations a licensee has to deal with to a sensible minimum. Aggregators and intermediaries play and will play an important role in meeting this challenge.
- That the UK music industry working with the appropriate European organisations continues to pioneer easier ways of licensing across the single European market reducing the number of licensors wherever possible that prospective licensees have to deal with, thus helping to create a true single market across Europe for music.

## Orphan works and mass digitisation especially in relation to libraries, archives and museums

**21** The legal changes that are needed to assist with resolving these issues are the responsibility of the IPO and those changes are currently being presented to Parliament. We have therefore concentrated our attention on the technological solutions.

**22** We support the ARROW<sup>7</sup> and ARROW Plus projects which demonstrate how due diligence in relation to orphan works can be done in an automated way by linking and searching libraries around the world. We especially support the possibility of the technology being usable beyond publishing, for example in the images industry where images without metadata quickly become orphan.

<sup>7</sup> ARROW stands for Accessible Registries of Rights Information & Orphan Works



## Repertoire imbalance

**23** If you cannot find a particular film or a particular piece of music legally on the internet, you may be tempted to find an illegal copy and use that. Repertoire imbalance as it is called between the physical world (e.g. DVDs) and the digital world (e.g. downloads) can be used as another “excuse” to “justify” copyright infringement. Like in other corners of the copyright world, this may be more perception than reality but perception can and does influence public opinion and politicians. The creative industries have to take perception seriously.

**24** We recommend that the industries, especially the audiovisual industry where repertoire imbalance is the biggest issue, continue to reduce the problem of repertoire imbalance between the digital and physical worlds and thus counteract the perception of the problem.

## The way forward after July 2012

**25** Maintaining the momentum created by this independent review is critical to delivering on the recommendations and statements of support set out above. All the work that we are either supporting or recommending will not be built in a day. The Global Repertoire Database, for example, is looking to at least a two year period of implementation.

**26** To ensure that the industry continues to maintain momentum and deliver ever more streamlined copyright licensing systems, the report makes a number of recommendations including:

- That an overall steering group is formed, called the Copyright Licensing Steering Group (CLSG) with a wide mandate to ensure continuing cross-sector and where possible cross-border coordination.
- The creative industries have agreed in principle to fund and provide an office to continue this work for one year in the first instance, subject to more detailed discussions with Government. We recommend that this office is independent of, and be based outside of Government thus ensuring that the principles of ‘industry-led’ and ‘industry-funded’ which have marked this review from its outset, continue to be upheld. The office would be responsible for providing a report to Government on progress made across all workstreams at the end of the first year.
- The UK music industry has made a commitment to produce an annual report to the Secretary of State for Business detailing what progress is being made including on joint licensing. We recommend that other industry sectors adopt the same approach and that once a year the Secretary of State agrees to meet industry representatives from across the sectors together to discuss progress.
- We also suggest that industry and Government could look at whether there is any beneficial and cost-effective overlap between reporting on and monitoring this continuing work of streamlining copyright licensing and Ofcom’s reporting requirements under the Digital Economy Act.

## 2. Introduction

**27** This is a short final report bearing good news. The report is the product of an independent review commissioned by the Secretary of State for Business Dr Vince Cable in November 2011 entitled the Digital Copyright Exchange Feasibility Study. The first person plural – we – is used throughout this final report to reflect the fact that the work has been driven by, and this report has been created by, Richard Hooper CBE<sup>8</sup> working in tandem with his Head of Secretariat Dr Ros Lynch<sup>9</sup>.

**28** The review was divided into two phases – Phase 1 diagnosis: what is wrong with copyright licensing and Phase 2: Seeking solutions. The diagnostic report *Rights and Wrongs*<sup>10</sup> published on 27 March 2012 set out clearly what was right and wrong about copyright licensing for the digital age across the four sectors of the creative industries (music, publishing, audiovisual and images) and across the two markets (libraries, libraries & museums; educational institutions) where problems had been reported. The report was widely accepted by stakeholders. *Rights and Wrongs* set out, however that much more needed to be done in the coming months and years. Specifically, the report identified seven problems under four different headings which the four creative industries still needed to confront and resolve. In summary, they are:

<sup>8</sup> Richard Hooper CBE was asked by the Government to lead the Digital Copyright Feasibility Study in November 2011 having previously done the review of the postal services sector for the Government. He declares the following interests: his wife Meredith Hooper is a writer and a member of ALCS; his daughter Rachel Byrne reports on Parliament for the BBC and is a member of the NUJ; his son Tom is a film director, a member of Directors UK and is also on the Board of the British Film Institute. Richard Hooper was chairman of Informa plc and still holds shares in the company

<sup>9</sup> Ros Lynch is a member of the Senior Civil Service in BIS who was assigned to work on this project

<sup>10</sup> IPO, *Rights and Wrongs: Is copyright licensing fit for purpose for the digital age*, March 2012

### Data building blocks

1. The need within all industry sectors for better data to identify copyright works and to clarify who owns the rights, thus enabling easier licensing processes and ensuring that the creators themselves (writers, directors, actors, composers) are properly remunerated.
2. Linked to 1) there is a need for a common language and agreed operational standards for expressing, identifying and communicating rights information across industry sectors and across national borders.

### Streamlining copyright licensing

3. The need for more automated copyright licensing systems (DCEs) linked interoperably to a well signposted, easy to navigate Copyright Hub, that becomes the accessible and authoritative port of call for all those – especially SMEs and individual users but also relevant to larger companies – who need better and cheaper access to copyright licensing.
4. The need to reduce complexity and expense of organisations and processes for copyright licensing in educational institutions.
5. The need to reduce complexity and expense of organisations and processes for copyright licensing in the music industry.

## Orphan works and mass digitisation

6. The need to resolve the orphan works and mass digitisation problems common to archives, libraries, museums, including the BBC and the British Film Institute.

## Repertoire imbalance

7. The need to reduce the problem of repertoire imbalance (e.g. in TV and film) between the physical traditional world and the online digital world.

**29** To address these issues, during the months April to July 2012, we set up new workstreams and also put our weight behind a number of existing workstreams via statements of support, working closely with representatives from across the different creative industry sectors. Current progress on all seven issues across all workstreams is reported in the Sections 4 – 7 below, amplified by more detailed reports from a number of workstream chairs in the Annexes. Recommendations for further work and statements of support for specific workstreams are included.



## 3. Definitions

**30** Reusing some of the material from our first report in March 2012<sup>11</sup>, it is worth very quickly summarising key definitions ahead of the main narrative. In order to streamline and simplify licensing within the framework of current laws – which is the objective of this whole piece of work – it is important to use terms whose meaning can be broadly agreed.

**31** Copyright licensing is defined as comprising seven distinct processes all of which do not occur in every licensing transaction:

1. The licensee, assisted by the licensor as appropriate, decides which rights are appropriate for the specific purpose or purposes of the licensee
2. The licensee discovers who owns the particular rights that are needed and requests the appropriate licence
3. The licensor may grant a licence for those rights that match the specific purpose(s)
4. The licensee pays for the rights (where required)
5. The licensor delivers to the licensee the licensed content in the appropriate format (although the content is often readily available)
6. The licensee ensures that any terms and conditions attached to the granting of the licence are effectively applied
7. The licensee accounts to the rights owner/manager for the content actually used (if required) so that the correct monies can be paid to the individual rights owners/creators.

**32** It is important to note that the price a rights owner charges for his or her rights, and the decision by a rights owner to withhold rights (e.g. the Beatles did not allow their songs on the internet for many years) are not copyright licensing process issues but are commercial business issues.

**33** A digital copyright exchange is defined as an automated online web-based computer system that allows licensors to offer their rights and allows licensees/rights users to license them. The DCE has six functions which allow rights users to:

1. Look for different types of content across the range of media types
2. Define and agree what uses they wish to make of the chosen content with the licensors
3. Be quoted a price by the licensor for those uses of the specified content that the system is programmed to offer
4. Pay for the rights online within the normal e-commerce framework
5. Have the content delivered to them in the appropriate format
6. Account back to the licensor as to what content was actually used so that the right creators can be paid their shares

**34** Licensors are those organisation or individuals who either on their own account or on behalf of others, license copyright works for permitted uses to licensees/users. Licensors comprise creators (e.g. a composer), rights owners (e.g. a film producer), rights managers (a collecting society working on behalf of creators and rights owners e.g. the Copyright Licensing Agency (CLA)). The terms licensors, creators, rights owners, rights managers and rights holders are often used interchangeably and they do overlap.

**35** Licensees are those organisations or individuals who use rights – often called rights users. They can be large organisations like the BBC which is both a licensor and a licensee. They can be small companies, for example start-up digital music service providers. They can be individuals who are uploading user generated content on to YouTube which includes licensable material or putting music on their wedding video. They can be teachers in schools wishing to use copyright works in their teaching plans. They can be museums or libraries wishing to make widely available their collections. The terms licensees, users, rights users are often used interchangeably.



## 4. Data building blocks

### 4.1 Introduction

**36** When this journey began back in December 2011 it was impossible to foresee what a central role data would play in the discussion on making copyright licensing fit for purpose for the digital age. Eight months later it is clear that secure identification of the work, the creator/rights holder and the rights lies at the heart of any technical solution to the more effective management of automated rights clearance. It is only through having robust data collection and data management procedures that copyright licensing will be made easier to use, that users can readily get legitimate access to content and that creators themselves are guaranteed to receive timely and accurate payment for their works.

**37** There are a number of issues which are fundamental to ensuring that the data building blocks are in place. These include being able to uniquely and separately identify each work, its creator(s) and the different rights associated with that work, having and keeping up-to-date records of who owns what rights to what in which country, and being able to exchange rights information across different systems and countries. We will now discuss each of these issues in turn.

### 4.2 Identifiers

**38** Identifiers have been in use for many years. The publishing industry was one of the early sectors to adopt universal identification of physical books through the development of the International Standard Book Number (ISBN). For the music industry the International Standard Recording Code (ISRC) provides a unique identifier for a specific recording and the International Standard Music Work Code (ISWC) uniquely identifies a musical work.

**39** Despite their central importance we have heard that these codes are not being used consistently and correctly across these industry sectors. We have, for example, received information from the Entertainment Retailers Association that currently the same piece of music may have different ISRC codes, leading to confusion and administrative burdens for companies operating digital services in multiple territories. Work is needed to ensure that the uniqueness of the code is preserved and that adequate monitoring takes place to reduce the incidence of duplication of codes for a single work. This becomes a more critical problem when rights information is attached, as a user or rights holder otherwise has an incomplete picture of the rights being claimed.

**40** There is an underlying issue with the unique identification of parties. Party IDs are needed to identify creators, rights holders, licensors, licensees, users and others. Names are highly ambiguous, but are still relied on extensively in digital commerce. For a simple example, Amazon.com adopts the crude method of changing a person's name to "John Williams (Composer)" to differentiate from the guitarist John Williams (and there are in fact several dozen different John Williams who have been recording artists in the music sector alone). Party IDs must also, by definition, be cross-media. For example John Lennon was a composer, lyricist, performer, actor, producer, artist, illustrator, text author, poet and photographer among other things. If it is, as we expect, unlikely that there will ever be a single global Party ID used by all sectors, then Party IDs from different sectors and organizations must be authoritatively mapped to one another.

**41** It appears that there is a potential solution on the horizon. The International Standard Name Identifier (ISNI) is the new ISO<sup>12</sup> standard that will allow users to definitively identify contributors across all forms of content. An ISNI can be assigned to all parties that create, produce, manage, distribute or feature in creative content. There are issues with data quality management and duplication that ISNI is addressing through the creation of a single global database at OCLC (a US not-for-profit library co-operative). It is not for us to say that ISNI will provide the magic bullet but we believe Party IDs are important and would urge all sectors to engage with the development of ISNI or a similar system so that an international standard becomes the norm.

**42** But the main focus from the point of view of this study is the use and non-use of identifiers in the audio-visual and still image industries where the majority of the problems lie.

## The audio-visual industry

**43** In the audiovisual industry there are two competing systems of identifiers for audiovisual works - the International Standard Audio-visual Number (ISAN) and the Entertainment ID Registry (EIDR). Both ISAN and EIDR offer a universal unique identifier for motion pictures and television programmes, and both are being adopted by broadcasters and others across the world.

**44** It is not our intention to go into detail on either of these identification systems. In addition we make no attempt to claim that one system is better than the other or that all European broadcasters should support ISAN rather than EIDR which was created by the Hollywood studios. We want to see broadcasters and others in the audiovisual industry adopt standard identifiers where these exist, but believe it is up to each organisation to choose the system that best meets their business needs.

**45** We have heard from ITV, for example, that the adoption of the ISAN system has contributed to increased revenue collection. Although it is impossible to be absolutely certain that the growth of collection revenues was the result of ISAN alone, ITV believes that it has been a contributing factor in the three-fold growth in collection revenues since 2005, particularly in relation to the Spanish and French collecting societies who will not release revenues unless an ISAN has been assigned.

**46** Our main focus in this study has been on ensuring that ISAN and EIDR are interoperable so that information can be easily exchanged between businesses operating the different identification systems. If, as we understand it, the potential barriers to this happening are less of a technical nature and more to do with governance and origin of the systems in Europe and in the USA, then we would urge the two sides to find ways to quickly overcome their differences for the benefit of all involved in the industry. To this end, EIDR has published preliminary technical guidelines, with significant input from ISAN. We are also pleased to report that representatives of ISAN and EIDR met in July and have made some progress on the non-technical requirements for achieving this objective.

**47** Unlike ITV the BBC has so far not adopted one of these identification systems arguing that neither ISAN nor EIDR meets its overall business needs. The BBC is an exemplar of a multimedia organisation acquiring, producing, using and trading content across all media types including images, sound recordings, text and audio-visual. Given the variety of content used by the BBC we accept that a somewhat different approach may be needed.

12 ISO is the International Organisation for Standardisation.



**48** To address its specific needs the BBC has proposed to us an approach based on the linked data method<sup>13</sup>, building on URIs<sup>14</sup>, HTTP and RDF, which they believe can form an interoperability layer, allowing the implementation by organisations of ISAN, EIDR, or other compatible schemes. It is not our intention to get into a technical discussion about this approach and how it could work in reality. However, there are potentially a number of issues with this approach including governance and accountability which will need careful attention. We are aware that there already exists a cross-media ISO identifier standard (DOI<sup>15</sup> which can be expressed as a URI) and would certainly want to urge the BBC to consider how its proposed approach sits alongside this established standard. We are also aware that the Linked Content Coalition (LCC) (see Section 4.4 below) is investing considerable resource into examining the issues of ‘identifiers’ and ‘compatibility/interoperability of rights data’ which are strongly interdependent. The BBC should be part of this investigation and should not seek to ‘go it alone’. The key word here is interoperability.

**49** We accept that the BBC is probably in an unusual position as a multimedia organisation which is a major acquirer, creator, broadcaster and distributor of practically every kind of content, and given our earlier claim that it is for each organisation to decide what best meets their business needs, we cannot argue that the BBC should adopt either ISAN or EIDR. The BBC’s proposed URI-based approach also helpfully highlights a most important feature of digital content identifiers. For a better digital licensing network, a system or service needs to be able link programmatically (‘resolve’) to other systems or services using identifiers, for example to allow a user of a system to find content or rights information automatically. URI supports standard methods of doing this, whereas traditional identifiers such as ISAN, ISRC or ISBN on their own do not. A URI, however, can also ‘contain’ other identifiers, and so deliver the ‘best of both worlds’.

**50** The BBC has told us that they do not rule out the use of either of the established identifier systems ISAN and EIDR when engaging with the external world through BBC Worldwide. So where an established international standard exists and where the BBC is creating and distributing content of a type to which that standard applies then we would strongly encourage the Corporation to incorporate established standards within their URIs wherever appropriate. This applies not only to audiovisual, but audio (ISRC) and possibly other content. This will not only help to reduce friction in the supply chain but will also show strong leadership. The BBC’s radical, cross-media approach has the potential to be very influential in pushing established identification systems fully into the digital age.

**51** The BBC has a real opportunity to show leadership on a number of dimensions across the audio-visual industry and the wider creative industries. We sincerely hope that the BBC seizes these opportunities and works in conjunction with others to address the data issues that are so vital to ensuring efficient licensing for the digital age. As we have been told on many occasions during this study – where the BBC leads others will follow.

<sup>13</sup> <http://data.gov.uk/linked-data/what-is-linked-data>

<sup>14</sup> URI stands for Uniform Resource Identifier.  
[http](http://www.w3.org/1999/xhtml/) is Hypertext Transfer Protocol and RDF is the Resource Description Framework.

<sup>15</sup> DOI stands for Digital Object Identifier.



## Recommendations: audio-visual industry

- (1) We recommend that the audio-visual industry adopts standard identifiers where they exist, choosing the system that best meets their business needs
- (2) Where an established international standard exists and where the BBC is creating and distributing content of a type to which that standard applies, then we recommend that the BBC should incorporate the established standard within its URIs wherever possible and
- (3) Recognising the BBC's need for a cross-media identifier approach we recommend that the Corporation works with others in the audio-visual industry and relevant standards bodies to develop an appropriate identifier.

## The images industry

**52** In the area of data and unique identifiers, the images industry faces two crucially important issues:

- there is no unique identifier for images; and
- metadata is routinely stripped from images on the web making it difficult if not impossible to identify who owns the picture and who should therefore be remunerated when it is used.

## The need for a unique identifier

**53** There appears to be little consensus in the image industry on either the need for a unique identifier or which identifier would be best. Yet as CEPIC<sup>16</sup> argues, the lack of a unique identifier is a barrier to interoperability with other media and if there was one in place it could help to reduce the number of orphaned images in the digital environment. An image stripped of its metadata may become an orphan (see Section 6 below for a discussion of the orphan works problem in copyright licensing).

**54** A number of attempts have been made in the past to develop an identifier for the images industry but these have all failed due to a lack of widespread support across the industry. Individual picture libraries and archives have developed their own identification systems but these are not integrated and exclude the thousands of photographers that operate independently within the industry. Those photographers have regularly told us that the lack of identifiers and the prevalence of metadata stripping mean that they do not always receive the recognition or the rewards for their work.

<sup>16</sup> CEPIC stands for the Coordination of European Picture Agencies Stock, Press and Heritage.

**55** We have been impressed with the capability of the Getty Images/PicScout commercial ‘digital exchange’ solution which has a well designed user interface and innovative image recognition capability. However this lacks a registry function which we understand that PLUS<sup>17</sup> could provide. We are also pleased to learn of the work the Creative Barcode team is doing to address the problem of identification of content in its pre-release, development phase and of the proposed CEPIC-led work package in the LCC’s RDI project to address the issue of image IDs. We have also received an interesting proposal from Phode (Photographers for a Digital Economy) for the creation of a publicly funded Digital Rights Hub and we understand that BAPLA’s<sup>18</sup> membership is discussing what actions the organisation should take.

**56** There would appear therefore to be a considerable amount of activity on identifiers in the images industry, which we welcome, but we urge all parties – individual photographers, picture libraries and the different societies – to seize this opportunity to work together to reach consensus on the most appropriate solution for the whole industry.

## Addressing the metadata problem

**57** Since this study began we have received representations from photographers and hard evidence demonstrating that metadata is routinely stripped from photographs thus in effect making them orphans.

17 PLUS<sup>17</sup> (Picture Licensing Universal System) was founded in 2004 with a mission “to “simplify and facilitate the communication and management of image rights.” The first stage involved the development of standards for communicating image rights and this was followed by the development of the PLUS Registry. PLUS will soon begin testing image registration and search, followed by license registration and the publication of an API specification. See [www.PLUSregistry.org](http://www.PLUSregistry.org) for further details.

18 The British Association of Picture Libraries and Agencies, or BAPLA, is the trade association for picture libraries in the UK

**58** As BAPLA explains, digital images saved in JPEG, TIFF or other formats allow for metadata to be embedded in the header of the image. The problem is that many users of images do not preserve this information: sometimes the information is removed when images are uploaded to the web and in other cases the data is removed when an image is copied or resized. The practice of stripping metadata is, we are told, common among newspapers, broadcasters and some magazines publishing on the web. This means that many photographers have their images copied without receiving any compensation for their creation.

**59** We have come to understand that the practice continues despite the existence of legal instruments making it an offence. S296ZG of the CDPA<sup>19</sup> makes it an offence to remove or alter electronic rights management information (electronic identifiers/ metadata) if it is done with the knowledge that it is likely to lead to infringement. BAPLA however suggests that the protection under CDPA does not extend to the removal of information when content is passed between machines as opposed to between people. If this is the case, then action

19 Section 296ZG of the Copyright, Designs and Patents Act 1988 applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which—

- (a) is associated with a copy of a copyright work, or
- (b) appears in connection with the communication to the public of a copyright work, and

where D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(2) This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information—

- (a) associated with the copies, or
- (b) appearing in connection with the communication to the public of the work,

has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

is needed to address this situation, given that so much more business is now conducted machine to machine. Recognising that the stripping of metadata on a commercial scale can already constitute a criminal offence as well as a civil infringement, we call on all organisations that regularly use and resize pictures, such as broadcasters and newspapers, to agree a voluntary code of practice in which they publicly commit to: (1) end the practice of stripping metadata from images and (2) refuse to use images for which there is no metadata attached. And to the extent that it seems appropriate, we suggest that the Government works with the images industry, technology developers and other interested parties to find a practicable solution to this problem.

**60** During our discussions with the BBC it was suggested that by applying the URI approach to images the problem of metadata stripping could be avoided. For rights metadata in particular this makes sense prima facie. Rights ownership changes may be registered by different parties, so embedding them with content is not a viable long-term solution. Embedding URIs, which can then 'resolve' to rights metadata stored in registries or linked data, would seem to circumvent both the 'stripping' and 'changing data' issues. We strongly urge the BBC, itself a major licensor and licensee of images, to work with the images industry to undertake the necessary tests so that within the next 12 months it is able to demonstrate and apply this approach to all images that it publishes on the web from that point forwards. This approach may facilitate more efficient licensing. We understand that it will be an immense task to apply this approach to the BBC's extensive archive so the Corporation will need to consider how best and when to introduce the URI approach to images within the archive.

**61** In addition to our recommendations regarding the BBC we call on technology developers to revisit the software in place to see how it could be amended to reduce the incidence of metadata stripping. BAPLA has told us that for example GDToolkit and Imagemagick which are used to resize and deliver images strip metadata. Imagemagick can be set

up to prevent this happening but it is perceived as too difficult and resource-intensive so few people make the effort. Technology firms must work with the images industry to ensure that any future developments enable all images to retain their supporting metadata, whether descriptive, technical or rights, when posted to the web. It would seem that some actions are already being taken. We have recently read that Microsoft Office 2013 which offers the ability to run a Bing-powered image search across the web from within PowerPoint and pull images off into presentations will show only images available under a Creative Commons<sup>20</sup> licence.

### Recommendations: images industry

- (1) We recommend that organisations that regularly use and resize images for publication on the web such as broadcaster and newspapers agree to develop a voluntary code of practice in which they commit a) not to strip metadata from images and b) not to use images for which no metadata is attached
- (2) We recommend that software developers producing software for posting images to the web work with the images industry to find a solution that would enable all images to retain their supporting metadata when posted to the web
- (3) To the extent that it seems appropriate, Government should work with the images industry, technology developers and other interested parties to find a practicable solution to the problem of metadata stripping.

<sup>20</sup> Creative Commons is a non-profit organization that enables the sharing and use of creativity and knowledge through free legal tools

**62** When we discussed these data building block issues with Robert Madelin, Director General, Information Society and Media at the European Commission, he encouraged us not to get too caught up with, and be drowned by, the archive issues of the past and to concentrate instead on putting in place systems and standards for new works that would play better in the future so that in five and ten years' time these issues would have been sensibly resolved.

### 4.3 Rights information databases

**63** As outlined in the Phase 1 report we believe that much more needs to be done to improve the quality of data so that it is clear who owns what rights to what in which country. Since then we have learnt that this is not just a UK problem but it is global.

**64** We have noted that registries of identifiers (which contain descriptive metadata about content) and registries of rights information do not necessarily go hand in hand, nor should they. Rights data changes over time and many different parties may make rights claims on the same content. While the two must be closely linked (via the identifier) rights registries are often distinct from identifier registries.

**65** Musical works are one area where the two helpfully coincide because of collective licensing. However, across the world there are music collecting societies (both on the publishing and recording side) with incomplete data and worse still with conflicting data. In other words, different collecting societies will hold different rights information on the same piece of content. As we argued before, this can lead to delays in licensing or payment and to the wrong payments being made to rights holders and to creators. This is unacceptable and there is little justification for it to continue in the future.

**66** Work is underway in the music industry to address this problem, with a strong role played by the UK. We support the efforts being made by music publishers to develop the Global Repertoire Database (GRD). The GRD, as described in **Annex A**, aims to address the lack of a database or data resource providing access to authoritative comprehensive multi-territory information about the ownership or control of the global repertoire of musical works. It will take about two years and a considerable amount of money from the collecting societies and music publishers involved for an operational GRD to be built. But it is clear that once it is up and running the GRD will enable better access to rights and more accurate payment of royalties to rights owners of musical works.

**67** This initiative on the publishing side is also to be mirrored on the recording side. The record companies and the performers in the UK have committed to a significant investment in new IT systems at their music licensing company PPL, which among other things, has resulted in the development of the world's leading sound recording repertoire database. The first stage of this development has now been delivered by PPL. This involves its 8,500 record company members electronically delivering specified sets of data related to their recordings (which must include, for example, the unique ISRC code identifier and the name(s) of the owner(s) of the recording). PPL now has details of 5.6 million sound recordings in its repertoire database and these relate to recordings from all over the world that have been released in the UK. During 2011, on average, PPL's members delivered details of 10,200 new recordings each week.

**68** PPL's members now wish their collecting society to develop this recording database into a multi-territory database that includes recordings not released in the UK, i.e. a Global Recording Database (GRD). This is particularly important to those members that currently operate an international business such as the four major record companies EMI, Sony, Universal and Warner Music, as well as indie companies such as Beggars Banquet. The current situation (which mirrors the problem with musical works that is being tackled with the GRD) involves duplication of repertoire databases around the world and wasted costs both in maintaining additional databases and feeding the same information into multiple databases with the resulting data synchronization and conflict issues.

**69** PPL is currently working with the above named companies and a range of overseas music licensing companies on the next steps. These are important developments in the UK that can significantly benefit UK record companies and the UK performers on those recordings. As well as some of the cost efficiencies that could flow, due to the popularity of UK repertoire around the world, UK record companies and UK performers will benefit from a more accurate and efficient administration of their rights around the world.

**70** We support the effort being made to develop these new databases in the music industry, as well as the fact that this global effort is being driven by the UK. This is bound to be good news for the UK music industry and the economy as a whole and the two GRDs will be exemplars for others to learn from and follow. It is important to remind the industry that all new databases like the two GRDs need to be built in ways that will allow them to be interoperable not just with each other but with databases across the other creative industries.

**71** In the publishing industry there are good databases held by the Publishers Licensing Society (PLS), the Authors Licensing and Collecting Society (ALCS), the CLA and the Newspaper Licensing Agency (NLA). Though these databases are good they are not as comprehensive as in the music industry because they have been used entirely for the management of secondary rights. The audio-visual industry has the Internet Movie Database (IMDb) (now owned by Amazon) which is an online database of information related to films, television programmes, actors, production crew personnel, video games and fictional characters featured in visual entertainment media. But to our knowledge there is at present no authoritative rights registry for photographs and other images

**72** We understand that the PLUS Registry is designed to link images to rights holders and rights metadata. In achieving its goal, the Registry employs a system of unique persistent identifiers, combined with image recognition and other technologies. The Registry's copyright 'hub' design, first proposed in 2005, provides an API allowing other systems to connect for the purpose of queries, and (with sufficient permissions) to read from and write to the Registry databases. Such other systems will include licensing platforms, content exchanges, royalty administration systems, digital asset management systems, other registries and applications of all kinds. The PLUS Registry is an industry-neutral information service designed in part to facilitate local and international digital content exchanges which are operated independently by third parties, relying upon the PLUS hub to facilitate global functionality and interoperability.

**73** The same can be said for content which is outside the traditional industry supply channels. A huge amount of digital content is now placed directly on to the internet in services such as YouTube (audiovisual), Flickr (photographs) and Soundcloud/iTunes (music) by its creators, some of high quality and commercial value. Various services to manage such content commercially are springing up, allowing creators to by-pass traditional channels to market. No identifier or metadata registries exist for this growing sector, and following the principle of capturing data at the earliest point possible that it enters the network, standards or methods for this should be encouraged. This is an area we urge the LCC<sup>21</sup> project to look at carefully.

**74** Several organisations including the BBC support the move towards “open linked data” as discussed and explained above. This certainly has great potential value for rights information, but any moves to make “open linked data” an authoritative source for rights data must be managed with great care, as conflicting rights data arising from spurious claims and out-of-date information would play havoc with automated licensing systems. The same care which is required to manage a complex rights database such as the GRD is required in open linked data, and more so because of its open nature.

## 4.4 Ensuring interoperability of systems

**75** It is not just important to have up-to-date databases of rights information with strong identifiers but it is equally important to be able to exchange that information across different systems in ways that are easily understood. At present there is no standard way of expressing the ownership and terms of use of media content in the digital environment to end users or in machine-readable ways. There are a number of sector-based schemes, but these are not easily compatible and contain many gaps. This is where the LCC comes in.

**76** The LCC is developing easy ways, based on open, non-proprietary standards, to communicate information about rights, describing who can do what and when with any content throughout the supply chain and with end users. The LCC specifications will not seek to “replace” existing standards but identify gaps and enable them to interoperate.

**Annex B** provides brief information on the technical deliverables of the project and more information is available at [http://www.linkedcontentcoalition.org/Home\\_Page.html](http://www.linkedcontentcoalition.org/Home_Page.html). The LCC is currently running a 12 month industry-funded project to address the lack of a communication layer of rights data.

**77** A second phase in the LCC project will be to deliver an exemplary implementation to demonstrate how the various elements of the rights data supply chain interact using the Rights Reference Model. Funding is being sought from the European Commission and if successful this leg of the project (the ‘Rights Data Integration’ or RDI) will start at the end of this year and run for two years.

<sup>21</sup> The LCC project aims to facilitate a fully interoperable intellectual property rights communications and management framework for all content and all business models on the internet.

**78** We fully support the work of the LCC and want to ensure that it continues to reach out to organisations in all creative sectors. We recognise that there are still some challenges ahead but as outlined in **Annex B** the potential benefits of the LCC are clear – it will make it “easier for consumers legally to access all kinds of media content on any device, from any platform, at any time regardless of where they live.” This has been a fundamental principle of the work on the DCE Feasibility Study and we would urge not only the UK Government but also the wide range of organisations operating across the creative industries in the UK and in other countries to get engaged and support the LCC.

## Conclusion

**79** Data are a necessary building block to ensure effective functioning of the copyright licensing process. As argued in this section much more needs to be done to improve the quality of the data thus ensuring that, for example, creators are paid accurately and within a timely fashion.

**80** The industry is responding and as we have demonstrated here there are some good initiatives in development, many with strong UK leadership. These initiatives deserve recognition and support for the benefits that they will deliver to UK plc. We therefore call on the Government to support both the GRD and LCC projects as they are central exemplars for getting the right data building blocks in place to streamline copyright licensing for the digital age. But encouragement and support will also be needed for the other innovative proposals which we have mentioned in this report and those that are still arriving on our desks as this report is being finalised for publication in the last week of July 2012.

## 5. Streamlining copyright licensing

**81** We now focus on three main areas which will enable copyright licensing to be further streamlined building on the data issues analysed above. The first one, relevant across all sectors and where possible across national borders, concerns the creation of a UK-based Copyright Hub linked to a growing range of digital copyright exchanges (DCEs). The second and third areas concern the complexity and expense of organisations and processes which make copyright licensing less easy to use in educational institutions and in the music industry.

### 5.1 The Copyright Hub and the DCEs

The central aim of our independent review is to streamline copyright licensing across the different sectors of the creative industries, and where possible across national borders.

#### Recommendation: DCE

Having defined the need for much better data and the need for those data to be compatible and interoperable with common standards and a common language across both sectoral and national boundaries (Section 4 above), we recommend that these data building blocks and common standards are used to create a not-for-profit, industry-led, industry-funded Copyright Hub with some possible Government pump-priming in the early stages.

**82** The Copyright Hub will be based in the UK and will link via spokes interoperably, scalably and intelligently<sup>22</sup> to the growing national and international network of private and public sector digital copyright exchanges, rights registries and other copyright-related databases, using agreed cross-sectoral and cross-border data building blocks and standards, on a “voluntary, opt-in and non-exclusive basis”. These words of principle are taken directly from the Copyright Clearance Centre (CCC), the US not-for-profit organisation based north of Boston. In building the Copyright Hub, much can be learnt from the CCC which since 1995 has been conducting digital commerce and acting as an ‘online hub’ for the publishing industry and therefore doing what the UK Copyright Hub would aspire to do across all creative sectors and many markets both nationally and internationally. **Annex C** contains a brief summary of the CCC’s work and Rightslink, an early example of a digital copyright exchange.

**83** In addition, lessons can be learnt from the Technology Strategy Board’s (TSB) Digital Licensing Framework (DLF). The DLF is a web-based communication system designed to facilitate the exchange of copyright licensing information between users and the owners of copyright works. The DLF is designed to support systems that allow rights users to formulate precise enquiries about the use(s) they want to make of particular copyright works and address them, via the messaging hub, to participating rights holder. The TSB will now focus on the longer term – five to ten years – and investigate the opportunities for creating new markets when rights and content are 100% digital and where there may be automation of other transaction components such as investment. Further details on the DLF are outlined in **Annex D**.

<sup>22</sup> The hub and spoke model is a convenient metaphor but the actual IT solutions – the way in which databases will talk to each other – will be much more sophisticated. ARROW (see Section 6), for example, would not be described as hub and spoke in the way that it trawls across databases around the world for answers to rights queries through a hub at the University of Bologna.



**84** The Copyright Hub faces major IT challenges, major strategic, funding and governance issues and can learn from the experiences of CCC in the USA and the work of, for example, the GRD or the LCC (see Section 4 above). The NIH syndrome (Not Invented Here) should we believe be banished from any thinking about the Copyright Hub. There is not time or money for reinventing wheels, hubs and spokes. The Hub will only work on the basis of much collaboration within and across sectors, within and across nations and much learning from each other and from past investments. One of the strong and unforeseen consequences of our work has been the coming together, for example at our stakeholder meetings, of people from different sectors and markets in the UK and thus the reduction in siloes and siloed thinking which was identified as a problem in our first report. The fixed and mobile internet, which is at the centre of the digital age and which is the focus of our work, are inherently mixed media, multimedia and cross-media, and borderless – that is copyright licensing’s challenge. But collaboration will not be easy to achieve given levels of mistrust that can arise between different parties on the one side and the constraints placed on collaboration by competition law on the other.

**85** Some of our early thinking on the IT aspects of the Hub is set out in **Annex E**.

**86** The Copyright Hub will serve in the UK and beyond a wide range of copyright licensors (rights managers, creators and rights owners in both commercial and cultural worlds) on the supply side and a wide range of copyright licensees/users on the demand side. One of the key strategic decisions is how to balance a big and ambitious vision with sensibly phased implementation and well chosen start points – crawling before walking before running. Yet as in other aspects of the work described in this report, speed and momentum are also important.

**87** The Copyright Hub’s particular focus will not be on the low volume of high monetary value licensing transactions at the top of the market (for example licences negotiated between the major record label Universal Music Group and the internet music service Spotify) but on the very high volume of low monetary value transactions coming mostly from the long tail of smaller users - the small digital start-up company wanting to use music and images and text creatively for its customers, the teacher in the classroom, the individual user posting a video on YouTube. As Jim Griffin consultant to Sound Exchange in Washington DC said to us: “Creativity is moving towards the edge of the network, from the centre.”<sup>23</sup>

**88** But larger companies have said to us regularly during the review that they also, not just the smaller businesses and individuals, need access to easy to use high volume, low monetary value, low transaction cost copyright licensing systems, for example a broadcaster wanting a particular film clip for a documentary programme or a publisher wanting a specific diagram or image for a book. The danger here is that the cost<sup>24</sup> and hassle of licensing the component is greater than its value to the overall work, thus leading to the clip or image being dropped, thereby reducing the overall size of the pie. Increasing the size of the overall pie will be a major benefit to come from streamlined copyright licensing as a result of more licensing and more services especially from the long tail of users. A key incentive driving industry funding and industry leadership for much of the work in this report is that revenues, especially revenues from the internet, increase as a result of better licensing procedures. At a time when analogue revenues continue to decline, in some cases rapidly, this is vital to the health of the creative industries.

<sup>23</sup> Jim Griffin along with others such as Peter Jenner and Scott Cohen were the copyright philosophers on our eight-month journey

<sup>24</sup> To reiterate, this refers to the transaction cost of licensing not the price at which the rights are licensed. The aim of all this work is to make the process of licensing as frictionless and as cheap as possible so that more of it happens.

**89** The BBC, Pearson and News International were strong proponents during Phase 1 of the argument that we need solutions to the very high volume of low monetary value copyright licensing transactions that are the hallmark of the digital age, as compared with the lower volume of high monetary transactions in the analogue era. The Copyright Hub and its federation of linked computer systems is that solution in the view of the four UK industries closely involved in this work – music, publishing, audiovisual and images. The Copyright Hub was presented in draft form at a stakeholder event held on 29 June 2012 and received a high level of support from those present with valuable suggestions as to how it should be taken forward and where the risks also lay.

**90** The Hub and its federation of linked databases will have four main purposes:

- Information and copyright education
- Registries of rights
- A marketplace for rights – licensing solutions
- Help with the orphan works problem

## Information and copyright education

**91** The Copyright Hub (and its related databases) will first of all act as an information resource – a signposting and navigation mechanism to the complex world of copyright. Time and time again during the review organisations large and small, and individuals, commented to us about the need for better signposting and better navigation. Where do I go to find out how to put music on my website (a small business)? Where do I go to find out who owns the rights to this novel (a Hollywood agent)?

**92** The Copyright Hub as information resource will also be linked closely to copyright education material, including potentially curriculum materials. Again so many people, for example Lord David Puttnam in Phase 1, pressed for better copyright education. We know that good work is being done in some areas. For example, the ALCS is raising awareness of copyright through curriculum-linked lesson plans and activities. But if the Copyright Hub can provide good quality information linked to accessible forms of copyright education, then another of the oft-heard “excuses” for copyright infringement – I did not know I had to get permission to use that – will be reduced. The political dimension of all our work comes back repeatedly to examining the “excuses” that have been and still are used to “justify” copyright infringement to see how they can be eroded in a disciplined way by the copyright industries who suffer from the persistent infringement of copyright. Some of those excuses are historic though they still drive perceptions. Some of those “excuses” are still today “justified” by poor, opaque and inaccessible licensing procedures.

## Registries of rights

**93** We have been told so often that it is difficult if not impossible to find out who owns what rights to what copyright works. We have been told in the UK and in other countries that the quality of rights databases is poor, inconsistent, not kept up to date or just not publicly accessible. They may have been adequate for the analogue world but they are not adequate for the digital world. As a result, for example, rights owners and creators are not properly paid for their work, as discussed earlier in Section 4 and licensing is made more difficult.

**94** The Copyright Hub will link – on a voluntary, opt-in and non-exclusive basis – to databases containing copyright ownership data, permitted uses and licences granted. It has been suggested to us that this could have specific advantages in copyright enforcement across the internet including

- peer to peer file-sharing by individual consumers
- illegal websites and search engines with illegal websites appearing in their search results
- advertisers monetising copyright infringing material
- payment providers serving copyright infringing subscription services.

**95** Maria A. Pallante, Register of Copyrights in the US Copyright Office, wrote in October 2011: “A robust public record of copyright ownership and copyright status is essential to facilitating marketplace transactions (and the corresponding dissemination of works), and encouragement of innovative business models that rely on the protection (or the expiration of protection) of copyrighted works...public registration is of growing interest in the global copyright world...”<sup>25</sup>

**96** However, for this to operate successfully, there would need to be verification and dispute resolution procedures. Sarah Faulder and Mark Bide of the PLS wrote to us following the stakeholder event on 29 June 2012 where the Copyright Hub idea was first set out: “Like any form of data, the value of metadata is highly dependent upon its reliability – and nowhere could this be more apparent than in the whole arena of rights management. All metadata makes a claim of veracity, and someone has to attest to the authenticity of that claim, particularly when the claim is that (for example) an individual owns a copyright (or more critically the right to get paid for a use of that copyright). Without any authority mechanisms, there is clearly considerable potential for the user of the copyright hub to be overwhelmed with competing claims of rights in the same works, and unable to distinguish between legitimate and illegitimate claims. The experience of the CMOs<sup>26</sup> in dispute resolution is also likely to prove valuable in this respect...”

25 Priorities and special projects of the United States Copyright Office, 25 October 2011

26 CMO = Collective Management Organisation like PPL, ALCS and Artists Collecting Society (ACS).

## A marketplace for rights – licensing solutions

**97** With good signposting and navigation, and a growing number of rights registries, the Copyright Hub becomes the obvious platform for copyright licensing transactions. The Hub would become a marketplace for rights. The Hub would link to the growing number of digital copyright exchanges, run by collecting societies such as PRS for Music, or commercial organisations like Getty Images, or UK cultural institutions which are planning a DCE<sup>27</sup>, or not-for-profit organisations like CCC. Individual creators would be able to register and offer their rights directly via the Hub if they chose to do so, something of special interest to photographers for example. Whilst there would be a strong emphasis on automated licensing via DCEs to reduce transaction costs and make licensing more transparent (key concerns coming from the Hargreaves Review), customised ‘manual’ licensing using emails or phone calls, especially for more difficult uses, could be offered via the Hub as well. We believe that over time, thanks to the existence of the Copyright Hub linked to DCEs, more licensing will move from manual/customised to automated, thus reducing transaction costs and reducing friction in the licensing process.

**98** In addition to the principles of voluntary, opt-in and non-exclusive, the marketplace for rights via the Copyright Hub would encourage competition and market mechanisms to operate. The Hub would be pro-competitive and would link to some of the streamlined copyright licensing solutions that happen outwith the collecting societies and their blanket licences, the so-called direct or transactional licensing involving record labels and aggregators for example. Voluntary, opt-in, non-exclusive and pro-competitive – these will be the key principles.

## Help with the orphan works problem

**99** Another potential application of the Copyright Hub relates to the orphan works problem (see Section 6 below). The Hub could be one of the places where prospective users of an orphan work could go to demonstrate that they have carried out a diligent and reasonable search to find the owners. It has also been suggested that the Hub could contain or provide access to orphan works registries.

## Two final thoughts on the Copyright Hub

**100** It should be a place which will stimulate creativity and ideas. One such idea was put forward at the stakeholder event on 29 June 2012. One of the ten break-out groups suggested that the various different functions of the Hub could integrate. A teacher intent on making his or her students understand copyright better would encourage and assist them to go into the Hub and register their copyrights for stories written or pictures painted, neatly linking together the copyright education, information and rights registries ideas.

**101** In addition, the Copyright Hub could bring considerable benefits for SMEs. SMEs account for 99% of all UK businesses, provide more than half of all UK employment and have a combined turnover of £1,500 billion. The success of these firms is crucial to the UK's economic prospects but, as the Hargreaves Review of the UK's intellectual property environment made clear, too often they struggle to interact with the UK's sometimes complex intellectual property environment and to manage their intellectual property assets in ways which will build company growth. The measures we propose in this report will make it easier for innovative businesses to generate revenue from their copyright materials. The Copyright Hub will help them to navigate through a complex world and our aim is to ensure that it is as functional for small organisations as it will be for those businesses with more significant resources. The Hub will also make it easier for smaller businesses to understand and demonstrate the value of their IP assets in ways which will help to build the confidence of financiers or potential investors as they seek to access finance.

## 5.2 Educational institutions

**102** In March 2012 we concluded that copyright licensing in educational institutions was too complicated and was therefore not fit for purpose. We argued that what the educational sector demonstrated was that complexity of process is caused by and contributes to complexity of organisational structure – we counted 12 different organisations requiring licences in the schools sector and 10 in FE Colleges.

**103** We have continued to receive reports from educational establishments about the difficulties they experience with licensing content for use in schools and colleges. These difficulties include:

- A high degree of uncertainty and confusion over which licences are needed and for what activity
- A lack of transparency in terms of pricing structures and the basis on which these structures are derived
- The failure among certain collecting societies to take account of the variation in IP use in schools, colleges and universities, depending on the type of course and student demographics
- The proliferation of licensors in the education sector

**104** Since March 2012 we have tried to encourage the different agencies involved in licensing content to educational institutions to find ways to address the issues identified in our first report, and in particular to reduce both the complexity of process and of organisations. We are pleased to report that the agencies are responding and that progress has been made as demonstrated below. But we believe that more could be done to simplify the landscape and enable educational institutions to carry out their core tasks with the knowledge that they are using copyright works legally.

## Addressing the problems

### Navigation

**105** On 10 July 2012 the Rights Industry Forum – a working group comprising representation from the CLA, PPL, Education Recording Agency (ERA), PRS for Music, Christian Copyright Licensing International (CCLI), Public Video Screening Licence (PVSL), Motion Picture Licensing Corporation (MPLC) and NLA launched a new copyright and schools website aimed at giving educational institutions reliable, comprehensive information on a range of copyright-related activities in schools and pointers on where the relevant licences can be obtained.

**106** [www.copyrightandschools.org](http://www.copyrightandschools.org) allows users to navigate according to activity or content type and provides relevant, succinct information written in language that is consistent across all content types. It ensures that any organisation operating in the education sector has access to a 'one stop shop' for information on how to legally use copyright content.

**107** We welcome this development and urge schools to use the site and offer feedback to the developers on where there is room for improvement.

### Transparency

**108** While we are clear that the price an organisation or individual charges for their rights is outside the remit of this study, we have always argued that transparency is critical to removing some of the complexity surrounding copyright licensing.

**109** We understand that certain aspects of a contract will be confidential. However, there is a need for potential licensees to have all the information they require to make an informed decision that will deliver value for money for their organisations. The latter is particularly important in a world where public spending is being squeezed and organisations need to ensure they are getting the best service at the best price. We also believe that as more and more licensing becomes automated, it will be necessary to be far more transparent in terms of pricing structures. We therefore urge the organisations involved in licensing content to educational institutions to consider how they could address this issue of a lack of transparency.

### Accounting for course and student variation

**110** We are pleased to learn that ERA<sup>28</sup> is proposing (subject to consultation with rights owners) to streamline its tariffs and remove current distinctions in rates between those applicable to secondary students and students under the age of 18 who are undertaking courses of further education within FE colleges. CLA already has in place a project to rationalise licence terms across the three education sectors of schools, FE colleges and higher education.

**111** We would urge the other organisations involved in licensing schools to rationalise licence terms (as appropriate) and ensure that educational institutions and the students they teach are not unduly disadvantaged because of their demographics or course type.

<sup>28</sup> On behalf of its Members ERA operates a Licensing Scheme for educational use of copyright material. The scheme permits staff at educational establishments to record, for non-commercial educational purposes, broadcast output of ERA's Members

## Complexity of organisations

**112** Since March 2012 we have been urging the organisations involved in licensing educational institutions to find ways to rationalise the number of different organisations that schools and colleges have to engage with to get the licences they need. This will be even more important as new education reforms will result in an increased number of schools seeking licences – there will be 5,000 academies in existence by 2015, all of which will sit outside of local authority control. These institutions could potentially all seek to obtain licences individually from the licensors operating in this space.

**113** We are pleased to report that the organisations involved in the Rights Industry Forum have agreed to build on the success of the new copyright and schools information portal by considering options for rationalising points of sale and customer service for copyright licences being sold to schools. We would urge them to make this a priority as it should significantly reduce bureaucracy faced by schools.

**114** In the audio-visual sector, we are also pleased to learn that the ERA board is developing a number of proposals to reduce the number of licensing points for educational establishments as well as ways to increase the content available to schools and we support this work fully. For example, the ERA board is:

- Expanding the scope of access to any pre-existing audio and audio-visual materials for non-commercial educational use to ensure that ERA is a single point of contact for all licensing requirements linked to the educational purposes of educational establishments.
- Developing itself as the Educational Resource Agency through which all curricular access to audio and audio-visual materials can be covered by ERA licensing as a single point of contact.

- Offering ERA licences through ‘regular points of contact’ for all educational establishments. Alongside this, agreements with organisations such as Independent Association of Prep Schools (IAPS) and Centre for Education and Finance Management (CEFM). are being developed to allow requests for licences to be triggered and processed with the help of these ‘front offices’.
- Continuing to monitor options for groups of educational establishments to take out blanket ERA and ERA Plus Licences, with discounts against tariff rates being offered where appropriate.

**115** In addition, ERA is committed to undertaking market research to highlight the online services that are of particular interest to teachers and educational establishments. This will enable the new committee to consider ways in which access could be facilitated through the ERA licence.

**116** In terms of increasing the volume of material available to schools, ERA is in discussion with organisations such as the British Film Institute (BFI), BBC, British Universities Film and Video Council (BUFVC) and operators of such services such as ClickView and Box of Broadcasts to address how access to audio and audio-visual archives can be brought within ERA licensing. We would urge the organisations involved to continue this dialogue and develop some innovative solutions to get this rich repertoire to schools. It is, after all, within our educational institutions that future content creators are being nurtured.

**117** Traditionally, local authorities have purchased many licences on behalf of the schools they maintain. As more schools become academies, this system is breaking down and the burdens on schools are likely to increase. The Department for Education (DfE) is exploring the potential for negotiating and funding a single licence for all state-funded schools in England in cases where all schools need a licence. This would remove the burden on both schools and local authorities.

## Conclusion

**118** We welcome the developments outlined above and urge all the agencies involved to fully participate and ensure that these initiatives deliver real benefits for our educational institutions.

**119** But while this progress is to be encouraged, there are still some organisations and creative sectors that are yet to bring forward proposals for streamlining copyright licensing for educational institutions.

### Recommendation: educational institutions

We recommend that educational institutions should, if and when they require them, be able to secure the relevant licences from a single institution – an intermediary or aggregator of sorts – thus reducing the degree of bureaucracy imposed on them by the licensing process. We know that PPL, Filmbank and PRS for Music offer their licences to schools for non-curriculum use through the CEFM. We believe that if more organisations adopt a similar practice that this will not only benefit educational institutions but will also benefit rights owners/creators as it will reduce duplication and cost, and ensure more money is paid back to them.

**120** In addition, we would like to see more automated licensing and renewals. We have, for example, been told that schools prefer to have an invoice sent via the post. While that may be the case now, we doubt that this is sustainable and it is certainly at odds with the rest of society where more and more is being done online to save time and cost. ERA, for example, will in future allow all educational establishments to confirm licence renewal directly with ERA online, if they so require. We urge other organisations operating in this space to do the same.

## 5.3 Music industry licensing

**121** There is a widespread perception that copyright licensing in the music industry is not as easy to use and not as accessible as it should be.

**122** The reality is that the music industry has made significant strides to streamline copyright licensing especially over the eight months of the review period. We invited in our first report Rights and Wrongs, any individual or organisation who was having difficulty with music copyright licensing to contact us so that we could arrange meetings to discuss and sort out the difficulties with senior music industry figures who themselves had volunteered the idea. In four months we have heard from no one.

**123** But, in our judgement, there is still truth in the perception and thus much remains to be done by the music industry. Both the perception and any element of truth in the perception damage the industry when it makes an ask of Government regarding stronger enforcement against copyright infringement.

**124** Copyright licensing in music splits into two different categories

- blanket or collective licensing by PPL and PRS for Music that covers radio and TV broadcasting, public performance (nightclubs, football clubs, restaurants and hairdressers) and internet uses that are not fully 'on demand' such as Internet radio-type services
- direct licensing which covers the sales of CDs to retailers, internet uses that substitute for CD sales ('on demand' eg downloads such as Apple iTunes) and uses of music that may raise artistic/moral rights concerns (such as 'synchronisation rights' where music is used in films or advertisements).



## Blanket/collective licensing

**125** This category of licensing offers easy to use copyright licensing for both licensors and licensees with broadcast licences as a good example of simple to use licensing. But blanket licensing does have some disadvantages to licensees/rights users in that the commercial terms are pre-established and standard for everyone, which may or may not be appropriate for the service being planned. Blanket licensing also has disadvantages for licensors/rights owners as the prices are regulated by the Copyright Tribunal.

**126** One of the complaints still voiced about this type of licensing is that two licences are needed from the two collecting societies PPL and PRS for Music. It is not a one-stop shop. We are pleased to report, and fully support the fact, that the two societies have agreed to work more closely together and have agreed to do more joint licensing so that the small business for example only has to deal with one organisation not two which can be irritating and confusing. **Annex G** contains a progress report from the CEOs of PRS for Music and PPL on joint working. Joint licensing saves costs, improves the customer experience and streamlines collective licensing even further. A new joint licensing solution for small workplaces is being planned and will be administered by PRS for Music and another joint licence for amateur sports clubs to be administered by PPL. We hope and expect that these joint working approaches can be extended further in the months and years to come. There are however competition laws which may on occasion restrict some initiatives.

**127** **Annex H** contains a summary of a wide range of licensing solutions by PPL and PRS for Music developed for the digital age.

## Direct licensing

**128** This form of licensing requires prospective licensees to negotiate with 8-10 multiple copyright owners (or more) covering the repertoires they are seeking. Clearly this is more complex and less streamlined than collective licensing. But the complexity is reduced by the important role of aggregators such as The Orchard or Ricall. The complexity is also reduced where a combination of collective licensing (by say PRS for Music) and direct licensing (by record labels) is possible.

**129** How can it be further streamlined? Geoff Taylor CEO of BPI has written to us: "In those cases where blanket licensing is not appropriate, such as high value uses, including synchronisation and on-demand digital services, [the industry] believes that in the short term the licensing process can be simplified by much better signposting for users how and where to go about obtaining direct licences for specific uses. In the medium term, it believes that the creation of a DCE platform would offer the opportunity for direct licensing to be automated in appropriate cases, so that rights for uses that are already established in the market could be simply obtained, while retaining the ability for copyright owners to compete on price."

### Recommendation: music licensing

We recommend that the music industry continues to find ways to make the licensing of new digital services over the fixed and mobile internet easier, more automated where appropriate and more accessible. This is and will be done by new types of blanket licensing, by direct licensing and by clever combinations of blanket and direct licensing. The challenge of direct licensing is to keep the number of different organisations a licensee has to deal with to a sensible minimum. Aggregators and intermediaries play and will play an important role in meeting this challenge.

## Beyond the UK

**130** Whilst music licensing within the UK can be and is being made easier to use, the difficulties multiply for potential service providers wanting to license music for a pan-European market. As our first report stated: “There is no clearly no single European market in the music industry (or in other sectors).”

**131** Albert Pastore from Nokia (a licensee of music) has articulated the following potential solution which relates in our view closely to proposals PRS for Music made to the European Commission in 2010 and to the European Commission’s recent announcement of a “Proposal for a directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of musical works for online uses in the internal market” (11 July 2012).

**132** “For digital music services...licensing must move to true multi-territorial, repertoire-specific licensing, enabling service providers the ability to commercially negotiate royalties covering the full scope of the service being offered and to make available their service across multiple EU Member States, potentially to the EU’s 500 million consumers. The EU should target a reasonable number (e.g. 6-10) of licensing entities offering different, competitive repertoires of musical works on a pan-European basis (limiting the amount of aggregation to avoid/limit monopolistic distortions). Currently the EU/EEA region has 30+ licensors...and this licensing situation can discourage service providers, SMEs and other innovators from offering their services in numerous territories.” We believe that the draft European Directive goes a long way towards facilitating the development of a genuine pan-European market in online services. But it may not go far enough in overriding individual country regulations and this could inhibit the development of pan-European services.

## Recommendation: European-wide licensing for music

We recommend that the UK music industry working with the appropriate European organisations continues to pioneer easier ways of licensing across the single European market reducing the number of licensors wherever possible that prospective licensees have to deal with, thus helping to create a true single market across Europe for music.

**133** It is a constant theme of this report, nowhere more relevant than the music industry, that the task of streamlining licensing is never over – there will always be new technologies and new service ideas that will require adept licensing which balance the rights of rights holders with the ease of use requirements of rights users. As a result the music industry’s digital revenues will increase faster as analogue revenues drop away, and “excuses” for copyright infringement are further eroded.

**134** Patrick Zelnik, co-president of Impala and president of Naive Records, writing in the *Financial Times*<sup>29</sup> about Universal Music’s potential takeover of EMI:

**135** “...the music industry must act to bring back a generation that stopped paying for content because legal ways to do so were seen as expensive and boring. This can be done if the Universal/EMI deal serves as a model, giving entrepreneurial platforms access to label repertoires on a non-discriminatory, transparent basis – in return for a commitment to direct traffic towards legal and affordable services.”

## 6. Resolving the orphan works and mass digitisation problems

### 6.1 Introduction

**136** In the Phase 1 report we argued that copyright licensing was not fit for purpose in archives, libraries and museums because of the orphan works problem - works for which the rights holder cannot be identified or if identified, cannot be located - and the lack of a legal mechanism to enable mass digitisation of works. As we argued then, the result is that the consumer is denied access to a significant amount of commercially and culturally valuable content, at least for some media types.

**137** Since the publication of the Phase 1 report much work has been done to find solutions to these problems. This work has continued on two fronts: (1) legislative and (2) technological. Each of these will now be discussed in turn.

### 6.2 The legislative response

**138** This response is being led by the Intellectual Property Office (IPO) and follows on from the public consultation conducted earlier this year. The DCE Feasibility Study team has not been engaged in this work but we have decided to briefly summarise the approach here and to include a briefing note from the IPO in **Annex I**.

**139** As set out in **Annex I** the Government has proposed in the Enterprise and Regulatory Reform Bill that powers be given to the Secretary of State to make regulations to allow for an orphan works licensing scheme and to make regulations in relation to the authorisation of voluntary extended collective licensing schemes to help with mass digitisation.

**140** The details of the schemes are still being considered and will be laid out in secondary legislation. However in terms of orphan works the Government has determined that there should be a diligent search before any work can be licensed as an orphan, the search will need to be verified by an independent authorising body; and that remuneration will be set aside for missing rights holders at a rate appropriate to the type of work and type of use. The Government also proposes a register of orphan works recording details of works that are the subject of a diligent search and separately works that have been deemed as orphans following a diligent search. As discussed in Section 5.1, the Copyright Hub could be one avenue through which a diligent search is conducted and also the place where orphan works registers could be accessed.

**141** In terms of mass digitisation, the Government believes that its proposal to allow collecting societies to operate in extended collective licensing mode could facilitate some mass digitisation. According to the proposal being pursued collecting societies that meet the necessary standards for protecting rights holders' interests could seek permission to license on behalf of rights holders who are not members of the society, with the exception of those that opt out of the scheme.

**142** The Government believes that ECL will appeal more in areas where licensing is characterised by high-volume, low-value transactions with high administration costs for individual clearance. Much of the focus of our work is on enabling high volume low-value transactions with low administration costs, something which we believe the Copyright Hub will further enable.

**143** More details on the legislative process can be found at <http://www.ipo.gov.uk/types/hargreaves/hargreaves-copyright.htm>

## 6.3 The technological response

**144** As noted in the Phase 1 report the publishing industry has developed a technological solution to assist libraries and archives wishing to undertake a mass digitisation programme and therefore needing to determine which, if any, of the works in their collections were orphans.

**145** ARROW was established as a European Commission-supported project and ran from September 2008 to early 2011. Its purpose was to investigate the extent to which data sources existing at the time could be used to conduct a diligent search to support libraries involved in mass digitisation projects for books and similar textual works in their collections.

**146** There is a wide range of organisations involved in ARROW including libraries, authors and publishers associations, and Reproduction Rights Organisations (RROs), among others.

**147** At a high level the ARROW search process can be described in the following steps:

- A library requests permission to digitise a book or a collection of books by providing its own catalogue records for the items concerned
- This information is checked against relevant data held by The European Library (TEL) which should have a record of all books published in Europe or held by a European national Library
- TEL looks for other editions of the same title and relates these to the book which the library wishes to digitise
- Then the records are checked against 'books in print' databases to check if the book is still commercially available

- Reproduction Rights Organisations (RROs) then carry out a process to identify the rights holders
- A proportion of the works at the end of this diligent search will be orphan

**148** This process has been tested with organisations in a number of European countries and it has proven to work. There are some imperfections which are being improved over time. But ARROW clearly benefits libraries and archives that wish to digitise their collections by reducing the time and cost involved in identifying works that are potentially orphaned.

**149** Since its successful completion, a successor project - ARROW Plus – was started and will run until 30 September 2013. ARROW Plus is designed to extend the implementation of the ARROW infrastructure beyond the initial four pilot countries (France, Germany, Spain and the UK) to a wider circle of European countries. It will also explore the possibility of including images, as well as other types of written works.

**150** ARROW Plus is a public-private partnership involving 33 representatives from all relevant parts of the book value chain in Europe: national libraries, authors including visual artists, publishers and collective management organisations, technology developers and ISBN agencies in 17 European countries.

## Conclusion

**151** We support the work that is being done to develop and further enhance the technological solution to the orphan works and mass digitisation issues across Europe. ARROW and ARROW Plus have demonstrated both the value in seeking cross border solutions and the benefits of a public-private partnership in finding a workable solution. The latter relationship is one we believe is crucial for taking forward many of the recommendations outlined in this report.

**152** We would urge the team involved to continue the work to encourage additional libraries and similar institutions across the world to become engaged with the project. We would also recommend that further work is done to consider the extent to which the current technological infrastructure could be scaled to cover content types other than text and images.



## 7. Repertoire imbalance

**153** Two young Harry Potter fans desperately want to watch their favourite film on-line but unfortunately cannot find it legally to rent or buy. What do they do? They go on to BitTorrent and find an illegal copy of the film to watch, using peer to peer filesharing. If a piece of music (historically, the Beatles or Led Zeppelin) cannot be found legally to rent or buy or subscribe to on the internet, a digital native<sup>30</sup> may believe it is “justified” to find it from an illegal source and use it. It is clearly not justified but...

**154** This is called repertoire imbalance. It mostly but not exclusively touches the audio-visual industry. Lovefilm (now owned by Amazon) has a subscription streaming repertoire of 8,000 films over the internet but a much greater repertoire of 70,000 films is available (DVDs and BDs - Blu-ray discs) via the traditional route of the Royal Mail.

**155** The audiovisual industry has argued to us that this is more perception than reality in that the most popular titles are available in the digital space, subject to the constraints caused by windowing strategies (see below), and these titles are the ones that people access the most. Will Page of PRS for Music presented data at a meeting of the UK Chapter of the International Institute of Communications<sup>31</sup> which showed that there were 13 million music tracks available in the digital space (e.g. iTunes) and 0.4% of them accounted for three-quarters of all downloads. This data and other similar evidence led us in other parts of our work, incidentally, to concentrate on the long tail of users more perhaps than the long tail of uses.

**156** Repertoire imbalance may be more perception than reality but, as this report stresses repeatedly, perceptions in the heated battles surrounding copyright in many countries across the world can drive public opinion and hence political views.

**157** We believe, having discussed this with people in the audio-visual industry, that the issue will right itself because of market forces over the next five years but the industry does need to remain vigilant and do all it can to reduce the imbalance. The costs of digitisation are not trivial, especially for older repertoire, and also it is a principle of our work that the rights owner has the right to withhold copyright works from services where he or she does not wish to offer them. That is not a copyright licensing problem but a business, commercial and indeed in some cases a moral rights<sup>32</sup> issue. There is a potentially vicious circle operating. If a rights holder feels that the digital space leaks easily and enables copyright infringement with little obvious enforcement against infringers, then s/he may be less willing to license works into the digital space for fear of losing legitimate revenues. The political dimension of our work constantly reappears. The industry must make licensing easier thus providing more and better services for the consumer, but the Government must in response do all in its power to defend legitimate copyright interests against infringement – in either the digital or the physical worlds.

30 A “digital native” is a member of the younger generation which has grown up with the internet, compared with the older generation who are digital immigrants.

31 IIC UK Chapter meeting, 17 April 2012

32 A photographer has moral rights in his or her photograph and can therefore insist that it is not used in an alcohol or smoking advertisement.

**158** Repertoire imbalance is closely related to the windowing strategies of, for example, feature film producers. The first window for a new feature film is cinema distribution and during this time other types of distribution are not permitted. This first window can last from month 0 to month 2 and is followed by the retail window (digital and physical) which lasts from month 2 to month 6, followed by Pay TV and finally free to air television much later<sup>33</sup>. As repertoire imbalance is righting itself as a result of the operation of the market and the expectation of digital consumers, so “the trend is ever shrinking windows” (Ted Shapiro, Motion Picture Association of America). Based on data from the British Video Association and the International Video Federation, in 2001 DVD/BD release of a film in the physical format was, for example, 26 weeks after the date of release into cinemas (theatrical release). By 2011 this was down to 3-4 weeks after cinema release. In 2011 (it did not exist in 2001) Electronic Sell-Thru, for example downloads, in the digital space was permitted at the same time as the DVD/BD physical release. Streaming/video on demand in the digital space was permitted from 0-30 days after the DVD/BD release.<sup>34</sup>

**159** The conclusion is that the industries, including the book publishing industry with the arrival of Kindles and e-books, need to remain vigilant and reduce repertoire imbalance wherever possible.

### **Recommendation: repertoire imbalance**

We recommend that the industries, especially the audio-visual industry where repertoire imbalance is the biggest issue, continue to reduce the problem of repertoire imbalance between the digital and physical worlds and thus counteract the perception of the problem.

<sup>33</sup> Presentation by Michael Comish, CEO blinkbox at the Marketforce/IEA conference on The Future of Broadcasting, 27 June 2012

<sup>34</sup> Submission by Ted Shapiro, Senior Vice President, MPAA, to the DCE Feasibility Study



## 8. Conclusions and recommended way forward

**160** Streamlining copyright licensing for the digital age will remain a constant requirement of the creative and cultural industries in the UK. Like innovation or modernisation, it never has an end point.

**161** Thus the question is: how can the momentum created by this independent review over the last eight months be retained after the review and its two authors finish at the end of July 2012?

**162** We recommend that, if the Government accepts the findings of this final report, a steering group is established to drive the Copyright Hub forward, made up of senior people from the creative and internet service industries. This group would have the task of overseeing the design, funding and the governance of the Copyright Hub and its IT strategy and implementation. It would be called the Copyright Hub Launch Group.

**163** We recommend that an overall steering group is formed, called the Copyright Licensing Steering Group (CLSG), with a wide mandate to ensure continuing cross-sectoral and where possible cross-border coordination and keep momentum up across all the outstanding issues raised in this report and their relevant workstreams, including the Copyright Hub workstream. It should be made up of the workstream chairs, other senior people from across the creative and cultural industries with strong information technology input and a representative from the IPO. Cross-sectoral membership and collaboration are vital given the mixed media and cross-media nature of the digital age.

**164** The creative industries have, we are pleased to report, agreed in principle to fund and provide an office to continue this work for one year in the first instance, subject to more detailed discussions with the Government. In those discussions with Government, industry would like to understand the connection between the work being carried out to streamline licensing described in this report and future proposed changes to the law for example in relation to exceptions. Would, for example, the work to streamline licensing in education obviate the need for an educational exception? Would the creation and operation of the Copyright Hub with its satellite of digital copyright exchanges and rights registries obviate the need for other changes to the law? It is for Government ultimately to reach a view on the right regulatory and legal framework within which copyright licensing takes place.

**165** We recommend that the Office be independent of, and be based outwith, Government. This ensures that the principles of industry-led and industry-funded continue to drive the work. Dr Ros Lynch, Head of Secretariat for the DCE feasibility Study should be seconded from the Department for Business, Innovation and Skills to run the Office to help maintain continuity with this project. The Office will oversee/contribute to all the various workstreams including the Copyright Hub Launch Group.

**166** How should the work be reported on and monitored in the future?



**167** We recommend a combination of four possible approaches:

- Where there is UK Government pump priming and/or funding from Brussels the usual reporting and monitoring procedures for use of public monies would be required
- The industry-sponsored Office should prepare a report to Government at the end of the first year on progress across all workstreams
- Jo Dipple, CEO of UK Music, has committed UK Music (which speaks on behalf of the whole music industry) to produce an annual report to the Secretary of State detailing how progress is being made towards the various goals, for example joint licensing. We recommend that other industry sectors do the same and that once a year the Secretary of State agrees to meet with all the industries together to receive and discuss progress reports
- Industry and the Government could also look at whether there is any productive and cost-effective overlap between reporting on and monitoring all the work described in this final report and Ofcom's reporting requirements under the Digital Economy Act. This approach has the advantage of an independent voice but the disadvantage of perhaps moving away from the industry-led and industry-funded philosophy underpinning all this work. Given Ofcom's new role in relation to copyright enforcement this may be an important idea for industry to consider given their concerns about copyright enforcement not being forceful enough.

**168** In conclusion, the political dimension of our work, introduced in our first report, remains constant: if the creative industries ensure that they have done all they can to make licensing and copyright work easier for rights users and therefore consumers, then the ball is firmly at the feet of the politicians to ensure appropriate measures are in place to reduce the incidence of copyright infringement on the web.

**169** There must be a sensible balance between the rights and requirements of licensors and of licensees, of producers and of consumers, a balance that is beneficial to both parties leading to further and sustained growth and innovation in the UK creative and internet industries.

**170** But intellectual property across copyright, trademarks, design rights and patents is at the heart of the success of a modern knowledge-based economy. It must be sensibly protected against theft and improper use.



# ANNEXES

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# Annex A

## The Global Repertoire Database Project

Mark Isherwood

### 1. The problem being addressed

There is currently no database or data-resource that provides access to authoritative comprehensive multi-territory information about the ownership or control of the global repertoire of musical works and that is openly available to songwriters, publishers, licensors and licensees. There are of course numerous databases of varying quality held by musical works licensors around the world and whilst these provide some ownership or control information for some of the global repertoire, the data, even on a national level, is not always maintained at an optimum level nor always openly accessible to the stakeholders.

There is a broad recognition across the stakeholder community of the urgent need to ensure that the global repertoire of musical works and rights is efficiently administered in the context of emerging multi-territory licensing solutions for the new online services, including those that have just started to appear. Authoritative, multi territory, transparent, openly accessible, comprehensive rights ownership data is key to enabling these multi-territory licensing solutions to function effectively and efficiently. This is true whether such solutions offer an aggregated 'worldwide repertoire' licence or a limited repertoire licence. Such a resource would maximise stakeholder trust in licensing solutions, deliver administrative efficiency through standardisation and interoperability and provide for a level of accuracy, comprehensiveness and automation fit for the 21st Century. Ultimately, the global repertoire database should improve datasets for all forms of licensing.

The Global Repertoire Database Working Group ('WG') was set up in 2009 to investigate how a global repertoire database ('GRD') could be delivered. During 2010 the WG went through a procurement process, publishing a Request for Proposals in July of that year. This resulted, at the end of 2010, with the appointment of the International Copyright

Enterprise ('ICE') as the technology provider and Deloitte as the project manager. In September 2011 a Scoping and Stakeholder Engagement Study lasting 7 months was undertaken, involving global representatives from across the music industry.

### 2. The proposed solution

A key deliverable from the Scoping Study was agreement to the scope of the GRD needed to provide a comprehensive solution to the problem identified above.

The GRD will provide a centralised, once-only registration mechanism for claims to works, agreements and repertoire mandates, following a principle of 'do it once, do it right'. The GRD will accept registrations from Publishers and Societies, either via standard electronic formats or an online registrations portal. Publishers will be able to choose whether they wish to register directly to the GRD and, if so, the GRD Registrations Hub will be capable of forwarding their registrations on to Societies. In future, Creators may also be able to register directly to the GRD; however, in the short term it is anticipated that Creators that are members of a Society will continue to register via that Society.

Participating Societies will continue to reconcile works claims for registrations they receive from their member Publishers and Creators (i.e. domestic works), prior to posting to the GRD. The GRD will be responsible for the reconciliation of claims registered directly to the GRD by Publishers, including split copyright works involving claims from more than one data source (e.g. direct Publisher and Society).

The GRD standards, underpinning registration mechanisms, will enable granular and explicit specification of the data required by the GRD, including online and offline usage types and all rights types (mechanical, performing, synch and print). The GRD will seek to raise the bar in terms of submitted data quality, and all data sources will receive regular data quality reporting and feedback.

All proposed GRD services relate to the provision of an authoritative source for works copyright metadata. For clarity, this means that the scope of the GRD is not currently envisaged to include any of the following:

- a Provision of usage functions or services
- b Provision of distribution-related functions or services
- c Provision of member functions or services
- d Provision of licensing functions or services
- e Provision of invoicing functions or services
- f Provision of an authoritative source for distribution shares.

## Moving forward

As a result of the scoping study the four major music publishers and APRA, GEMA, PRS for Music, SACEM and STIM from the music rights society community have agreed to make their musical works data available for what is known as 'Release1' of the GRD. Those five societies have also agreed to provide funding for the next phase of work. Since then another seven music rights societies have committed to provide funding as well. These are ASCAP, BUMA-STEMRA, SABAM, SGAE, SIAE, SOCAN and UBC.

In the next few weeks work will begin on a Requirements and High Level GRD Design phase of work. The activities within this phase will need to span across business requirements, rules and participant readiness, data assessments and data strategy, data standards and schemas, GRD business design & set-up and the technology blueprint. This phase should be completed in Q2 2013.

An operational GRD is then anticipated to be available in Q2 2014 although there will be a long period of the loading of data from the above participants. A GRD with some of the data from the above organisations should be available by the end of 2014.

# Annex B

## The Linked Content Coalition (LCC)

### Angela Mills-Wade

A project initiated by the European Publishers Council. Partners include EMI Music Publishing, RTL Group, ITV, IFPI, Microsoft, Pearson, Elsevier and Axel Springer. A full partner list is available on [http://www.linkedcontentcoalition.org/Coalition\\_Partners.html](http://www.linkedcontentcoalition.org/Coalition_Partners.html)

### The Problem

Today there is no standard way to express the ownership and terms of use of media content online, throughout supply chains, to end users or in machine-readable ways. This may sound like a mere technical problem but it has far-reaching consequences way beyond technology. If this problem is not solved soon, digital business models will be hindered, piracy will continue to flourish and politicians will not act in defence of rightsholders.

Media companies, authors and artists and the whole range of **creative industries lack a common, communications layer of rights data in order to identify and express rights**. Media cannot expect their users and business partners to respect their rights if there is no universal way to express them: the lack of a common rights language therefore stands in the way of progress.

Search engines, ISPs, Telcos and content aggregators have said that **the Internet does not lend itself to traditional licensing models and assert that it is not possible to find out who owns the rights. They are right.**

Not only is it **difficult for people who want to trade in rights to find each other, transactions are too people-heavy and therefore both expensive and inefficient**. New business opportunities are deferred because of the cost of complying with multiple standards.

The creative content sector needs to find ways to work better with new market players and aggregators to avoid further disruption in who pays, and gets paid, for content creation and distribution

The lack of a common rights language stands in the way of progress.

**The Linked Content Coalition** has attracted 40 partners and is running a 12 month industry funded project to rectify this lack of a communications layer of rights data. Its success is crucial to the future viability of media in the digital world.

### The Solution

**Every digital media content transaction is a rights transaction:** that is, a transaction in IP rights in order to access and to use content, rather than simply delivering and consuming the content itself. **IP rights are the core units of commerce in digital media.**

All delivery channels today increasingly involve **machine to machine communication**. The Linked Content Coalition will develop ways to facilitate copyright management by doing what the Internet - and machines in general - are really good at: managing huge quantities of data and hiding complexity from users.

The Linked Content Coalition is putting in place easy ways, based on open, non-proprietary standards, to communicate information about these rights, describing who can do what and when with any content throughout our supply chains and with end users.

Many media companies are already building **voluntary rights exchanges**, incorporating well-structured databases of rights which can be searched by third parties to identify ownership and get clearance for rightful use. The Linked Content Coalition project is **designing the means to establish seamless communication between these various right registries** to support a rights trading infrastructure which is truly cross media in the long term.

The technical deliverables, built on actual business and creative requirements, will be developed in several work streams led by experts, and can be summarized as follows:

- **Metadata:** This work stream will agree a Rights Reference Model to be used as the basis for developing interoperability tools between schemas used in different sectors. It will also specify the requirements for mapping and transforming the controlled vocabularies used in schemas and messages.
- **Identifiers:** A set of functional requirements for the identifiers to be deployed in the infrastructure, an analysis of the extent to which current identification standards meet those requirements, and recommendations for closing any gaps.
- **Messaging:** A set of functional requirements for standard messaging, with an analysis of the extent to which existing technologies and standards meet these requirements and of where gaps exist, and recommendations on how best those gaps might be filled.
- **Iconography:** A specification for human interpretable “rights pictograms” to be used by creators or users of rights data as well as sales platforms together with a definition of the services represented by the icon.

## The Timetable

### April 2012

LCC started work

### June 2012

1st event for partners and wider stakeholder group

### June – December 2012

detailed work stream activity

### November 2012

2nd Plenary

The final leg of the Linked Content Coalition’s work is to **build an exemplary implementation to demonstrate how the various elements of the rights data supply chain interact using an instantiation of the Rights Reference Model**. The LCC formed a multi-media, multi-national consortium which applied for EU funding under the Competitiveness and Innovation Programme. If our bid is successful this project will start at the end of this year and run for 2 years using real data sources from companies and creators.

Benefitting from political support at highest level from the European Commission, including from President Jose Manuel Barroso, Vice-Presidents Neelie Kroes and Michel Barnier, the work of the Linked Content Coalition will have a positive impact on the future of copyright management long term; demonstrating the benefits of innovation and collaboration and making it easier for consumers legally to access all kinds of media content on any device, from any platform, at any time regardless of where they live.



# Annex C

## Copyright Clearance Center

**Tracey L. Armstrong, President and CEO**

### CCC's Role

- Copyright Clearance Center (CCC) is a global rights broker for the world's most sought-after print and digital books, journals, newspapers, magazines, blogs, movies, television shows and images. CCC provides customized information solutions that simplify the access and licensing of content for businesses, government agencies and academic institutions, while compensating publishers and creators for the use of their works.
- All of CCC's licensing services operate on a voluntary, non-exclusive, opt-in model (for both rightsholders and users). CCC is a market-focused aggregator of rights.
- CCC is a founding member of the International Federation of Reproduction Rights Organisations (IFRRO) and one of CCC's senior executives currently sits on the IFRRO Board of Directors. "Reproduction Rights Organizations" or "RROs" are collective management organizations primarily in the field of literary (text-based) works.

### History

- CCC is a not-for-profit organization, started in 1978 by a collaboration of content creators, publishers and users and incorporated under the laws of New York State, USA.
- CCC has distributed more than US\$1.3 billion over the last 10 years to rightsholders around the world.
- CCC has focused on serving business users of copyrighted publications on behalf of its participating rightsholders, and it serves thousands of academic institutions.
- In 2010, CCC established a subsidiary, RightsDirect, to sell licensing solutions to companies outside the US. RightsDirect is based in Amsterdam.
- In January 2012, RightsDirect became the licensing agent in Germany for the VG WORT Digital Copyright License. (VG WORT is a Collecting Society in Germany.) The license includes digital rights from hundreds of thousands of rightsholders from Germany and around the world.
- Also in January 2012, CCC acquired Pubget—an information and media solutions provider focused on expediting access and analysis of content. Pubget serves the academic and business communities.

## CCC Products & Services

**Repertory Licenses:** Cover the rights to share content, in both digital and analogue form, from many information sources in both the business/government sector and the academic sector, for one annual fee.

**Point-of-Content Solutions:** Principally through its award-winning RightsLink® service, CCC offers automated permissions, reprint processing and royalty collection directly from participating rightsholders' websites.

**Pay-Per-Use Services:** Centralized access to individual permissions at prices, and according to other terms, set by rightsholders. Businesses use these services for permissions to share content in marketing and other external communications as well as for document delivery services. Academic institutions use them to clear paper and digital coursepacks.

**Motion Picture License:** Created with the Motion Picture Licensing Corporation of Los Angeles, this license authorizes businesses to show scenes and entire movies and TV programs, both stand-alone and as part of presentations, for sales meetings, employee training and more.

**Content Services:** Facilitates quick access to articles and other content for use in education, business and more. CCC's new Get It Now service, designed as a supplement for Inter-Library Loan (library privilege) services within universities, has already been widely acclaimed as a convenient and cost-effective solution for academic libraries.

**Rights Management:** A suite of tools for CCC repertory licensees that maximize the value of the rights companies buy from CCC and other sources (including rightsholders), to give workers visibility into their content rights within their workflow. Separate tools enable rightsholders participating in CCC's licensing services to manage their CCC relationships and integrate them into their own rights and information management workflows.

**Other Services:** CCC continues to develop new services at the request of users and rightsholders to help make copyright work for all market participants.

## WHO CCC SERVES

35,000 for-profit and not-for-profit businesses with employees in 180 countries, primarily through repertory licenses

1,200 US academic institutions, including 84% of the major research institutions, all primarily through pay-per-use services

110 US campuses representing over 400,000 students through repertory licenses

## Other Numbers – CCC:

Manages more than 600 million rights on behalf of rightsholders from around the world

Licenses tens of thousands of movie and TV show titles, from more than 400 producers from around the world, for the internal use of businesses

Has delivered copyright education, both in-person and online, to nearly 50,000 people over the last 3 years

Fields more than 110,000 customer service and other information inquiries a year

Has bilateral agreements for the exchange of rights and royalties with RROs in 25 countries

# Annex D

## Technology Strategy Board: Digital Licensing Framework

Jeremy Silver

### Background

When the Digital Britain report was published in 2009, one of its recommendations was that Technology Strategy Board should create and manage a digital test bed upon which to encourage innovation in the digital space. The following autumn, Technology Strategy Board launched the IC tomorrow digital test bed. In the process of seeking rights for trial purposes it became clear that digital innovators who wished to be rights users were having some difficulties accessing the market. So Technology Strategy Board started exploring the idea of using the test bed environment to promote more automation and simplicity in the copyright licensing process. To that end, a basic concept for the Digital Licensing Framework (“DLF”) was assembled and work started on its design and implementation in the summer of 2011 when a first meeting was held with stakeholders. By the end of 2011 a number of major rights holders had agreed to support the DLF project with the provision of content metadata.

### Concept

The DLF is a web-based communication system, a hub, designed to facilitate the exchange of copyright licensing information between the users (“rights users”) and the owners of copyright works (“rights holders”). Technology Strategy Board has built and manages the messaging hub at the core of the system as a demonstration of feasibility. A number of major rights holders from a variety of content verticals have provided content information for use within the back end of the system. Technology Strategy Board has procured the development of user interfaces forming the front end of the system.

The DLF plays no role in the actual granting of copyright licences. It supports systems that on the front end allow rights users to formulate precise enquiries about the use(s) they want to make of particular copyright works and address them, via the messaging hub, to participating rights holders. When the rights holder in the particular copyright work receives such an enquiry, an automated response can be delivered through the system to the rights user indicating whether or not a licence for that use is available.

By way of example, a rights user who wants to use a particular piece of recorded music in an advertising film will formulate, through the system’s user interface, an enquiry about the availability of a synchronisation licence for the music in question. The system will identify the rights holder of the synchronisation right in the music recording in question and transmit the enquiry to that entity. The rights user will then receive one of three responses from the rights holder;

- Yes: a licence is available here (link to rights holder’s licensing site or other facility)
- No: no licence is granted for such use of that work
- Maybe: (call our office to discuss)

Based on the response received the rights user is able to follow up the licensing process directly with the rights holder (or abandon the enquiry).

At present, the DLF is being run as a research project to test different aspects of basic components of this kind of hub: the user interfaces; the language used for expressing and conveying licence enquiries; the most efficient technical architecture. The system has been built to function in a variety of different modes and environments. In short, the DLF is an open model for a copyright hub that could be implemented in a variety of contexts.

## Objectives

The overriding objective of the DLF was to construct a working, generic copyright hub to test some of the essential components of other possible copyright hub models. For example, the DLF front end challenge is the transformation from business terminology to the linking language. How should an unskilled rights user (without recourse to a copyright lawyer) know that the right to include music in a film is a “synchronisation right”? Equally, how is a rights holder to know that the right the user is looking for is something for which the rights holder has a legal enforceable licence available?

DLF therefore set out to develop, on the front end, functional, user-friendly tools that enable the basic requirements of the rights users to be transformed into an enquiry which, through the standardised language employed, can be mapped to the term of a licence that a rights holder can recognise. The DLF team therefore developed a basic set of terms used within the DLF to describe the different uses to which different categories.

The user interface challenge is compounded when a licensing enquiry has to be managed across a variety of different content verticals, each using their own terminology for the licence models supported.

In March 2012 Technology Strategy Board launched a competitive procurement exercise to recruit software developers with innovative ideas for “front end” user interfaces for the system. There were three challenges to which candidate software developers were invited to respond:

- 1 Build a user interface to help a rights user enquire about copyright licences within a particular content sector
- 2 Build a user interface to help a rights user enquire about copyright licences across different content sectors
- 3 Build the “aggregation engine” to support the user interface sought in challenge 2.

Central to the first two challenges was the need to assist rights users in the licensing journey: helping them understand the need for licenses and enabling them to express their needs in meaningful terms to rights holders.

Four companies were successful in securing funding from Technology Strategy Board to proceed with developing some prototype ideas. These companies were Metabroadcast, Arc Software, Totally Radio and I3DLife. . A group of rights owners provided resources at the back end of the system, so that realistic queries could be demonstrated across a range of content types. The rights owners involved were EMI Music Publishing, EMI Music, Osprey, PRS for Music, National Maritime Museum, BBC, Pearson, Tate Images, and the V&A Museum.

## The Future

The code in which the model messaging hub is built is all open source and Technology Strategy Board intends to release it into the community so that others can take it forward and build on this early base. While licensing models have been the initial focus, Technology Strategy Board will now look to the five to ten year time horizon. The next stages of the DLF programme will look to the future of digital exchanges and begin to explore the opportunities of creating new markets when the rights and the content are 100% digital and where there may be automation of other transaction components such as investment or purchase. It will address challenges of a purely digital environment such as trust and verification. It will also encourage current projects to be as future-proof as possible, for example, in their adoption of extensible ontologies and forward-looking database designs.

In order to begin to create a common language and shared vision of new marketplaces, rights owners and developers will need to set aside the legacy complexities that hamper incremental progress. Technology Strategy Board is interested to engage with technology companies and rights owners to collaborate on creating pre-market, future models for digital exchanges. The complex legacy challenges of poor data should not hinder the further exploration that will yield new growth in purely digital transactions. Drawing a line in the sand and creating models for newly created digital rights to newly created digital works will allow for the more rapid innovation which Technology Strategy Board is there to promote.

# Annex E:

## The Copyright Hub – a proposed architecture

### DCE Secretariat

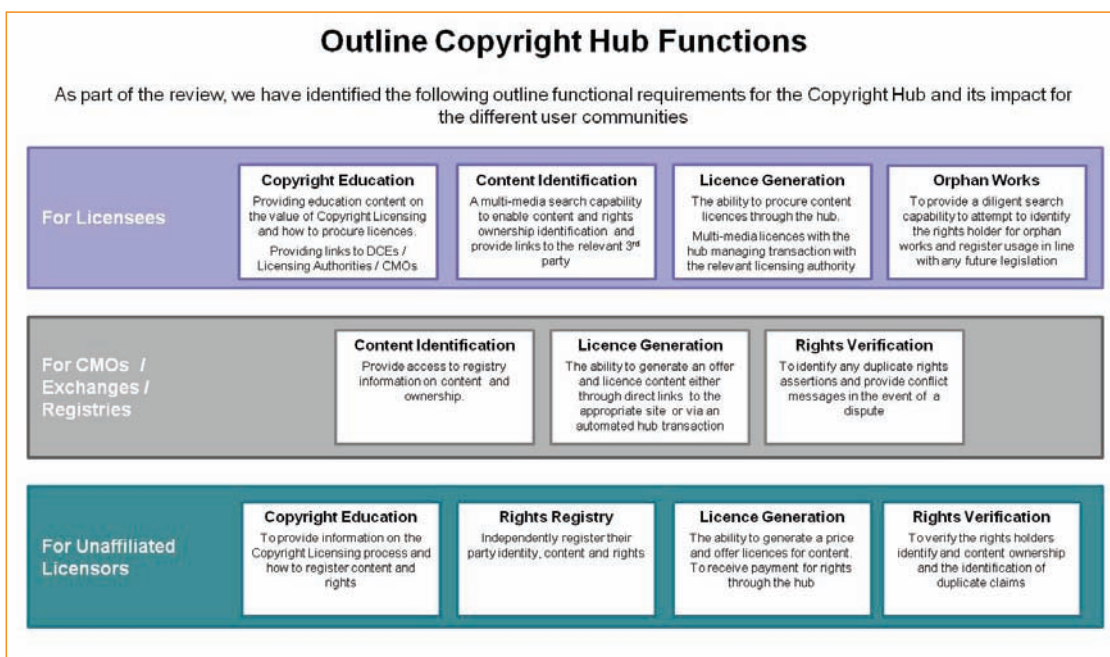
As part of the review we have considered the functionality that the Copyright Hub could provide. The detailed solution scope, functional requirements and phasing would be refined as part of any programme mobilisation and scoping phase of any implementation.

Figure 1 provides an outline view of the functional requirements for the Copyright Hub. The licensing solution has been broken down into the two key functional areas; content / ownership identification and license generation.

### Copyright Education

The Copyright Hub should provide a comprehensive education repository in support of digital copyright licensing. The solution would provide practical information / guidance for:

- Licensees on the importance of licensing content, how to identify content owners and navigate the copyright process
- Licensors on the value of the copyright licensing and how to register their rights and monetise their content through selling rights



**Figure 1**  
**Outline Copyright Hub Functions**

We would also expect the Copyright Hub to provide signposting and navigation to key sites that support the management of digital rights in the UK (e.g. CMOs, Digital Copyright Exchanges and Rights Registries)

## Content Identification

The Copyright Hub should provide the mechanism for potential licensees to identify both the content they are looking to use, the associated rights holder and how they can acquire the license. The solution would achieve this through the provision of:

- A multi-media search capability which is integrated through a message hub with content registries to enable content identification and confirmation of ownership
- Alternative advanced media search capabilities which utilises the latest search recognition technologies for content identification e.g. image recognition
- Direct links to the appropriate CMO, Rights holder or Digital Copyright Exchange to enable consumers to procure licences

## Rights Registry

The Copyright Hub could enable unaffiliated content creators to register their content directly through the hub. The solution would need to provide content creators with the ability to:

- Register themselves as parties
- Register their content and rights
- Share ownership
- Transfer ownership

In order for the Copyright Hub to work effectively as a registry it would need to provide a metadata governance function which would validate the rights holders' assertion of ownership. This could be achieved through developing a forensic capability which identifies duplicate rights assertions with CMOs and DCEs. Any potential rights conflict would result in the relevant parties being alerted that an issue needed to be investigated / resolved.

## Licence Generation

The Copyright Hub should play a significant role in automating the copyright license process. The solution would need to provide the ability to:

- Generate an offer and price to licence content either through integration with 3rd parties or through the internal rights registry
- Generate and / or distribute the relevant licence document
- Manage the payment transaction from the licensee
- Transfer any licence payment to the rights holder or relevant 3rd party

The Copyright Hub could also play significant role in meeting the future industry demands for multi-media licenses. The hub would provide a platform for a licensee to develop multi-media licence requests which transcend the multiple rights registries and unaffiliated content creators. In this scenario the hub would:

- Manage the overall license agreement and payment with the licensee
- Manage the individual license transactions and payments with multiple 3rd parties



## Orphan Works

The copyright hub could support the challenges associated with orphan works through the deployment of the following functionality:

- Diligent search capability for rights owners / holders associated with an Orphan Work
- Formal email confirmation that a diligent search has been performed
- Orphan work registry to enable consumers to register their use of an orphan work

The application of any functionality to support the management of orphan works will need to be deployed in line with any future orphan work legislation.

## Solution Phasing

The copyright hub functionality should be implemented through a number of phases. As part of the study we have considered one phasing approach which we have outlined below. The precise phasing and timelines for delivery should be considered as part of the mobilisation and solution scoping phases of an implementation.

### 1 Website Launch & Education

- The initial website launch will provide an education portal for digital copyrights and signposting to the appropriate rights licensing websites

### 2 Content Identification and Signposting

- Launch of a multi-media search capability using appropriate messaging standards to integrate with 3rd parties. Users signposted to rights holder sites to procure licences

- Embedded alternative search capabilities (e.g. image recognition) to accelerate content search

### 3 Register, Licence & Orphan Works

- Launch of an independent market place for content creators to register their rights and monetise their content through licensing
- Develop licensing process with rights holder platforms to automate the process
- Duplicate rights verification checks and conflict message generation
- Enable licensees to confirm they have performed a diligent search for an orphan work and register their usage

### 4 Multi-Media Licensing

- Ability to procure a single licence for multiple-media types through the hub
- Manages the licence transactions with the associated rights holder platforms

## Licensors View of the Copyright Hub

Figure 2 provides an outline view of the potential ways we envisage a licensor could benefit from using the Hub.

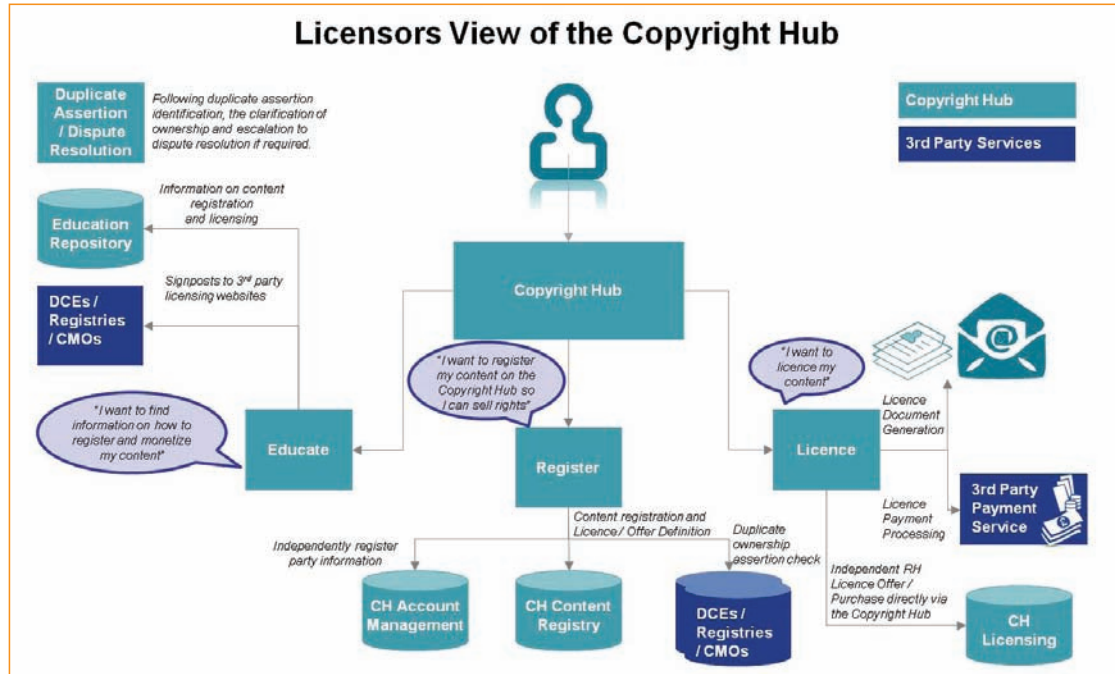


Figure 2 - Licensors View of the Copyright Hub

## Licensee Scenario Analysis

Figure 3 provides an outline view of the potential ways we envisage a licensee would be able to use the Copyright Hub.

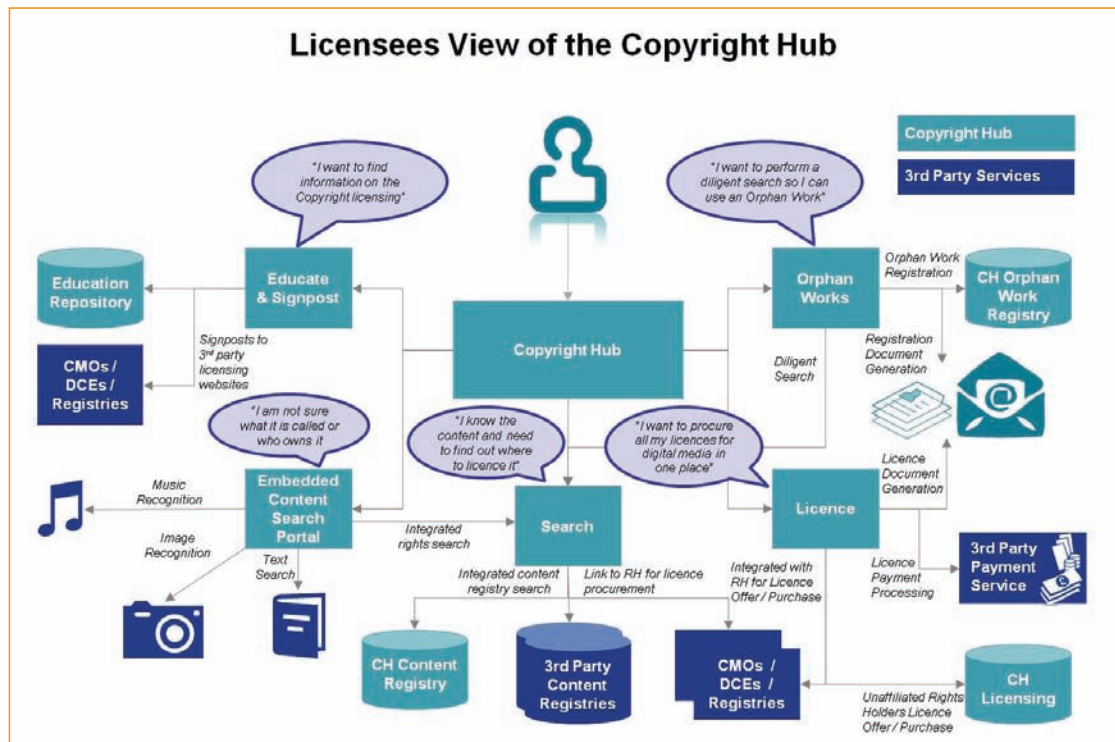


Figure 3 - Licensee View of the Copyright Hub

# Annex F

## Museums Digital Content Exchange proposal

**Tom Morgan (NPG) & Vanessa Minet (BM)**

A coherent, sustainable presence for the UK cultural sector in the global licensing marketplace

### Proposal Outline

The Museums Digital Content Exchange ('MDCE') aims to create a flagship centralised image licensing agency for museums and galleries in the UK. Run as a non-profit organisation, it will consolidate operations to deliver better service (a more comprehensive range of images and innovative licensing options) at lower cost, making content from large and small institutions available on a single online platform to a worldwide market – creating a coherent, sustainable presence for the UK cultural sector in the licensing marketplace.

The project is urgently needed to address a number of barriers to economic development, enhance financial performance, and facilitate additional benefits to the cultural and education sector, as well as protecting and promoting the interest of UK creators and other rights-owners.

### Rationale/Benefits

Image licensing is an important source of revenue to the UK's museums and galleries but development is currently constrained by lack of co-ordination between institutions, forcing customers to interact with a confusing array of structures, prices and terms, whilst smaller institutions are kept out of the market.

Currently, duplication of operations and infrastructure results in high transactional costs and missed opportunity. Concentrating resources via MDCE would reduce costs and permit a change of focus, increasing market share and maximising returns. If the MDCE could aggregate the annual turnover of major UK institutions (est. £2.5m), it could expect to return around £1.25m, net of costs. European partners BPK and RMN would add a conservative estimate £0.6m of turnover within three years of launch.

Museums face a difficult balance in deciding access policy for IP and digital content. Whereas their image licensing currently generates more than £2.5m turnover, they are under pressure to provide free access to their assets for Google, Wikipedia and other interest groups, to exploit, without financial return. A licensing system is therefore required, which is backed by a common policy and consistently applied across the sector. The MDCE will ensure the appropriate availability of content for re-use in the UK education sector, whilst increasing commercial licensing income and providing a single, authoritative voice for the sector on related policy issues.

Good IP management is an essential 'backstage' operation in UK cultural heritage institutions. The MDCE would address current costly duplication of effort and lack of a central, authoritative contact database, which is not in the interests of UK creators and rights-holders or of the institutions themselves.

German and French cultural heritage institutions have proven the MDCE concept, coordinating their image licensing through BPK and RMN respectively, and are keen to partner with the MDCE, to create a single UK source for licensing European fine art and cultural content, with reciprocal syndication in France and Germany.

- MDCE shares the objectives of the Hooper Secretariat's DCE proposals.
- MDCE aims to improve licensing, helping UK businesses to access the European cultural image repertoire and taking UK cultural content to new markets, worldwide, increasing export revenue.
- MDCE aims to be a non-profit organisation, self-sustaining within three years of launch.
- MDCE is an industry-focused, self-help initiative by the cultural sector, sharing skills and resources and exploiting digital technologies for improved effectiveness and efficiency.

## Key MDCE objectives:

### Create a coherent presence for the UK cultural sector in the licensing marketplace

- a flagship brand for UK cultural content
- dynamic response to marketplace developments, with innovative licensing

### Deliver a key European cultural and business partnership

- a licensing collaboration with BPK (Germany) and RMN (France)

### Drive innovation and cost-effective performance improvements

- merging resources to reduce costs, improve pricing, efficiency and transparency, and maximise returns for participating institutions
- creating innovative licensing solutions
- sharing investment in infrastructure, business development, sales and marketing activities

### Deliver coherent policy

- coordinating and communicating policy for access and re-use of IP and digital content balancing the public mission of providing access with the need to protect and realise the economic potential of the digital assets
- ensuring a consistent and balanced approach to 'open content' initiatives, including Europeana

## Improve IP management

- protecting and realising the interests of UK creators and other rights-holders
- co-ordinating on metadata and rights management practice, including a central registry of creators and rights-holders and royalty payment operations
- improving museums' collective ability to deal with matters arising from UK and EC legislation and to ensure their interests are addressed in debate concerning public policy and intellectual property in the cultural sector

## Timescale

Proposed inception – October 2012; Setup phase – Jan-Dec 2013; Launch – Jan 2014

## Costs

Funding in the range of £2m would be required to underwrite the pre-launch phase and running costs to the end of August 2015, when MDCE would deliver an operating profit. It is hoped that UK Government would provide this funding. Initial investment would be recouped by August 2016, when the project would be in net profit.

## Stakeholders

MDCE is led by the National Portrait Gallery and the British Museum, with contributions from the Tate Gallery, National Maritime Museum, V&A Museum, Réunion des Musées Nationaux de France, and the Bildarchiv der Preussischen Kulturbesitz. It has been developed in consultation with a wide range of cultural heritage organisations, and representatives from rights-holders groups as well as publishers.

# Annex G

## PRS for Music and PPL - Joint Briefing Note

Peter Leathem, PPL

Robert Ashcroft, PRS for Music

### Introduction

Hundreds of thousands of businesses across the country, large and small, need licences from both PRS for Music and PPL. Collective licensing already simplifies the licensing process for music, by providing blanket access to millions of different compositions and recordings, and the Phase 1 report acknowledges that each of PPL and PRS for Music is efficient in its own right. However, both organisations recognise the value, to music users and rights owners alike, in finding ways for PRS for Music and PPL to work more closely together.

In responding to the Call for Evidence during Phase 1 of the Digital Copyright Exchange feasibility study, PRS for Music and PPL confirmed their commitment to further joint working:

*“Building on earlier joint initiatives (such as joint licensing of schools, churches, DJs, joint research under MusicWorks, common reporting standards for TV and radio broadcasters, and joint audits), in January 2012 PRS for Music and PPL launched a joint licence for Community Buildings. The joint licence is administered by PRS for Music and was delivered on time as planned. PRS for Music and PPL are actively engaged in extending their joint working and are both committed to improving the licensing experience for our users.”*

This joint Briefing Note, submitted for Phase 2 of the feasibility study, seeks to provide some further detail on our current joint activity and an update on our plans to do more.

### Current Joint Activity

#### 1.1 Joint licensing arrangements

PRS for Music and PPL currently operate the following joint licence arrangements, administered by PRS for Music (under the terms of contractual agreements with PPL) on behalf of itself and PPL:

##### a Limited Manufacture Licence (LML)

Joint licensing arrangement covering the necessary MCPS and PPL rights for the following users to undertake the following activities:

Schools, colleges, universities, local education authorities, private tutors, students	Recordings of student performances for sale or giving away to students, family, friends or to raise funds for the school.
	Recordings solely used for the giving and receiving of tuition.
	Student films that are shown only as part of the students' course work, educational assessment, student competitions and the students' personal portfolio.

Churches and other religious establishments	Recordings of choirs or other services for sale or giving away to members of the congregation, family, friends or to raise funds for the church, or institutions of other religious denominations.
Private and domestic use	Recordings of private events such as: weddings, christenings, bar mitzvahs, family holidays and funerals, which are sold or given away to family and friends associated with that event.
	Recordings made for playing at private events such as: weddings, christenings, bar mitzvahs, family holidays and funerals.
	Copies of existing films or recordings transferred from video (e.g. VHS) or audio (e.g. CD) formats to other physical formats (e.g. DVD-Video) solely for private and domestic use by the owner of the original version, their friends or family.

Amateur societies	Recordings made for playing and showing only as part of the practicing, participating and competing in recognised amateur society activities, including: musical gymnastics, horse dressage, synchronized swimming, amateur dramatics and amateur film making.
Charities	Recordings of community projects music or otherwise, funded by non-business entities and supported entirely by voluntary contributions and voluntary workers, which are sold or given away to members of the community, friends and family.
Amateur Musicians	Recordings made by non-record company affiliated musicians that are sold directly to audiences, family or friends, including amateur orchestras, singers and bands.

## **b ProDub**

Joint licensing arrangement covering the necessary MCPS and PPL rights for the following users to undertake the following activities:

DJs, karaoke jockeys, fitness instructors, performers etc	The ProDub Licence allows individuals to copy music they own onto various formats and devices, such as from their CDs to their laptop, for the purpose of using that device or format to undertake professional or semi-professional performances.
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Both the LML and ProDub licences can be purchased online.

## **c Community buildings**

Joint licensing arrangement covering the necessary PRS for Music and PPL rights for the following users to undertake the following activities:

Community buildings (run by voluntary organisations)	Various types of public performance of music.
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PRS for Music and PPL also effectively provide a joint licensing solution for other sectors through their shared use of one licensing intermediary:

## **d Schools**

Both PRS for Music and PPL licences for the non-curricular use of music at schools are administered by CEFM (Centre for Education and Finance Management).

## **e Churches**

Both PRS for Music and PPL licences for the public performance of music at churches are administered by CCLI (Christian Copyright Licensing International).

## **1.2 Joint marketing/ awareness activities**

### **a Joint marketing activity**

PRS for Music and PPL now use the same media agency for the planning and booking of print advertising, which allows us to present a clearer and more co-ordinated message to the business community. Similarly, our marketing teams have reviewed our advertising with a view to making it even more transparent that usually both licences will be needed. We also recognise the value of joined-up messaging in other contexts such as trade events and, for example, hosted a shared PRS for Music and PPL stand at the Business Start-up Show in London in May 2012.

### **b MusicWorks**

MusicWorks is a joint research and awareness-raising initiative, using independent third party research to demonstrate the positive effects of music and the benefits it can bring to businesses. The research activity is jointly funded and the MusicWorks website is operated by PPL on behalf of PPL and PRS for Music jointly.

## **2 Planned activity**

### **2.1 Top-level commitment**

PRS for Music and PPL have each committed to further joint working as part of their strategic plans, which is supported by the boards of both organisations.

PRS for Music and PPL recently held a strategic away-day as an important next step in our ongoing planning and discussions for further joint working. This positive and productive session was attended by the Chief Executives and teams of senior executives from both organisations, and facilitated by Deloitte.

Following the away-day, PRS for Music and PPL have established a joint working project team, reporting to the Chief Executives and comprising senior executives across the operational, licensing, legal, financial and marketing functions. This project team is meeting regularly to review and drive forward the organisations' various joint working initiatives.

## 2.2 Next steps

We set out an update below on the next steps we are planning to take on the journey to extend our joint working.

### a Joint licensing activity

Building on their existing joint licensing, PRS for Music and PPL are now working together with the aim of developing two new joint licensing solutions:

A joint licensing solution for **small workplaces** (offices/factories with 4 or fewer staff), planned to be administered by PRS for Music; and

A joint licensing solution for **amateur sports clubs**, planned to be administered by PPL.

Analytical work is already underway with Deloitte, to provide the foundation on which we intend to develop full proposals for these two new joint licensing solutions. We are pleased to be exploring these opportunities to further simplify music licensing for these sectors, and

look forward to discussing matters with them (including appropriate consultation) in due course.

In parallel, PRS for Music and PPL are pursuing opportunities to collaborate on a range of operational and administrative activities that support the public performance licensing process generally. This has the potential not only to deliver further simplification of the end-to-end licensing experience but also to drive even greater operational efficiency.

### b Joint marketing/awareness activity

PRS for Music and PPL are also planning further collaboration on marketing and awareness-raising activities, including:

A joint advertising campaign in various Chamber of Commerce titles (currently expected to launch in September 2012);

Continued joint attendance at key trade events (including a shared stand at The Restaurant Show in October 2012);

Joint relationship-building with consumer groups and representative bodies across the business community.

We will also continue jointly to develop the MusicWorks initiative. The latest new research (looking at the value of music to small businesses) was published in June 2012, accompanied by the launch of the newly redeveloped website, [musicworksforyou.com](http://musicworksforyou.com).



## Annex H:

### Examples of licensing solutions offered by music copyright holders

The following examples illustrate ways in which music copyright holders are responding positively to the challenges of licensing music in the digital age.

We also provide examples of how the copyright holders of the “two sides” of music are working together to offer joint licensing solutions in many cases. The focus here is on licensing via the collection societies representing music copyright holders.

Every piece of recorded music has two sides to it.

- One side is the musical and literary works (the musical composition and lyrics). Rights holders are music publishers and composers. When licensing collectively, they use PRS for Music.
- The other side is the sound recording (and the performances on it). Rights holders are record labels and performers. When licensing collectively, they use PPL.

These are completely separate copyrights. The use of recorded music almost always requires a licence from both sets of copyright holders.

## Examples of efforts to create licensing solutions for the digital age:

What is it for?	The licensing solution (Musical works)	The licensing solution (Sound recordings)
<p><b>Non-interactive digital music services</b>, such as a digital radio station or a music streaming service, for digital start-ups / small companies.</p>	<p><b>Limited Online Music Licence (LOML), offered by PRS for Music.</b></p> <p>The licence covers the use of musical works in the UK.</p> <p>Specifically aimed at small businesses with a turnover under a set amount.</p> <p>More than 4000 of these have been issued to date.</p> <p>Buy directly from the PRS for Music website starting from £118 + VAT.</p>	<p><b>The Small Webcaster Licence, offered by PPL.</b></p> <p>The licence covers the use of recorded music in the UK by online radio stations.</p> <p>Specifically aimed at small businesses with a turnover and streaming volume under set amounts.</p> <p>Over 500 such stations are currently licensed by PPL.</p> <p>Available from PPL for £190 + VAT.</p>

<b>What is it for?</b>	<b>The licensing solution (Musical works)</b>	<b>The licensing solution (Sound recordings)</b>
<p>Significant new <b>online streaming services</b>, such as Mixcloud.</p>	<p>PRS for Music has a number of licences available to cover such services including the <b>Online Music Licence (OML)</b>, the <b>General Entertainment Online Licence (GEOL)</b> and blanket licensing agreements with broadcasters such as the BBC.</p> <p>For example, the OML covers the use of musical works in the UK. More than 50 of these have been issued to date. Rates for different uses are published on the PRS for Music website.</p>	<p><b>Bespoke blanket licences</b> offered by PPL.</p> <p>PPL is mandated for a limited set of sound recording rights in the online and mobile space. This is continually kept under review.</p> <p>When the BBC wanted to develop the iPlayer and asked PPL to negotiate a collective licence covering the new rights, PPL was able to extend its rights mandate to license a package of additional rights including on-demand streaming, temporary and permanent downloads. Through direct agreements with societies in the USA and Canada, and reciprocal agreements in Europe, the licence was further extended internationally.</p> <p>Another example is Mixcloud, an internet based service offering on-demand streaming of a range of music programmes including DJ sets. Such content is likely to include unauthorized remixes and mash-ups of PPL sound recordings. Notwithstanding the problems this poses, PPL has licensed the service on a pragmatic basis with a “take down” right in the event of rights holder objections.</p>

<b>What is it for?</b>	<b>The licensing solution (Musical works)</b>	<b>The licensing solution (Sound recordings)</b>
<p><b>“On-demand” digital music services</b>, such as music downloads or interactive streaming services where listeners can choose what to listen to and when.</p> <p>For example, iTunes, Spotify, Deezer, etc.</p>	<p>The larger music publishers create bespoke, multi-territory licenses for new digital music services. All have dedicated digital business development and sales teams.</p> <p>PRS for Music works with a group of independent music publishers to make their rights available to users on a pan-European basis.</p> <p>For UK services, PRS for Music offers a one-stop licence on behalf of those publishers and composers who do not license directly. There are 3 tiers of licences:</p> <p><b>Online Music Licence</b> – for large and comprehensive digital music services (see p.3).</p> <p><b>Limited Online Music Licence Plus (LOML+)</b> – a new licence, aimed at mid-tier businesses that exceed the threshold for the Limited Online Music Licence, but are too small to need a full Online Music Licence.</p> <p><b>Limited Online Music Licence</b> - for start ups and very small businesses (see p. 2).</p>	<p>The larger record labels create bespoke licences for new digital music services. These might include rights for use in multiple territories. All have dedicated digital business development and sales teams.</p> <p>Independent record labels use Merlin – a one-stop global rights agency for licensing new and online mobile music services.</p> <p>For standard online and mobile services (such as downloads, ad-supported streaming and subscription services), most major rights holders now have off-the-shelf rates and licences for these may be readily available through aggregators such as IMI or 7digital.</p> <p>The BPI’s Innovation Panel provides a service to new businesses to guide them through the licensing process for sound recordings.</p>
<p>There are over 70 fully licensed digital music services in the UK, which is significantly more than in our competitor markets like the USA.</p>		

## Examples of efforts to streamline and simplify through joint licensing initiatives:

Who is it for?	The joint licensing solution for musical works and sound recordings
<p><b>Non-commercial organisations and individuals who want to make CDs or DVDs (to sell or give away) of amateur performances, when these performances</b> include the use of professional artists' recordings or compositions.</p> <p>Think Glee. A secondary school produces a DVD of its students' talent show, singing and dancing to the soundtrack of popular pop hits. They sell the DVD to raise money for the club.</p>	<p><b>Limited Manufacture (LM) Licence</b></p> <p>This one licence covers both the use of musical works and sound recordings. It is an example of music copyright holders' efforts to streamline and simplify the licensing process. It is administered by PRS for Music on behalf of itself and PPL.</p> <p>More than 12,500 of these have been issued to date. Many groups find this useful: schools, churches, amateur societies, charities, amateur musicians, and videomakers for events like weddings and bar mitzvahs.</p> <p>Buy directly from the PRS for Music website. Costs vary depending on uses, but prices start at less than £8, including VAT.</p>
<p><b>DJs, karaoke jockeys, fitness instructors, dance class instructors and performers.</b></p> <p>For example, A professional DJ creates a specific playlist for an event on his computer at home, transfers it to a laptop and connects it to a speaker system at the venue.</p>	<p><b>ProDub Licence</b></p> <p>The one licence allows individuals to copy music they own onto various formats and devices, such as from their CDs to their laptop, for the purpose of using that device or format to undertake professional or semi-professional performances. It is administered by PRS for Music on behalf of itself and PPL.</p> <p>Buy directly from the PRS for Music website. Costs vary depending on uses, but prices start at £85 (excluding VAT).</p>

<p><b>Who is it for?</b></p>	<p><b>The joint licensing solution for musical works and sound recordings</b></p>
<p>Users of <b>music incorporated into advertisements, films and television, games and corporate materials.</b></p>	<p><b>Production Music Licence</b>, (sometimes called library music licence) offered by PRS for Music.</p> <p>A Production Music Licence covers the use of the musical works and the sound recordings in the 600,000 + tracks and sound effects in over 200 production music libraries, spanning all genres of music. These are pre-cleared for usage in any territory in the world.</p> <p>Go to the PRS for Music website, generate a quote, and pay.</p> <p><a href="https://musicshop.prsformusic.com/LMGR/">(https://musicshop.prsformusic.com/LMGR/)</a></p> <p>Costs vary but prices start at £5 for a student film.</p> <p><b>Cuesongs</b> and <b>Ricall</b> and other services provide searchable databases of music tracks that allow users to listen to tracks, download broadcast quality tracks, and obtain pre-cleared licences for using both the sound recording and musical works, worldwide. Depends on uses, but many licenses for use of specific tracks are available ‘off the shelf’ and can be bought online.</p>
<p>Community buildings run by voluntary organisations</p>	<p><b>Community Buildings Licence</b></p> <p>This covers various types of public performance of music, and licenses the necessary rights for musical works and sound recordings in a single transaction.</p> <p>It is administered by PRS for Music on behalf of itself and PPL– start the ball rolling with a phone call to PRS for Music.</p>

<p><b>Who is it for?</b></p>	<p><b>The joint licensing solution for musical works and sound recordings</b></p>
<p><b>Places of worship</b></p> <p>PRS for Music and PPL license the public performance of music at places of worship when this takes place outside of services of worship, for example:</p> <ul style="list-style-type: none"> <li>• Youth group social events</li> <li>• Parent and toddler groups</li> <li>• Coffee mornings</li> <li>• Christmas parties</li> </ul>	<p><b>Christian Copyright Licensing International (CCLI)</b></p> <p>Copyright holders of both musical works and sound recordings use CCLI as a one-stop shop to license the public performance of music by places of worship.</p> <p>Licences are available to buy directly from the CCLI website.</p>
<p><b>Schools (and other educational establishments)</b></p> <p>Schools' public performance of music outside the curriculum*, for example,</p> <ul style="list-style-type: none"> <li>• Discos/end of term parties</li> <li>• Telephone systems music on hold</li> <li>• Playing a radio/tape/CD player in the staff room</li> <li>• School fetes (where music is being played)</li> <li>• Dance/Aerobics classes</li> </ul> <p>(*Schools do not require a public performance licence for curricular use of music.)</p>	<p><b>Centre for Education and Finance Management</b></p> <p>Copyright holders of both musical works and sound recordings (along with other right holders) use the Centre for Education and Finance Management as a one-stop shop for licensing the non-curricular public performance of music at schools.</p> <p>Quotes for licences are available from the CEFM website.</p>

<b>Who is it for?</b>	<b>The joint licensing solution for musical works and sound recordings</b>
<p>Schools' use of recordings of broadcasts (television or radio programmes) for use as an aid in lessons, for example, if a teacher wants to play a recording of a BBC radio programme about the growth of urban music, as part of a lesson in social studies.</p>	<p><b>Educational Recording Agency (ERA)</b></p> <p>Copyright holders of both musical works and sound recordings (along with many other right holders) use ERA as a one-stop shop to license the rights in recordings of television and radio broadcasts for curricular use in schools.</p> <p>Contact ERA by email or phone; they will run a search to see whether the educational establishment is already licensed by a local authority; and if not, will supply an application.</p>
<p>Schools wanting to copy hymns and worship songs</p>	<p>Music publishers appoint <b>CCLI</b> for this purpose.</p>
<p>Schools wanting to copy printed music publications and <u>make</u> arrangements of musical works.</p>	<p><b>Schools Licensing Scheme</b>, to be launched in April 2013, offered by the Music Publishers Association (MPA). This answers a need by schools and local education authorities for a more flexible approach to the use of sheet music within the school.</p>



# Annex I

## ORPHAN WORKS AND EXTENDED COLLECTIVE LICENSING

### Intellectual Property Office

The Government has proposed in the Enterprise and Regulatory Reform Bill that powers are given to the Secretary of State to make regulations to allow for an orphan works licensing scheme and to make regulations in relation to the authorisation of voluntary extended collective licensing schemes.

#### Orphan works

The Government has also proposed that the Secretary of State should have a power to reduce the duration of copyright in existing works which are unpublished, pseudonymous or anonymous. It is thought that these works account for a large proportion of the orphan works and, if the term can be reduced, a significant reduction in the number of orphan works should follow.

Currently, because of transitional provisions on copyright term for these very old works, much material, such as medieval manuscripts, in archives, libraries and museums will remain in copyright until 2039. The change would allow the UK to apply harmonised term conditions to such works.

This will be very helpful in reducing the scale of the orphan works issue but there still is a need for a means of licensing orphan works. The details of the scheme are still being considered and will be laid out in secondary legislation. However, the Government, in its policy statement on modernising copyright, has determined the following:

- There should be a diligent search before any work can be licensed as an orphan and the search will need to be verified by an independent authorising body (yet to be determined).
- Commercial and non-commercial will be catered for to maximise economic growth potential but also because it is difficult to differentiate the two.
- Remuneration will be set aside for missing rights holders at a rate appropriate to the type of work and type of use.
- It will be assumed that moral rights have been asserted and rights holders' will be credited where their names are known and details of the orphan works licensing body provided where they are not.
- There will be a register of orphan works recording details of works which are subject to a diligent search currently and, separately, works which have been deemed orphan after a diligent search.

The orphan works scheme will allow for genuine orphan works to be used, for example, in exhibitions, online, in a TV documentary and on postcards. It does not rely on the existence of any previous licensing of that type of work by a collecting society but it does require a diligent search prior to use.

The Government's proposal to allow collecting societies to operate in extended collective licensing (ECL) mode could facilitate some mass digitisation. ECL schemes are likely to include some orphan works but it would not be known whether they were or not until royalties come to be divided up.

## Extended Collective Licensing

To help simplify copyright licensing while protecting the interests of rights holders, the Government has proposed to create a power which could be used to allow voluntary extended collective licensing (ECL) schemes to be authorised in the UK for the first time. This would mean that collecting societies that meet the necessary standards for protecting rights holders' interests could seek permission to license on behalf of rights holders who are not members, with the exception of those who opt out of the scheme.

By simplifying rights clearance where it is taken up, ECL could reduce administrative costs for users. While the proposal is not specifically designed to support mass digitisation projects, it could help to facilitate such projects by making them more economically viable for institutions. However, it is important to remember that the Government's proposals are for a voluntary system. No collecting society could be compelled to operate an ECL scheme, and will only be able to successfully apply to do so if they meet a number of criteria. Specifically, a collecting society will be required to demonstrate that:

- i) it is significantly representative of rights holders affected by the scheme.
- ii) it has the support of its members for the application.
- iii) it has in place a code of conduct, to ensure minimum standards of governance, transparency and protection for non-member rights holders.

In practice, the Government expects that ECL will be a more attractive option in areas where licensing is characterised by high-volume, low-value transactions with high administrative costs for individual clearance – such as those areas where collective licensing already plays a big role. Some sectors have developed other solutions like direct licensing, and the Government does not intend to disrupt that. Therefore while ECL could potentially be used to facilitate mass digitisation projects, the extent to which this occurs is dependent on the decisions taken in each sector. ECL may be less likely, for example, to provide a solution for projects where there isn't an established tradition of collective licensing for the type of clearances required. The Government believes this market-led approach is the correct one to protect the interests of rights holders.





**INTELLECTUAL**  
PROPERTY OFFICE

Concept House  
Cardiff Road  
Newport  
NP10 8QQ

Tel: **0300 300 2000**  
Minicom: **0300 0200 015**  
Fax: **01633 817 777**  
**[www.ipo.gov.uk](http://www.ipo.gov.uk)**

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