



Support for creativity in a changing market

I. Writers and ALCS

1.1 Writers play an important role in our cultural life. Government figures place the value of the creative industries at around 7.5% of GDP and the publishing industry alone contributes between 2-3% year-on-year growth in cultural exports. International visitors come to the UK because of our distinguished heritage as birthplace to many of the world's greatest writers, and to see contemporary dramatisations by UK writers in the West End and beyond.

On the other side of this success story is the loss writers suffer as a result of the unauthorised use of their works in the on-line environment. The ease digitalisation gives to the process of copying and distributing works has produced an imbalance between the freedom of the user, the profits of commercial intermediaries and the losses incurred by writers. As a matter of fairness this imbalance should be addressed.

1.2 The Authors' Licensing and Collecting Society Limited ('ALCS') is the UK rights management society for writers of all genres of literary and dramatic copyright works including fiction, journalism, plays, poetry, academic texts, TV and radio scripts and story-lines, dramatisations, translations, abridgements and adaptations.

Established in 1977 and wholly owned by its writer members (of whom there are currently over 60,000), ALCS is a not-for-profit organisation. Since its foundation, ALCS has paid writers over £170 million in fees and today it continues to identify and develop new sources of income for writers.

Throughout its thirty year history ALCS, in partnership with other bodies such as the Copyright Licensing Agency (CLA) and the Educational Recording Agency (ERA), has helped to find licensing solutions that allow users to access works and writers to receive a fair compensation for that use. These solutions respond to technological change and the realities of user behaviour in a way that the market can sustain.

2. The current environment for writers

2.1 Developments in technology have changed significantly the way we access and use creative content. Whilst usage methods are subject to continuous change, the underlying purpose of creators' rights, as set out in the Universal Declaration of Human Rights, remains the same:

"Everyone has the right to the protection of their moral and material interests resulting from any scientific, literary or artistic production of which he, or she, is the author."¹

¹ Article 27, Universal Declaration of Human Rights

2.2 This changing environment offers writers new opportunities to bring their work to a wider audience, but also presents threats to the established models designed to ensure that the value of their work is both acknowledged and rewarded.

In digital formats writers works are more mobile, for online sale or rental, but are also subject to the kind of 'democratisation' of content - through unauthorised copying and sharing amongst users - that has visibly affected the music industry, and had a significant impact on the earnings of creators in that sector.

Recent independent research on writers earnings funded by ALCS² suggests that the level of rewards available in this sector already present a real threat to the future viability of content creation in this core area of the Creative Industries. The key findings are set out below.

- The typical income for a professional author is one third below the national average wage;
- The earnings of a typical writer are deteriorating in real terms;
- 60% of people who saw themselves as 'professional authors' required a second source of income;
- Typical earnings of professional authors from the 25-34 age-group are just £5,000 per annum.
- Less than 15% of authors surveyed have received payments for online uses of their works.

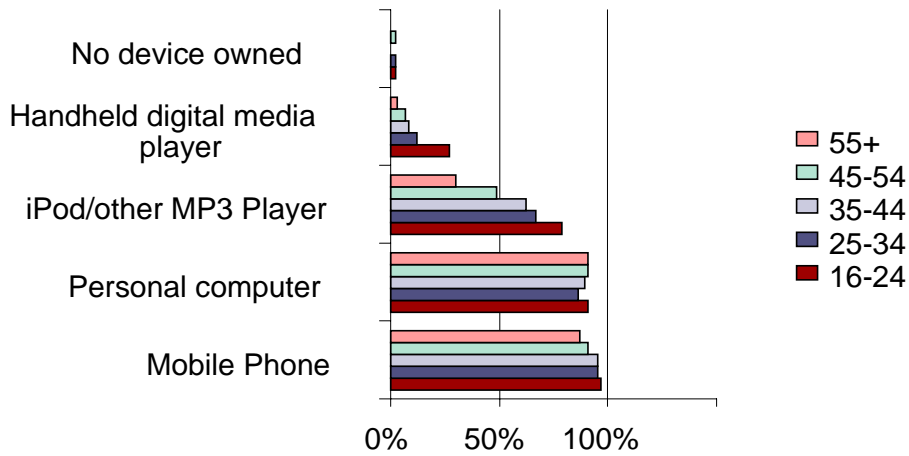
An unchecked erosion of these already minimal returns, fuelled by a growth in internet sites offering 'free' on-line use of valuable works, together with a social change in attitudes towards copyright, will in time discourage creators and reduce the value of creativity itself to both society and the economy.

2.3 Earlier this year ALCS commissioned a further (independent)³ survey examining behaviours and attitudes in relation to the impact of technology on the use of creative works.

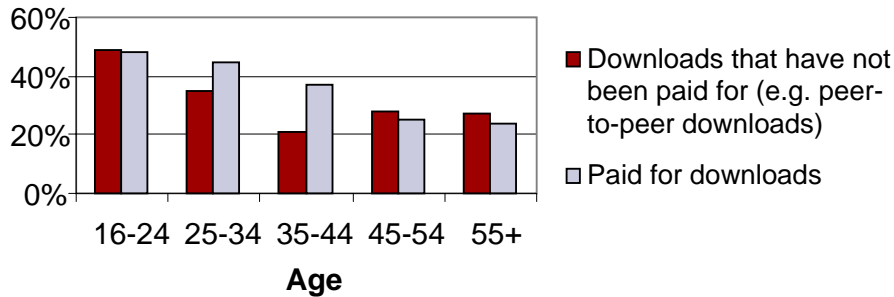
² *Authors' earnings from copyright and non-copyright sources: A survey of 25,000 British and German writers. Research by the Centre for Intellectual Property Policy & Management, Bournemouth University (December 2007)*

³ Independent Research conducted by Tickbox for ALCS, February 2008
(Total surveyed: 1,223)

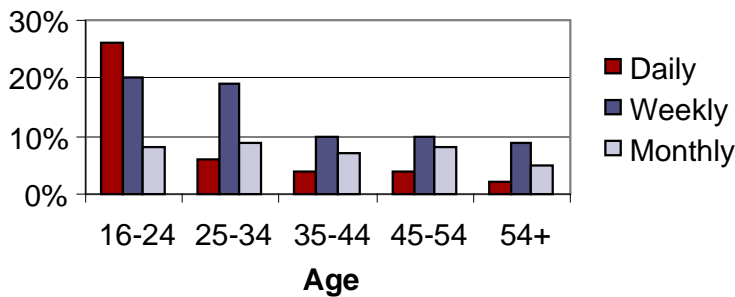
The survey confirmed that while levels of ownership of multi-media devices is high,



this technology is often used by all age groups to access content in a way that does not include creators within the value chain.



However, as can be expected, the survey also revealed that incidences of illegal downloading were most prevalent amongst the 16-24 age-group; the group with the highest levels of ownership of new technology.



2.4 The impact of these new technologies on the music industry has been well documented. In terms of the works that writers create, similar issues arise. Films,

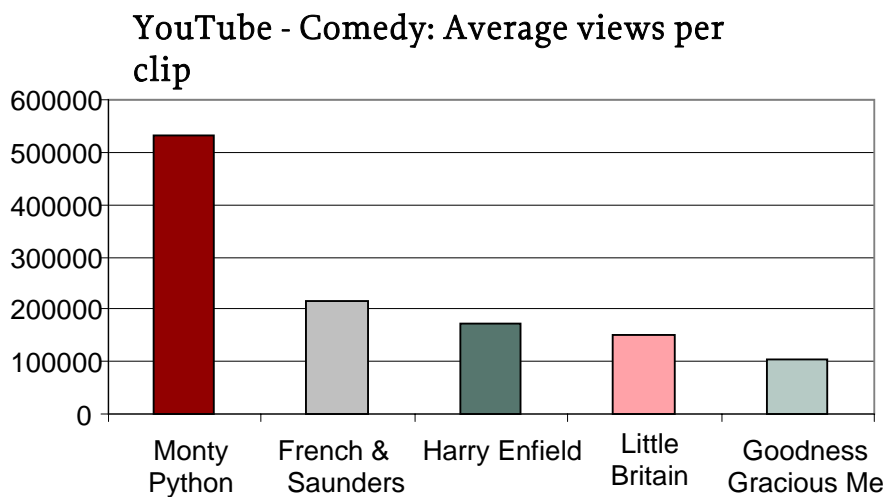
television and radio programmes scripted by writers are now available on-line for 'free' download, providing direct competition to the royalties based sale/rental markets. As far as published works are concerned the growing popularity of devices such as the Sony E-Reader and Amazon Kindle suggest that a legitimate market for e-books will, in time, have to compete against on-line resources that offer the same products as free downloads.

The works may be different but the underlying problem is the same: **if you can get something for free, why pay?**

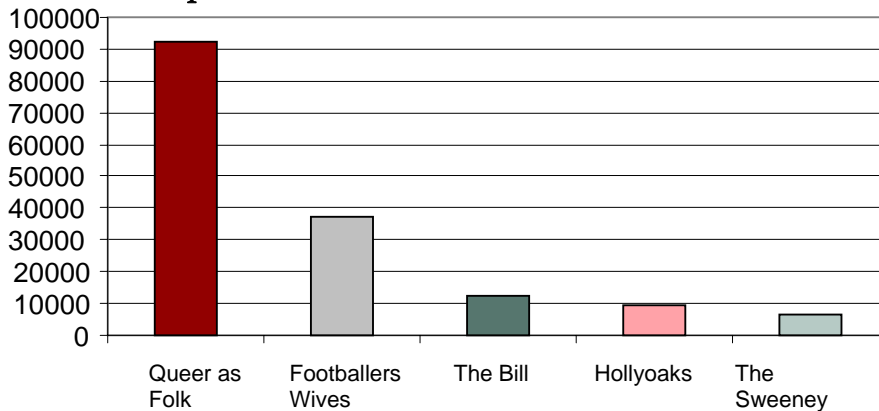
It is not just individuals that have constructed the new models for accessing content outside of the systems that provide a fair return to creators. On-line networking sites have to a great extent facilitated this new world by hosting vast resources of searchable content. Originally designed as spaces for sharing user generated content such as 'home videos', these sites now contain huge archives of professional, broadcast quality works.

It is sometimes argued that 'mere clips' do not carry a significant value. Many clips attract hundreds of thousands of visitors to the site, providing advertising and other promotional opportunities. Furthermore programmes or films are often uploaded in the form of indexed 'chapters' to provide access to an entire work. As far as writers are concerned the value in these user-uploaded clips and extracts is not recognised by any compensation to the original creator.

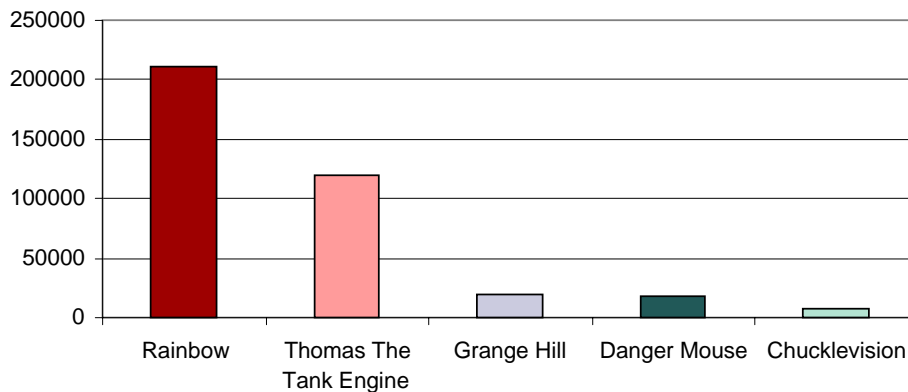
The following provides a snapshot of some internal research conducted by ALCS examining the incidence of professionally produced content on YouTube within three key genres of scripted works.



YouTube - Drama: Average views per clip



YouTube - Children's: Average views per clip



According to copyright law authors have the right to authorise the use of their works. The advent of such sites has inverted this principle. For YouTube postings copyright owners must follow a 10 point notice and take down procedure just to have their work removed. The onus is therefore on authors to police the site and undertake the prescribed procedures.

Last year the music industry secured a compensatory payment from YouTube to account for the reality of how the site operates: works are posted without permission; value is extracted without payment to creators; it is not practical to seek out and request take down of every clip that infringes creators' rights.

Were ALCS to seek a similar voluntary arrangement with YouTube to compensate writers for the vast numbers of scripted TV/film works that appear on the site, it would look towards government for support in achieving a fair return for creators.

3. Current policy discussions

3.1 Format Shifting. The original Gowers Report focussed on the issue of music transfer. Following the principle that copyright exceptions should be introduced on the basis of evidence of need, it appears to follow that an exception that extends only to music rights may be most appropriate at this stage. In light of the provisions of the European Copyright Directive, this leads to the question of fair compensation to accompany the new exception and who might fund such compensation.

Irrespective of the works to which any new exception ultimately applies, there is a broader issue at stake surrounding the question of compensation for 'shifted' content. The formal Gowers proposal focuses on cases where individuals shift works solely within the private domain, using content and equipment they have paid for. The UK-IPO Gowers Consultation document acknowledged that the reality may be slightly different, "most rational utility-maximising consumers would be expected to copy beyond the bounds of the proposed format shifting exception (for example to make copies for family and friends)."

Accepting the reality of actual use patterns (with or without the exception) it seems reasonable to suggest that:

- a) demand for portable content storage and playback devices - whether for music, TV/film or books - will remain and in some sectors grow;
- b) the source of content on these devices will be both legal and illegal;
- c) the means to identify the illegal content (to isolate or restrict its availability) will, at least in the foreseeable future, never be 100% effective.

In this environment the commercial demand for the devices that connect the user to the content, and the unquantifiable amount of works used without payment are two constant features. On that basis we would argue that, to re-set this inequality within the market, a proportionate fair compensation regime should balance one with the other.

3.2 ISPs. A similar argument applies to the question of the place occupied by ISPs in the new world of on-line content access. The fact that 'free' content is available on-line does not of itself drive demand for Internet access, but it is clearly something that many people have come to accept as an added element of value.

To a certain extent this misperception may be corrected through education initiatives. But education campaigns will not convince everybody, particularly those who have grown up with the enabling technology.

Following recommendations within the Gowers Report and the subsequent DCMS Creative Industries Strategy Paper ISPs have begun to work with the rightsholders to trial systems for removing services from persistent copyright offenders. If widely accepted and adopted this kind of enforcement procedure is clearly a valuable tool in reducing the amount of illegal file-sharing activity.

But realistically it will be some time before the kind of enforcement measures currently under discussion are applied robustly with certainty to all kinds of work currently shared over the Internet. According to the BPI illegal, unpaid use outweighs legal sales by a factor of twenty to one. Clearly there are well-established systems, expectations and behaviours that underpin this kind of activity and these will not change or disappear overnight. A fully satisfactory solution may yet be reached; until it is creators are unfairly disadvantaged and lose potential income with every passing day.

On that basis while acknowledging the roles that education and enforcement have to play in reducing the vast amount of traffic in infringing copies of copyright works on-line, ALCS argue that a truly comprehensive solution requires serious consideration of a third pillar: fair compensation.

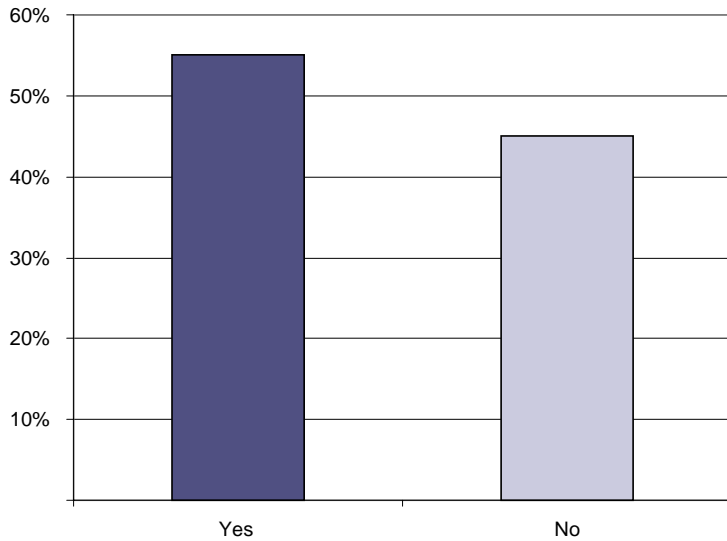
We would be happy to discuss the exact form such support could take, but suggest that the following may provide useful guiding *principles*:

- **Discretionary powers within** the Copyright Designs and Patents Act (1988) enabling the Secretary of State to grant Orders establishing **fair compensation** remuneration schemes;
- Compensation (as a minimum) for the **creators** of copyright works for the **unauthorised copying** of their works;
- In cases where no other licensing/ compensation schemes exist;
- Such schemes to be funded by the parties involved in the **commercial** supply/ provision of the means to copy copyright works;
- With these parties paying variable rates commensurate with the potential for **lost revenue** attributed to each 'means' of copying (based on a **fair and proportionate** formula, to be agreed);
- Such fees to be distributed by mandated agencies, using the **existing infrastructures** for apportionment and distribution;
- The right of creators to receive such fees should be **inalienable and unwaivable**.

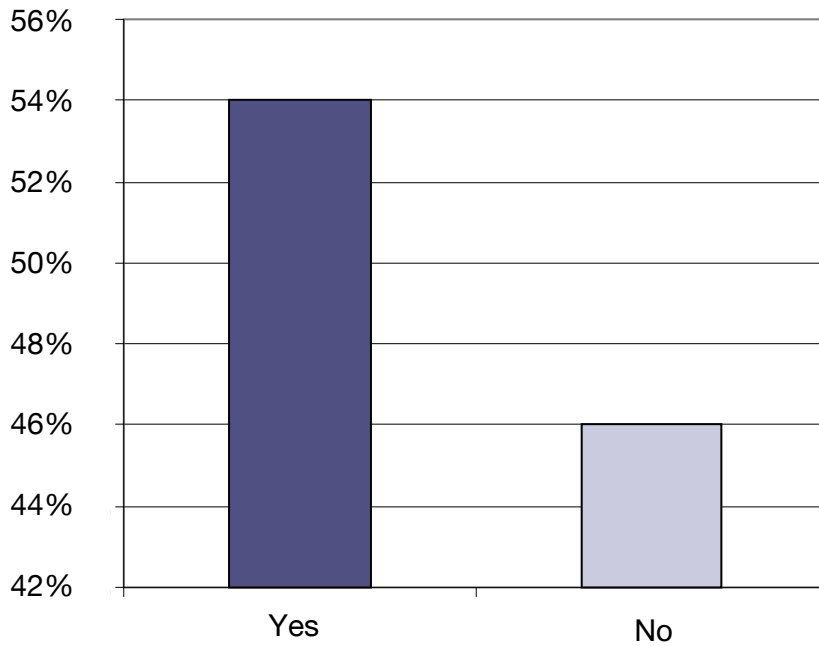
4. Returning value to creators: other perspectives

As an organisation representing the interests of creators is it inevitable that ALCS would make the case for treating them fairly in the new use environment. It seems however that this basic principle has broad-based support.

The online survey we commissioned earlier this year asked whether creators should be recompensed for the earnings they lost through the illegal use of film and TV works. The majority of respondents felt that they should.



A further question as to respondents' willingness to pay a reasonable amount added to the price of digital recording equipment to compensate creators received a similar response.



Furthermore it appears that within policy-making circles there is a clearly stated intention to find solutions that can restore some balance to the current system by safeguarding the legitimate right of creators to receive a fair return for the use of their works.

"You can't have a basic point that everything is free, otherwise you'll have no creative industry in the long term. We have to help people be savvy about their own value; otherwise this content will fuel lots of big companies that don't support the creative process in any meaningful way. The talent of this country will be enjoyed by millions but those people will not get a reward for it. As the department for talent we have to have solutions for these questions."

Andy Burnham

"The copyright system is one intended to provide balance. It is important in changing technical circumstances that the balance between rightholders and users be maintained."

"We have some simple choices to make. If creative artists can't earn a living as a result of the work they produce, then we will kill off creative artists and that would be a tragedy."

Lord Triesman

"Levies are a valuable component in how we presently ensure the livelihood of the creative community. And that authors receive fair compensation for the use of their work cannot be contested."

Charlie McCreevy