



All Party Writers Group (APWG): Digital Economy Bill briefing points

Writers have been relying on robust copyright legislation for 300 years...

“Whereas Printers, Booksellers, and other Persons, have of late frequently taken the Liberty of Printing, Reprinting, and Publishing...Books, and other Writings, without the Consent of the Authors or Proprietors...to their very great Detriment, and too often to the Ruin of them and their Families...”

Preamble to the first UK Copyright Bill, 1709.

“As throughout history, there needs to be workable mechanisms to ensure that content-creators are rewarded for their talent and endeavour.”

Digital Britain Report, 2009.

The Digital Economy Bill will receive its Second Reading in the Lords on Wednesday 2nd December. The APWG supports the Government in its aims to enhance the existing copyright rules to cope with the realities of the digital-use environment and applauds the work that has gone into the creation of this Bill although the lack of detailed provision for copyright awareness education is a disappointment.

The comments set out below refer to two specific areas within the Bill, highlighting concerns with the current wording that we believe may be addressed through relatively modest amendments. It would be very useful if these points could be raised during the Second Reading debate as a precursor to the submission of formal amendments later in the process.

For further information about the issues raised in this briefing and/or the work of the APWG please refer to the contact details at the end of this paper.

Clause 42: Licensing of orphan works

Orphan works are books, films, sound recordings and other works protected by copyright for which the owner either cannot be identified or located after a diligent search. The British

Library has estimated that well over 40% of all creative works in existence are potentially orphaned¹; research² suggests that on average 5-10% of the holdings within UK public sector bodies are orphan works.

This issue is particularly relevant in the digital age. This fast expanding medium offers new opportunities for both the dissemination of works and the application of data standards that can assist in tracking usage and, where appropriate, providing remuneration to the underlying creators. In this way digital distribution can offer new life to works that may have been dormant for many years.

Potential users of orphan works include commercial and non-commercial institutions, creators and the general public. In the absence of an identified party to authorise the use of these works, solutions are required that ensure a balance is struck between access rights and the value attached to the works themselves.

Proposals in the Bill: The APWG welcomes Government proposals that will enable authorised licensing bodies to provide permission to access orphan works.

Licensing bodies exist to secure fair terms for the use of their members' works. As such they are ideally placed to offer licensing/ administration solutions. Licensing bodies:

- already deal in volume licensing and payments
- truly represent the interests of their members
- have a proven track record in locating payees and uniting them with their fees (thereby eliminating future orphan works scenarios)
- are best placed to secure fair, market rates for different uses

Inevitably there will be fees for genuine orphan works that cannot be allocated to individuals. Licensing bodies are governed by and run for their members – the members of these bodies can direct the most appropriate uses of these fees, for example by sanctioning the establishment of funds to support the future creation of cultural works.

Concerns: The Bill as currently drafted provides a loose definition of who might exercise orphan works licensing schemes: “a licensing body or other person”. This seems to allow for ‘self-licensing’ scenarios e.g. where an institution with large holdings of orphan works could grant themselves authority to use these works. The primary focus for these bodies will be access, not the fair reward of the underlying content creators/ owners.

For the reasons stated above we believe it would be in the best interests of creators to have orphan works dealt with by a licensing body that genuinely represented the creators in that sector.

¹ *Intellectual Property: A Balance* – The British Library Manifesto, September 2006;

² *In from the Cold: An assessment of the scope of ‘Orphan Works’ and its impact on the delivery of services to the public*, JISC, April 2009

Clause 44: Public Lending Right (PLR)

2009 is not just the anniversary of the first UK copyright Bill; the Public Lending Right Act (1979) turns thirty this year.

The PLR scheme is a model of good practice demonstrating Government support for a system that balances the need for access for social good against the right of creators to receive a fair reward for the use of their works.

To mark the anniversary the APWG has campaigned for a review of the PLR scheme to take account of developments in library services beyond the lending out of printed books as envisaged by the original legislation. We were delighted that the Digital Britain Report recommended legislative action in this area and welcome the inclusion within the Bill of new powers for the Secretary of State to implement the necessary changes to the scheme.

Proposals in the Bill: Extending the PLR scheme to include a) 'non-print' books (audiobooks/ e-books) thereby allowing for claims against the fund from narrators and producers of audiobooks and b) digital loans on-site e.g. e-books and digital audiobooks uploaded to an e-reader/ MP3 player by the librarian for individuals to read or listen to at home and then return.

Concerns: The Bill expands the definition of 'author' for the purposes of the scheme to include narrators and producers of audiobooks. From its inception the PLR scheme has existed to reward *creators* for public access to their works. On that basis we suggest that care must be taken when assessing the inclusion of producers.

Where audiobooks are concerned it is important to distinguish the individual that undertakes the actual recording from the company that publishes and distributes the work. As a contributor to the process of creating the work the former has a legitimate claim to PLR, whereas the latter will receive remuneration through the separate licensing arrangements it has in place with the library and should therefore not be eligible to claim a share of the pot.

For any further information please contact:

Barbara Hayes, Barbara.Hayes@alcs.co.uk; 0207 264 5709

Richard Combes, Richard.Combes@alcs.co.uk; 0207 264 5706