

Digital Copyright Exchange (DCE) Feasibility Study: Call for Evidence

4 January 2012

Dear Sir/Madam,

I, with Ros Lynch as head of the DCE secretariat, have commenced Phase 1 of work on the feasibility study. The Study is independent but based in the offices of the IPO.

Phase 1 is diagnostic, looking at what are the issues surrounding copyright licensing in and for the digital age. Phase 2 will examine and recommend the range of potential solutions to any issues found. One solution put forward by the Hargreaves report is the idea of the Digital Copyright Exchange.

Section 1 contains the main hypothesis the interrogation of which is at the centre of Phase 1. Copyright licensing is complex and a consensus around definitions will aid clarity of debate. Section 2 below contains our suggested definitions of key terms and our market definition. We would like your views as to whether you think these definitions are sensible. Key terms when used first are indicated in bold.

There appears to be a lot of assertion in this controversial area – we are seeking hard data and evidence for or against the main hypothesis, or parts of the hypothesis. Your responses to the two questions set out below in Sections 1 and 2 would be welcome, please submit these, with a completed cover sheet to HooperSecretariat@ipo.gov.uk by no later than **Friday 10 February 2012**.

Many thanks,

Richard Hooper
DCE Feasibility Study

Section 1 - The Hargreaves Hypothesis

The hypothesis emanates from the Hargreaves Report and has been refined as a result of meetings in December 2011 with a range of stakeholders who agree and disagree with parts or all of the hypothesis. The hypothesis can be described like this:

“Copyright licensing, involving rights owners, rights managers, rights users and end users across the different media types, in the three defined copyright markets, is not fit for purpose for the digital age.”

There are seven reasons given for this. Copyright licensing is:

1. expensive (both the licensing process and the cost of rights)
2. difficult to use
3. difficult to access
4. insufficiently transparent
5. siloed within individual media types (at a time when more and more digital content is **mixed media** and **cross-media**)
6. victim to a misalignment of incentives between rights owners, rights managers, rights users and end users
7. insufficiently international in focus and scope

As a result of copyright licensing not being fit for purpose, the following seven claims are made:

1. the size of the pie for rights owners/managers is smaller than it could be
2. the share of the pie going to rights owners is smaller than it could be
3. new digital businesses within the creative industries are being held back
4. innovation is being held back
5. infringement of copyrighted content remains persistent
6. the end user is deprived of access to a significant amount of commercially and culturally valuable content, e.g. archive material
7. UK GDP should grow by an extra £2 billion per year by 2020, if barriers in the digital copyright market were reduced.

Question 1: Do you agree with this hypothesis in whole or in part?

If so, please provide evidence from those markets and media types you have experience of.

If you do not agree with the hypothesis in whole or in part, please provide the evidence for those markets and media types you have experience of.

Evidence for and against each of the fourteen bullet points would be especially valuable.

Section 2 - Definitions

Copyright licensing comprises six distinct processes:

- Deciding which rights are appropriate for the specific purpose or purposes of the potential rights user
- Discovering who owns the particular rights that are needed including where there have been changes in ownership
- Giving a licence for those rights that match the specific purpose(s)
- The rights user paying for the rights
- The rights owner/manager delivering to the rights user the licensed content in the appropriate format (although the content is often readily available)
- The rights user accounting to the rights owner/manager for the content actually used so that, for example in the case of collecting societies, the correct monies can be paid to the individual rights owners

There are two important distinctions which need to be borne in mind with copyright licensing:

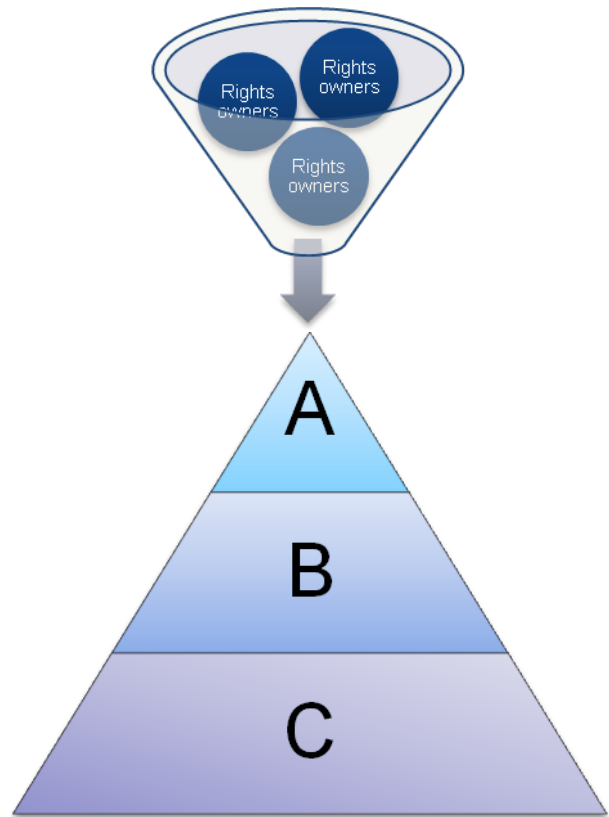
- the use/licensing of an existing work (e.g. a piece of music or photograph already in existence) is different in nature and complexity from the copyright licensing issues involved in commissioning a new work, e.g. a script for a television drama
- being licensed to incorporate an original copyright work into another work which has its own copyright (e.g. a piece of music into a television programme) is different in nature and complexity from being licensed to exploit the original work itself (e.g. the piece of music being licensed to iTunes)

Rights owners (sometimes referred to as rights holders) are those individuals or organisations which own the copyright, for example in the book publishing industry the author, the illustrator or in the case of non-fiction often the publisher.

Rights managers are those organisations who manage rights on behalf of rights owners, for example the music collecting societies like PPL and PRS (sometimes referred to as CMOs, collective management organisations)

Rights users are those individuals or organisations who wish to acquire a licence to use other people's copyright, for example film producers in the feature film industry

End users are the final consumers who access and enjoy the copyrighted content developed by rights users and rights owners. When those end users create content (e.g. uploading a video to YouTube) they become, without always being aware of it, rights users.



The **three defined copyright markets**, for the purposes of this study are described in Figure 1:

Copyright licensing involves nine major **media types**:

1. Music and audio
2. Performances
3. Text
4. Artworks
5. Still pictures
6. Moving pictures
7. Computer games
8. Mixed media (content that contains moving pictures, text and still pictures, e.g. a newspaper website)

9. Cross-media (the same digital content being licensed on different platforms, for example cable television and Smartphones)

The digital age is defined variously as the age of the internet with a single convergent computer language which can deliver, both one-way and two-way, music and audio, text, still or moving pictures over fixed, broadcast and mobile networks. The UK creative industries, the focus of this study, are past the inflexion point where digital technology has taken over from analogue and print. Digital switchover of terrestrial television, for example, completes this year, 2012. The digital age is characterised by many features that are different from the analogue/print age:

- the creative destruction of incumbent analogue businesses
- rapid change and uncertainty
- low barriers to entry and intensifying competition
- disintermediation (squeezing or bypassing the middle man/intermediary)
- the cost of copying and distributing digital content is much less than the cost of copying and distributing analogue content
- a digital copy shows little or no degradation from the original, an analogue copy does
- lower prices and lower profits (it is said that pounds in the analogue space become pennies in the digital space)
- the erosion of monopoly status
- spectrum and advertising inventory go from scarcity in the analogue age to abundance in the digital age
- the ownership of content model (a physical CD at home) transforms into an access model (accessing the song from a cloud-based music service)
- the traditional “push” model of broadcasting (one-way with a distant editor deciding what you will receive, e.g. BBC Radio) is joined by the “pull” model of on demand (you deciding what you want and retrieving it, e.g. a radio programme on the BBC i-player)
- passive consumers become active creators, UGC (user generated content)
- if the content is digitisable, then sooner or later in the digital age it will be digitised
- the fixed internet is effectively borderless, a global service on a single platform. Traditional copyright licensing in the analogue age was/is managed by territory (e.g. Canada) and by platform (e.g. terrestrial free to air television).

Question 2: Do you agree with these definitions including the market definition?

If not, why not? Please suggest better ones.

Response sheet

Please provide evidence from those markets and media types you have experience of with a completed Response Sheet to HooperSecretariat@ipo.gov.uk no later than **Friday 10 February**.

Name	Jon Webster
Job Title	CEO
Organisation	MMF (Music Managers Forum)/FAC (Featured Artists Coalition)
Contact Details	Email: webbo@themmf.net
	Telephone: 0207 306 4888
	Postal Address: 26 Berners St, London, W1T 3LR
Please indicate which media type you work with (tick as appropriate)	Music and audio Performances Text Artworks Still pictures Moving pictures Computer games Mixed media (content that contains moving pictures, text and still pictures, e.g. a newspaper website) Cross-media (the same digital content being licensed on different platforms, for example cable television and Smartphones) Other (please provide details)

This consultation forms part of a publication exercise. As such, your response may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

If you do not want part or whole of your response or name to be made public please tick this box: and explain why you regard the information you have provided as confidential:

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