Joint Response to the UK IPO’s Call for Views: Modernising the European Copyright Framework

Joint response on behalf of:
The Copyright Licensing Agency ("CLA")
Authors Licensing and Collecting Society ("ALCS")
Publishers Licensing Society ("PLS")

1. About CLA, ALCS and PLS

1.1 CLA, ALCS and PLS are all collective management organisations (CMOs) within the meaning of The Collective Management of Copyright (EU Directive) Regulations 2016. CLA issues licences to the education, public and business sectors to copy extracts from print and digital books, journals and magazines on behalf of ALCS and PLS. ALCS and PLS are members of CLA and obtain the necessary copying rights from authors and publishers respectively.

1.2 CLA’s licences also include the copying of artistic works where incorporated in a print or digital book, journal or magazine. CLA is authorised by the Design and Artists Copyright Society (DACS) to license on behalf of visual artists. DACS and PICSEL, both representing visual artists, are expected shortly to apply for membership of CLA.

1.3 CLA, ALCS and PLS welcome the opportunity to provide their views on the European Commission's proposal for a Directive on Copyright in the Digital Single Market insofar as it impacts on collective licensing.

2. Article 4: Use of works and other subject-matter in digital and cross-border teaching activities

2.1 CLA licences all schools and universities in the UK, as well as most further education colleges, under the licence override provisions in section 36 of the Copyright, Designs and Patents Act 1988. CLA’s licences allow extracts from published works to be copied, unless a rightsholder chooses to exclude their work(s). The licences cover print and digital books, journals and magazines. Students registered with an educational establishment can access and copy works covered by the CLA licence wherever they may be in the world. In addition to works for which
CLA receives a mandate from ALCS and PLS, CLA licences works from all over the world by virtue of its bilateral agreements with CMOs abroad.

2.2 The fair dealing provisions under section 32 of the CDPA, along with CLA’s licences, provide a convenient and affordable end to end access model for educational institutions.

2.3 CLA collected licensing revenues were worth £76.2 million for authors, publishers and visual artists in 2015/16. This is a highly valued revenue stream for rightholders for the use of their works. Furthermore, as evidenced in the PwC Report ‘An Economic Analysis of Education Exceptions in Copyright’ from 2012, publishers regularly reinvest secondary licensing income in new and innovative products.

2.4 CLA, ALCS and PLS therefore welcome the fact that Article 4 of the proposed directive should enable CLA to continuing licensing educational institutions, thereby enabling users to have lawful access to all the works they need whilst ensuring that rightholders are fairly remunerated for such use of their works. However we seek the Government’s assurance that it will provide for this under Article 4.2, a provision which we suggest should be mandatory.

2.5 CLA, ALCS and PLS therefore support the provision under article 4.4 for compensation for rightholders for digital teaching activities in other Member States where the exception applies but suggest that this should be mandatory.

3. Article 7: Use of out-of-commerce works by cultural heritage institutions

3.1 CLA, ALCS and PLS supported IFRRO in agreeing the principles for licensing out-of-commerce works which were negotiated between rightholder organisations and library organisations and recorded in a Memorandum of Understanding signed in Brussels in September 2011. We therefore support Article 7 which we believe is consistent with those principles and, in particular, the safeguards provided for rightholders. We would urge the Government to ensure that all aspects of that MOU are fully incorporated into Article 7.

3.2 On the strength of the 2011 MOU CLA, ALCS and PLS have already embarked on exploratory discussions with cultural heritage institutions in the UK for licensing the digitisation and communication to the public of out-of-commerce works. CLA is also actively seeking information from its CMO partners in other Member States as to their experience of such licensing schemes with a view to moving forward with out-of-commerce works licensing once CLA’s application for an extended collective licence for its blanket licensing scheme is processed. We are concerned that the recent decision of the Court of Justice of the EU in Case C-301/15 Marc Soulier Sara Doke v Premier Ministre could hinder extended collective licensing and would like to know the Government’s views on this.

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1 pp.2-3
https://www.cla.co.uk/data/corporate_material/submissions/an_economic_analysis_of_education_exception_s_in_copyright_-_pwc_final_report.pdf

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3.3 CLA, ALCS and PLS are therefore supportive of the legislative proposals in Article 7, 8 and 9 and look forward to progressing the discussions with cultural heritage institutions in the coming months.

4. Article 12: Claims to fair compensation

4.1 Article 12 enables Members States to legislate in order to ‘fix’ a gap in their legislation highlighted by the decision a year ago of the Court of Justice of the EU in the Hewlett-Packard v Reprobel case and followed by the German Federal Court of Justice in the case of Vogel v VG Wort earlier this year. The optional exceptions which are subject to the compensation which publishers have been precluded from sharing in as a result of these decisions have not been implemented in the UK. However, CLA receives a share of such compensation, currently worth approximately £750,000 per annum, from CMOs in Europe for distribution to rightholders in the UK. Furthermore, many publishers in the UK have divisions in other Member States that are more directly impacted by the decisions which, in the case of Germany, require publishers to repay immediately monies distributed to them over the past four years. Hundreds of publishers in Germany are now in very serious financial difficulty as a result. The consequences of these decisions are likely to affect publishers in other Member States until such time as Article 12 is enacted.

4.2 CLA, ALCS and PLS are supportive of Article 12 but urge the Government to support any proposal by which it can be fast-tracked and implemented as soon as possible in 2017.

4.3 Publishers are an essential part of the economic value chain in publishing, as evidenced in the 2012 PwC Report referred to above. We are concerned that the lack of fair compensation for publishers has the potential to cause great damage to the collective licensing framework not only in the affected Member States, but also in the longer term throughout Europe and globally.

Impact of the legislation in light of the UK’s planned exit from the European Union.

The UK’s creative industries are net exporters with a global reach. We fully expect therefore that UK copyright works will continue to be used and enjoyed in the EU notwithstanding the UK’s planned exit. CLA, ALCS and PLS will certainly continue to work with partner CMOs in Member States. Furthermore, we have worked hard with the Government over the years to achieve balanced copyright legislation, both at European and UK level, and our creative industries have been built on the foundation of such legislation. Consistency between European and UK copyright laws will ensure that we can continue to exploit UK copyright works and enforce our rights in the EU for the benefit of the UK economy. Our position on the above provisions is not changed therefore by the prospect of any different future relationship we may have with the EU. We would urge the Government to ensure that copyright legislation derived from European legislation and currently applicable in the UK is replaced by similar if not identical legislation and that no changes are made without full consideration.