



1) *What should the objective of IP policy be?*

'The role of government begins and ends with protecting the rights of creators, rather than protecting any company or interest group's business model.' - Helen Burrows and Kitty Ussher, 'Risky Business', a report by Demos, page 90¹ [our emphasis]

We are told we now live in an 'information society', and that our economy is based increasingly upon intellectual capital. If this is true, it follows that **the Government's first priority is to protect and promote creators of that intellectual capital.**

This is clearly a problem for Government, because a significant proportion of intellectual capital creators are sole traders and micro-businesses, who have traditionally been difficult to reach, contact, or organise, and whose views can be fragmented and voices largely unheard. Consequently, the views and needs of the micro-businesses who make up 90% of the economy² and over half of GDP³ tend to be disregarded in favour of larger organisations, with their concentrations of capital, communications abilities, and lobbying power.

The result is policy which consistently favours large public and private organisations at the expense of creators.

The Government intends the Creative Industries to be an engine of economic growth, yet its proposed policies restrict and remove the abilities of rights owners to market their property. When was sustained economic growth ever the result of such restriction?

Government policy should be to make it as easy, cheap and straightforward as possible for sole trader and micro-business creators to assert and retain ownership and control of their property, trade it in their primary marketplace, and minimise intermediation.

2) *How well co-ordinated is the development of IP policy across Government? Is IP policy functioning effectively on a cross departmental basis? What changes to the machinery of government do you believe would deliver better IP policy outcomes?*

Policy is evidently a barely co-ordinated mess, as a diagram and commentary by Demos⁴ makes clear.

Copyright consists of human rights, moral rights and property rights. The 'moral' aspect is cultural; the property rights lead to commercialisation (and tax take), and infringement. This implies interest in copyright from DCMS, the Treasury, BIS, and the Ministry of Justice.

Stop43 is surprised that the MoJ appears to have been absent from the Hargreaves Review/Consultation on Copyright process. We have been promised the Patents County Court Small Claims track; we wait to see whether its implementation will be effective in reducing infringement levels, or yet another useless box-ticking exercise.

Stop43 notes the important positions the BBC, Ofcom and Channel 4 occupy in Demos' diagram. The BBC and Channel 4 have obvious conflicts of interest with other creators, rights holders, managers and users, and since British Library Chief Executive Dame Lynne Brindley joined Ofcom we have grave doubts about

¹ http://www.demos.co.uk/files/Risky_business_-_web.pdf?1320841913

² Federation of Small Businesses data

³ibid.

⁴ http://www.demos.co.uk/files/Risky_business_-_web.pdf?1320841913, page 33

Ofcom's impartiality. Creators feel we lack a Government champion to promote and defend our interests as independent creators and rights owners, and yet we comprise 90% of the creative sector.

Stop43 recommends responsibility for copyright policy be brought back into DCMS, and the MoJ should co-operate closely with DCMS to extend Fair Contract law to cover copyright and ensure that the PCC Small Claims track is properly effective in dissuading infringers.

3) *There have been numerous attempts to update the IP framework in the light of changes brought about by the digital environment. How successful have these been and what lessons can be learnt from these for policy developments?*

Apart from the Digital Economy Act, **all of these attempts have tended to weaken creators' rights, and none of them have been implemented yet.** Their lack of implementation demonstrates that they have failed.

Stop43 believes that the Hargreaves Review of Intellectual Property and Growth has also failed.

Hargreaves' Report, the Government's Response, and the Consultation on Copyright documents all **ignore or gloss over evidence offered for the very obvious market distortion, devaluation, dysfunction, failure and destruction within digital copyright markets** resulting from restrictions on authors' Moral Rights; the onerous contract terms imposed upon micro-business suppliers by oligopsonists; the shocking, overwhelming and systemic infringement of photographers' copyright; and the lack of effective, proportionate and dissuasive remedies for most instances of digital copyright infringement.

Hargreaves and the IPO pursue an anti-copyright, anti-creator agenda and yet appear to be failing even at that. Commercial Orphan Works use is to be modelled on the Canadian system (only 260 licences issued in 22 years⁵); Extended Collective Licensing schemes are only to extend existing collective licensing schemes (which, for photography, means a little more photocopying, nothing more); in a judicial review based on Article 1 of the First Protocol of the Human Rights Act ⁶, copyright exceptions are likely to fall foul of the 3-step legal test of Proportionality⁷ if their intended goals could be achieved by other means (DCE, Cultural Use⁸, etc.) rather than wholesale breach of the public's human rights.

The Hargreaves process appears incapable of providing a useful solution for orphan works, of enabling mass digitisation, or stimulating significant economic growth. The Digital Copyright Exchange (which we support) is his only idea of real merit and promise, and that was obviously cherry-picked from Stop43's National Cultural Archive proposal⁹:

The various Reviews and Consultations have tried to change the copyright system in order to promote 'growth' and 'access' without properly defining these terms. In particular they have conflated economic growth with economic welfare. Most proposals appear to be intended to transfer producer surplus to consumer surplus. As Oxford Economics' Comments on Economic Impacts of the Consultation on Copyright makes clear¹⁰, this does not automatically result in economic growth. Rather, it is just as likely to result in net economic loss.

This report, carried out by serious economists, points out:

- The assumption that preservation of copyright is economically inefficient appears to be the starting point of the Consultation.

⁵ <http://www.cb-cda.gc.ca/unlocatable-introuvables/licences-e.html>

⁶ <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/II/chapter/1>

⁷ <http://www.bailii.org/uk/cases/UKHL/2001/26.html>

⁸ http://www.stop43.org.uk/proposals/ipreview/ipreview/ipreview/cultural_use.html

⁹ <http://www.stop43.org.uk/proposals/ipreview/ipreview/nca.html>

¹⁰ <http://www.allianceagainstiptheft.co.uk/downloads/consultations/current/Oxford%20Economics%20Consultation%20on%20Copyright.pdf>

- The Consultation's Impact Assessment documents often fail to quantify a net cost or benefit... In spite of this lack of a quantitative basis, the proposed initiatives are often preferred to the existing status quo. In short, change is suggested even though there is no costing to support it.
- There is an assumption that there will be large scale benefits to business from the proposed measures, whereas much of the benefit may accrue to recreational consumer surplus. If this is the case then there may be little impact on economic growth. Indeed, in some cases growth may suffer, as existing rights holders experience reduced profitability with no corresponding increase in other industries.
- There appears to be little acknowledgement of the potential for the proposed measures to be abused, resulting in additional copyright infringement and lost sales.

Copyright policy is evidently vulnerable to capture by vested interests:

- Market-dominating media corporations wish to retain the status quo or move it further in their own interests;
- global tech corporations and 'tech startups' wish to use other's property as if copyright law does not exist, and do;
- the Cultural Heritage Sector, owning *objects*, not *rights*, nevertheless wish to become publishers and monetise the rights they do not own in the objects which they do, typified by the British Library's baseless assertion of copyright in digital facsimiles of Public Domain IP in its custody¹¹;
- academia in general, especially IP academics, tend to view copyright as a barrier to access. They typically show little interest in the economics of small creative businesses or the crucial role of copyright in sustaining the markets in cultural products.

In the opinion of senior, experienced people in the creative industries, the relatively young IPO staff running the Consultation tend to lack experience and understanding of the problems and industries they are attempting to legislate for. To compound this problem, Ministers are spread too thinly to exercise proper political leadership and control. The Minister in charge appears to have little grasp of the situation and next to no command of it. This appears to have created a vacuum which has been filled by what appear by their actions to be ideologically-motivated and politicised senior managers and 'economists', bent on implementing their own agenda.

Both Hargreaves' advisory panel and Richard Hooper's DCE advisory panel lack representation from independent creators, and by 'creators' Stop43 mean *the creators themselves*, not intermediaries and aggregators claiming to speak on behalf of creators. Their interests are rarely coterminous with ours.

Ensure that creators are properly consulted and represented in policy initiatives, and their views and requirements properly catered for. The copyright value chain starts at the creator and must return value to the creator. Ignore the creator and the entire value chain will collapse.

4) *How effective is the Intellectual Property Office and what should its priorities be?*

The IPO's role should be to promote and strengthen creators' rights and ability to trade the use of those rights.

The IPO is of little practical use to the micro-business copyright creator. It offers few useful services, facilities or advice. It appears to be intent on weakening creators' rights. Consequently, as it is constituted at present, creators view it as an almost entirely negative, indeed malevolent, institution. **We would be better off without it.**

Stop43 has very little trust in the IPO being an impartial 'honest broker' in the copyright policy development process. In our view it is heavily biased against the existing, viable businesses already run by creators and the creative industries, and strongly favours 'tech startups' and the theoretical growth they represent.

¹¹ <http://www.whatdotheyknow.com/request/103829/response/265841/attach/html/3/120320%20Response%201213.pdf.html>

The Consultation on Copyright Document deviates obviously and shockingly from the IPO's own guidance on standards of evidence for policy¹². It is riddled with undefined terms¹³, incredible assumptions¹⁴, false statements¹⁵, leading questions, 'preferred options'¹⁶, and bias¹⁷, despite assurances from Ministers that policy remains undefined and that Hargreaves carried out no more than a 'signposting' assignment.

Why is this so? One can only conclude that it is the inevitable consequence of intention and effort to arrive at a predefined conclusion. Stop43 know for a fact that the publishing, music and audiovisual sectors agree with our view.

Freelance and micro-business copyright creators need an IPO which provides useful services to them. These could include:

- Promoting attitudes to copyright and copyright policy which works positively *in favour* of creators' rights and markets based upon them, rather than constantly seeking to undermine them;
- Promoting respect for moral rights and use of fair contracts;
- Helping to create new digital markets based on rights licensing, rather than seeking to prevent their emergence, which will be a primary consequence of extended copyright exceptions and extended collective licensing;
- Providing impartial, accessible, comprehensible and trustworthy plain-language guidance on copyright law similar to that available from the OFT, ACAS, HSE and others, although this could as easily (and perhaps more appropriately) be provided by the DCE.

5) *UK IP policy sits within European and supranational agreements. How should the UK government coordinate its policy at an international level and what should it do to promote IP abroad to encourage economic growth? Do you have examples of good and poor practice in this area?*

The UK should seek to maximise whatever competitive advantage it enjoys in intellectual property. Therefore, its priority at international level should be the same as its domestic policy: **to make it as easy, cheap and straightforward as possible for sole trader and micro-business creators to assert and retain ownership and control of their property, trade it in their primary marketplace, and minimise intermediation.**

Access to international markets by photographers is rarely a problem. Ensuring full payment of invoices, avoiding unnecessary withholding tax, and obtaining redress from foreign copyright infringers are significant problems. The Government should work to address them.

6) *Protecting, and enforcement of, the IP framework often sits in very different departments to those that develop IP policy and those that have responsibility for the industries most affected. What impact does this have and how can it be improved?*

¹² <http://www.ipo.gov.uk/consult-2011-copyright-evidence.pdf>

¹³ Examples: *The Government will be guided by the following principles: exceptions should be introduced or expanded to the maximum degree that is possible without undermining incentives to creators* (Introduction page 8); *7.77 The Government proposes to amend the UK's current research exception so that people will be able to copy a wider range of works for non-commercial research and private study'*

¹⁴ http://www.theregister.co.uk/2011/08/24/ipo_economic_justification_of_hargreaves_wtf/

¹⁵ http://www.theregister.co.uk/2011/12/19/put_that_parody_down/

¹⁶ Examples: *'7.50 In view of its potential benefits this is currently the Government's preferred option'*; *'7.121 The Government's current preferred way to address these issues is to make this a "fair dealing" exception'*

¹⁷ Example: *'7.2 Allowing copyright owners to restrict the use of their works in this way generally benefits creators and the creative industries at the expense of other groups.'* This statement entirely disregards the utility, benefit and profit gained by users of those works. Restriction by usage is both important and efficient: it minimises costs for rights users and end users, as they only have to pay for the usages they actually need; and by making it available for further licensing for other uses, usage granularity maximises the value of a copyright asset, the return on investment in creating it, and the tax collected as a result of its exploitation.

The result of this separation has been the almost complete disregard of two of the worst problems faced by creators: the lack of ‘effective, proportionate and dissuasive’ remedies for copyright infringement, and the lack of Fair Contract law for IP.

Fair Contract law in particular could solve most of the problems that the IPO’s proposed copyright exceptions are supposed to address, and do so in a manner fairer to all and which will promote actual growth, unlike the economic chilling effect resulting from depriving creators of their rights, and ability to trade the use of those rights.

Stop43 would be happy to provide further evidence, both written and oral, if the All Party Group requires it.

THREATS TO THE PHOTOGRAPHIC SECTOR

1. **Legislative destruction of its economic base;**
2. Market distortion, dysfunction, failure and destruction resulting from copyright infringement;
3. Market distortion, dysfunction, failure and destruction resulting from orphaning;
4. Market distortion, devaluation, dysfunction and failure resulting from the actions of oligopsonists;
5. Catastrophic income loss by rights owners as a result of all of these factors, singly and in combination.

SUMMARISED RECOMMENDATIONS

1. The role of government begins and ends with protecting the rights of creators, rather than protecting any company or interest group’s business model. **Suspend the introduction of commercial use of orphan works, extended collective licensing and additional copyright exceptions.** Establish a DCE and allow transactional markets (including fee-free transactions) and Cultural Use to solve the problems these measures are intended to address;
2. **Equip the Small Claims track to the Patents County Court with effective, proportionate and dissuasive remedies,** and implement the process in such a way that claims for as little as £25 are worth pursuing;
3. **Strengthen authors’ Moral Rights and establish a DCE as a platform for de-orphaning, anti-orphaning and public education;**
4. **Apply Fair Contract law to IP and provide an Ombudsman** to arbitrate, adjudicate, and enforce effective, proportionate and dissuasive sanctions in unfair contract disputes involving IP;
5. **Establish a DCE which stimulates growth by providing an impartial and trusted platform for new transactional digital markets** directly accessible by all categories of rights owners, rights managers, rights users and end users.

ABOUT STOP43

Stop43 is a self-funded group of professional freelance and micro-business image creators, between them members of [Artists’ Bill of Rights](#), [The Association of Illustrators](#), [The Association of Photographers](#), [The British Institute of Professional Photography](#), [The British Press Photographers’ Association](#), [Copyright Action](#), [EPUK](#), [The National Union of Journalists](#), and [Pro-Imaging](#): professionals who were sufficiently concerned and motivated by the threat that [Digital Economy Bill Clause 43](#) posed to our livelihoods that we took [direct action](#). We had [the support of the 16,000 members of the ten organisations listed on our website](#), and that of **thousands of photographers**, as proven by their direct lobbying action that resulted in Clause 43 being removed from the Digital Economy Bill. Since then, professional illustrators and members of the cultural heritage sector who understand and support our position have joined us and contributed to this submission. **Stop43 have a mandate to lobby for our [8 tenets](#) from the 2,100+ members of our Facebook Group.**