

Intellectual Property is an engine of economic growth and has been so since the Statute of Anne in 1709 assured economic returns for authors and inspired the Industrial Revolution. **The overwhelming majority of commercial creators agree with and wish to retain their moral and property rights granted to them by copyright law.**

If law as it applies to Intellectual Property is to be changed to make this growth engine more effective, then given the UK's current and foreseeable economic circumstances it is obvious that **any such changes should have two primary aims:**

- 1. to stimulate activity in Intellectual Property markets and thereby promote economic growth, and**
- 2. encourage this economic growth to take a form that maximises HM Government's tax receipts as a result of it.**

Photographers and graphic artists directly create Intellectual Property. Many gain significant income from its licensing; professionals rely upon it. It follows that properly to maximise our return on investment in making our images, photographers and graphic artists should enjoy rights over our property and legal redress for its theft comparable to those enjoyed by owners of physical property. Unfortunately we do not in several highly significant ways and believe that economic activity and innovation at the individual and micro-business creator level is at present severely constrained by the following factors:

1. The Moral Right of Attribution for photographers is inalienable but not unwaivable and not automatic - it must be actively asserted - and sectors such as newspapers, magazines and some books are exempt from current Moral Rights provisions. **How are we properly to trade our property if we do not have the unwaivable right to assert our ownership of it?**
2. Current law provides no cheap and easy way by which claims against rights infringement can be made and damages awarded in sums significantly greater than the licence fee would have been, to make the pursuit of claims for infringements worthwhile and deter infringers.
3. Copyright law can be trumped by contract law, leaving photographers and graphic artists vulnerable to onerous take-it-or-leave-it rights-grabbing contracts imposed by oligopsonistic buyers, and competition law prevents micro-businesses from sharing license fee information even though we have no power to distort the markets.
4. Digital technology has made undetected theft of photographs and graphic works trivially easy. **This digital problem requires a statutory digital solution: appropriate digital solutions are available now.**
5. Without our knowledge our authorship and ownership information can be removed from our work, "orphaning" it and in many cases rendering it anonymous, thereby depriving us of its value.

Improving copyright, contract and competition law to stimulate growth at the individual and micro-business creator level by strengthening our moral and property rights will increase our confidence that our efforts and investments are worth making, increase our economic activity, as a direct consequence **increase HM Government's tax receipts at the effective rates we pay rather than the much reduced rates corporations usually contrive to pay, and thereby achieve the two primary growth aims we have identified**, because any sector in which high value is initially created

at the individual and micro-business level always contributes more tax revenue as a percentage of the value of its market than a similar sector that has become corporatised.

RECOMMENDATIONS

1. The *essential nature*(1) of intellectual property and *the differences in character, value chain and usage*(2) of different forms of *cultural digital intellectual property*(3) should properly be recognised and defined;
2. The creator's unwaivable, inalienable and automatically-asserted Moral Rights and Copyright should obtain for all photographs in all circumstances with no exceptions, unless the creator expressly, voluntarily and without contractual coercion requires anonymity;
3. A low-cost, simple and straightforward system should be established by statute by which claims by rights holders against rights infringers can be made and damages awarded in sums significantly greater than a normal licence fee would have been, to make the pursuit of claims for infringements worthwhile and deter infringers
4. Fair Contract Law on the German model should be applied to Intellectual Property and an Intellectual Property Ombudsman be appointed to arbitrate in matters of contractual dispute, market distortion and market failure;
5. The deliberate creation of "orphan" photographs and their *extra-Cultural*(4) use should be made illegal;
6. A free-to-use, simple and readily available mechanism enabling photographers to find and readopt their "orphaned" works should be established;
7. To maximise HMRC's tax take the entire package of legislative changes should be designed to encourage growth in the trade of economic Intellectual Property rights at the creator/initial rights-holder level.

Stop43 have devised an innovative self-funding scheme to implement our recommendations which makes use of existing, proven software, digital infrastructure and Internet-based structural and business models that will:

- be a free, online machine-searchable metadata registry that by way of a *revokable statutory license* (5) makes cultural digital Intellectual Property including so-called "orphan works" freely available to the public for their Cultural Use;
- enable rights-holders to find and readopt their "orphan works" and make them commercially licensable, and to reassert their rights and reestablish control over unauthorised copies;
- educate the public about Intellectual Property Rights and enforce digital copyright law by automatically interceding in potential infringements of copyright at the point of potential infringement, and tracking infringements;
- streamline the licensing process; and
- act as a market-maker and economic engine connecting intending commercial users to the revenant rights holders of licensable works in a quick and simple way that enables creators, rights holders and their representatives directly to conclude equitable licensing transactions with users, strengthening the entire cultural Intellectual Property sector, and be self-funded by levies on transactions that it facilitates.

We have called it The National Cultural Archive. It will increase confidence on the part of creators in the viability of their businesses, encourage greater innovation based upon that increased confidence, **drive economic growth, and maximise corporation tax, income tax and VAT receipts for the Government at a time when it sorely needs them.** We believe that this scheme could be realised today at relatively low cost.

Notes

(1) The current UK copyright framework fails properly to recognise the essential nature of Intellectual Property in that **it exists independently from the medium upon which it resides.**

For example, if I copy my digital image file from my memory stick to your memory stick I retain ownership of my IP in that digital image. But what does my IP physically consist of? Nothing more than an arrangement of electrical charges in the transistors within the memory sticks. If you then reformat your memory stick by overwriting it with other data my digital image file, and therefore my IP, will vanish from it without trace. But has your memory stick been physically changed, save for transient electrical charges? Where did my IP go? – your memory stick still holds charges in its transistors, only in a different configuration. Has it in itself lost or gained economic value? It holds no more or less electricity than it always did.

My IP is and always was a "virtual" entity, just like text. It is thus demonstrated that IP has an independent life from that of its carrier medium or "platform". Do not forget that throughout all of this I retained an identical copy of my IP, my digital image file, on my memory stick. Anyone who uses a computer experiences this characteristic of IP every day, usually without considering it. Examples of the consequences of the "virtual" nature of IP include:

1. It is possible to own a physical object such as a painting, the IP of which (its image content) is in copyright and therefore owned by someone else,
2. It is possible to own a physical object such as a painting, the IP of which (its image content) is no longer in copyright and therefore not owned by anyone,
3. An instance of digital IP is not in itself a physically ownable object although its carrier medium is.

(2) Stop43 have explored these subjects in the following essays:

[The Characteristics of Digital Media and Networking](#)

[The Uses of Creative Intellectual Property in the Networked Era](#)

(3) We have used the term "*cultural digital intellectual property*" to describe pictures, music, text, films and interactive media as distinct from what might be called "*industrial digital intellectual property*" such as inventions, processes, etc, covered by patent law.

(4) *Cultural use* (including use for preservation, private study and private research) enables the free display of a digital object devoid of any kind of revenue generation or advertising, that does not promote any kind of commercial, educational, political, religious or charitable organisation or their objectives, does not include any right to copy or include in derivative works, and does not in any way interfere with or supplant "a normal exploitation of the work" as defined by the Berne Convention Article 9 and TRIPS Article 13. In this context well-established examples of Cultural Use are:

1. Viewing in-copyright pictures hanging on the wall of a public art gallery;
2. Viewing in-copyright manuscripts and similar works in a museum;
3. Online public gallery use.

We prefer to use the term 'Cultural Use' rather than the more vague "Non-commercial Use", but for the sake of clarity have distinguished between what we regard as 'Commercial' and 'Non-commercial' uses:

Commercial Use is any use (including use for preservation, private study and private research) that directly or indirectly generates revenue for the user, including the rights holders, promotes their educational, political, religious or charitable objectives, allow copying; allow inclusion in derivative works.

Non-commercial Use is any use (including use for preservation, private study and private research) that DOES NOT directly or indirectly generate revenue for the user, including the rights holders; promote their educational, political, religious or charitable objectives, allow copying; allow inclusion in derivative works.

(5) There is no reason in principle why an orphan work should not be readopted by its owner. An exception to copyright would preclude this. A revokable statutory license such as we propose would enable re-adoption, allowing defined use of orphan works while they remain orphaned. This concept is crucially different to that of Creative Commons licenses which permanently grant rights and cannot be revoked.

About Stop43

Stop43 is composed of members of [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 no mandate as such for our campaign; only [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 we have been joined by professional illustrators and members of the cultural heritage sector who understand and support our position and have contributed to this submission.



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