



Creative Content in a European Digital Single Market

Challenges for the Future

Views to DG INFSO and DG MARKT

**From
The Booksellers Association
of the United Kingdom & Ireland Limited**

**The Booksellers Association of the UK & Ireland
272 Vauxhall Bridge Road
London SW1V 1BA
United Kingdom
www.booksellers.org.uk**

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1. The Booksellers Association

- 1.1 The Booksellers Association of the United Kingdom & Ireland Ltd is a trade association situated in London, United Kingdom. Formed in 1895, our aims are to help our bookselling members to:
 - Increase sales
 - Reduce costs
 - Improve competitiveness, efficiency and productivity
 - Network
 - Represent their views
- 1.2 We very much welcome the opportunity to give our thoughts and comments on the European Commission's document, *Creative Content in a European Digital Single Market: Challenges for the Future.*
- 1.3 The Booksellers Association ["BA"] has a diverse membership, covering all types of businesses, large chains and small independents, general and specialist, terrestrial and online, retailer and wholesaler, located both on – and off – the high street.
- 1.4 Over 3,900 bookselling outlets are currently in membership of the BA, of which approximately 1,300 are independent bookshops.
- 1.5 There are no barriers to entry in setting up a bookshop in the UK, although it is not so easy to create a successful business.
- 1.6 The main requirements to becoming a member of the BA are that retail businesses have to have in stock at least €5,800 worth of books (at publishers' recommended retail prices), be open to the public and pay business rates.
- 1.7 BA members sell printed books, audio books, e-books and e-readers. Booksellers may also employ 'print-on-demand' (POD) technology, which can produce a bound paperback from a remote digital file in around four minutes.
- 1.8 UK and Irish booksellers operate in a very competitive marketplace, competing particularly on:
 - Price
 - Service
 - Location and
 - Stock range

2. BA Reports

- 2.1 The BA has taken a keen interest in the digitisation of content from the early days of audio books and CD-ROMs through to today's e-books and e-readers. Our association has produced a number of reports to help and encourage our members to adapt to the digital age. These include:

Brave New World

Digitisation of Content: the opportunities for booksellers and The Booksellers Association

November 2006

Contents

- Market Overview
 - Consumer and Key Market Drivers
 - Publisher Strategies
 - Existing Players in the Digital Market
 - The Publishing Value Chain
 - Lessons from Other Media Markets
 - Bookseller Opportunity Analysis
 - Conclusion
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Embracing The Digital Age

An Opportunity for Booksellers and the Book Trade

November 2007

Contents

- The Digital Opportunity
 - Making Use of Digital Marketing
 - The Bookseller's Role in Selling Digital Content
 - Working with the Consumer
 - Proposals for the Future
 - Bringing These Proposals into Existence
 - Conclusion
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- 2.2 To encourage SME's to embrace new technologies and to promote and sell new digital formats, the BA is publishing in January 2010:

The Independent Booksellers Guide to Multi-Channel Bookselling

**(including: websites, audiobooks, e-books, e-readers, print
on demand, social networking, blogs, online selling and
marketing)**

2.3 Google Settlement

September 2007

The BA made submissions (as a rights holder and a trade association) to both the US District Court and the European Commission Google Book Settlement Hearing, to express our concern over the initial Settlement. We argued that:

- Copyright is fundamental to the creation of ideas; it was too big an issue to be part of a private deal and that matters concerning copyright should be decided by Congress rather than as part of a class action; the same rules should apply to everyone and no one should have a privileged position.
 - It was wrong for a civil court in the US to decide on the granting of exclusive rights to Orphan Works. They should be outside the Settlement.
 - If the Settlement were to be approved by the New York court, then the Book Rights Registry should have European representatives.
 - The definition of "*commercially available*" had to be made crystal clear.
 - Booksellers should be able to access the Book Rights Registry and have an opportunity to purchase and re-sell the digital material, at trade terms, which would produce a profit for the rights holders, for Google and for booksellers.
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3. Statement of Principles

- 3.1 The BA has considered carefully the European Commission's Green Paper on Copyright and the recent Reflection Document: "*Creative Content in a European Digital Single Market: Challenges for the future*".
- 3.2 Although booksellers are not usually the rights holders (unless, for example, they are acting as a publisher for a local author), they support the concept of copyright as passionately as authors and publishers.
- 3.3 Publishers are converting the text of more and more consumer books into digital formats and copyright is coming under greater pressure. Consumers can easily share files of copyrighted material illegally.
- 3.4 Illegal file sharing will mean lost revenue not only for authors and publishers, but for booksellers as well. Launching the *Digital Britain Report* in the UK in June 2009, Lord Mandelson made reference to the fact that the UK Government estimated that for every twenty music tracks downloaded, nineteen were done so illegally. This is a staggering amount of illegal activity.
- 3.5 Although there are differences between the music industry and the book trade, there are also great similarities and synergies. If the book trade were to go the same way as the music sector in the last ten years, our industry will be decimated.
- 3.6 So in our review of the Commission's Consultation Documents we have considered carefully the implications for booksellers.
- 3.7 It seems to us that there are 10 Principles that should be supported in order to provide a fair trading infrastructure for rights holders and the value chain. We urge DG INFO and DG MARKT to support these principles, which will do much to ensure we don't suffer similar experiences to the music industry.
- 3.8 These are our 10 Principles and following the list there are further sections explaining in more depth our reasoning:

1. **Protection of copyright** is the key issue and new proposals are always welcome, providing **rights holders are given the option** to participate or not.
2. **Copyrighted works have an intrinsic value** and a free model based solely on advertising income is not in the public interest.
3. There needs to be a **database of rights holders** so that copyrighted works (including orphan works) can be identified and there has to be a **diligent search** to find rights holders.
4. **Orphan works should be covered by collective licensing agreements** owned by the public (ie Government) and administered by appointed rights organisations.
5. **Licenses for commercial exploitation of orphan works should be open** to any applicant (ie not to a single enterprise) and any **monies collected not claimed should be held** for a period of time before being **donated to literacy charities**.
6. The public should have **online access to public domain and orphan works but not commercially available titles** unless rights holders have given their explicit permission.
7. Government and rights holders should collectively **promote the value of copyright through a public education programme**.
8. Governments should have **effective laws to stamp out piracy** of copyrighted works.
9. We welcome **new business models** and innovation, but **consumers should have choice** on terms that are **commercially viable** and which do not undermine the value of intellectual property.
10. **Booksellers are already participating in the digital world** and have a role to play in the value chain and in the cultural health of Europe.

4. Protection of copyright

- 4.1 The BA does not represent rights holders, nevertheless our members rely on copyrighted material for their livelihood – so “*Copyright is important not just to the UK’s creative industries...but also to a range of other businesses*”.¹
- 4.2 “*Financial and societal rewards to creators and investors have helped continue to fuel the engine of creativity*”.² The BA gives full support to the protection of copyright as it is fundamental that creative people should be rewarded for their work. Without copyright protection, the creative industries will be undermined and innovation will be stifled.
- 4.3 New ideas and proposals to make more use and expand the market for copyrighted material are always welcome, providing rights holders are always given a clear option to participate or not before any exploitation of their works takes place.
- 4.4 The BA supports the argument that “*contractual licensing is the preferred way forward to implement exceptions and remunerate rights holders*”.³

5. Copyrighted works have an intrinsic value

- 5.1 Copyrighted works may involve a number of people in its creation, from the original idea through to the final product. Each step requires the input of time, energy and material resources.
- 5.2 The product itself therefore has an intrinsic value apart from its physical manifestation.
- 5.3 However, in some circumstances the rights holder may wish to make their material free of charge and it is entirely within their prerogative to do so.
- 5.4 Also, the sale of the product may not be the only financial recompense for rights holders. However, a future where creative works rely solely on their funding from related advertising is not in the public interest or in the long term interest of rights holders. “*A current challenge to developing business models, many of which rely on advertising revenues, is the state of online advertising*”.⁴

6. Database of rights holders

¹ © the way ahead: A Strategy for Copyright in the Digital Age, The value of copyright (October 2009)

² © the way ahead: A Strategy for Copyright in the Digital Age, General Introduction (October 2009)

³ EU Creative Content in a European Single Market: Challenges for the Future, 5.1 (October 2009)

⁴ © the way ahead: A Strategy for Copyright in the Digital Age, The value of copyright (October 2009)

- 6.1 “*Rights clearance and the visibility of rights is a major issue*”.⁵
In order to ascertain who holds the rights in copyrighted works, there has to be a database of rights holders.
- 6.2 A search for rights holders also has to be carried out before any exploitation of their works and “*orphan works would only be included in an extended licensing scheme after a diligent search*”.⁶
- 6.3 The BA supports the efforts of rights collecting organisations, such as the Copyright Licensing Agency and The Publishers Licensing Society in the UK and The International Federation of Reproduction Rights Organisations. “*Making licensing easier benefits all who are currently involved and has the potential to bring in new users of works as well*”.⁷
- 6.4 The BA also supports the European Union’s ARROW (Accessible Registries of Rights Information and Orphan Works) project, which aims to find ways to identify rights holders and clarify the rights status of a work including whether it is an orphan or out of print.

7. Orphan works should be covered by collective licensing

- 7.1 Orphan works are copyrighted works where the rights holder cannot be identified or located.
- 7.2 The majority of works published in the 20th Century are orphan works and it is regrettable that this cultural resource cannot therefore be made easily available to the public. “*The UK has a particular need to develop an orphan works solution, because of the number of English language works available*”.⁸
- 7.3 The BA wishes to see greater choice for consumers and therefore supports the UK Government proposals to “*make provision for the legal use of ‘orphan works or rights’ through extended collective licensing to help streamline the rights clearance process*”⁹ and EU options to use “*extended collective licensing...to tackle ‘orphan works’ and possibly out-of-print works*”.¹⁰
- 7.4 We believe it makes sense for common standards of due diligence to be developed across the member states.

⁵ Digital Britain, Creative Industries in the Digital World (June 2009)

⁶ EU Creative Content in a European Single Market: Challenges for the Future, 5.1 (October 2009)

⁷ © the way ahead: A Strategy for Copyright in the Digital Age, How was this Copyright Strategy developed? (October 2009)

⁸ © the way ahead: A Strategy for Copyright in the Digital Age, How was this Copyright Strategy developed? (October 2009)

⁹ UK Digital Economy Bill, 3.2.3 (November 2009)

¹⁰ EU Creative Content in a European Single Market: Challenges for the Future, 5.1 (October 2009)

- 7.5 Furthermore, we welcome the proposal that "*anybody wishing to use orphan works will be expected to secure an appropriate permission from the Government first*".¹¹

8. Licenses for commercial exploitation of orphan works

- 8.1 The BA welcomes the UK Government proposal that collecting societies should ensure that "*the balance between consumer and rights holder interests are maintained*"¹² for orphan works.
- 8.2 Licenses for commercial exploitation of orphan works should therefore be open to any applicant and not sold or given on a monopolistic basis to any single enterprise.
- 8.3 Monies collected from the commercial exploitation of orphan works and not claimed by the rights holders should be held for a period of time (certainly for not less than five years). We support UK Government proposals which include "*making provision for the reimbursement of rights holders who are subsequently found and claim for the use of their work*".¹³
- 8.4 If the monies held remain unclaimed after a suitable period, then they should be distributed to literacy charities in the countries where the works are published or the rights are registered.

9. Online access to public domain, orphan works and commercially available titles

- 9.1 There should be free online access for titles in the public domain via the public library service.
- 9.2 There should also be online access for orphan works via the public library service through a collective licensing agreement. "*The British Library for example estimates that some 40% of their archive count as orphan works*".¹⁴
- 9.3 Commercially available titles should *not* be made available free online to the public unless rights holders have given their specific permission beforehand.
- 9.4 The BA supports the European Union Europeana project which provides access to Europe's cultural and scientific heritage though a cross-domain portal, bringing together existing digital content of Europe's cultural and scientific heritage.

¹¹ Digital Britain, Creative Industries in the Digital World (June 2009)

¹² UK Digital Economy Bill, 3.2.3 (November 2009)

¹³ Digital Britain, Creative Industries in the Digital World (June 2009)

¹⁴ Digital Britain, Creative Industries in the Digital World (June 2009)

10. Promote the value of copyright through a public education programme

- 10.1 Governments and rights holders should promote the value of copyright to the cultural and economic well being of society through a public education programme. *"Education for users and consumers is important to develop a copyright system where people are responsible users, aware and respectful of rights".¹⁵*
- 10.2 The BA, and our members, would be happy to support any such programmes and might well be able to disseminate relevant material to the public.

11. Effective laws to stamp out piracy

- 11.1 Piracy, the illegal copying and dissemination of copyrighted works, deprives rights holders of their just rewards. *"The Government considers online piracy to be a serious offence. Unlawful downloading...is effectively a civil form of theft".¹⁶*
- 11.2 Governments should have laws to stamp out piracy and the BA therefore supports the UK Government's *"recognition of the importance of having penalties that are proportionate to the harm caused to UK industries and which are effective deterrents against copyright infringement".¹⁷*
- 11.3 We welcome the UK Government's recent initiatives, set out in its *Digital Britain Report*, to tackle illegal file-sharing. We are pleased to see a requirement for ISPs to notify their customers when rights holders identified them as engaging in unlawful file sharing. The BA supports accounts suspension to be added to the list of potential technical measures. This seems to us to be a particularly important way forward, as publishers' content is often available in file sizes which are generally much smaller than those in the music and audiovisual sectors.
- 11.4 But we think rights holders should be able to press for accounts to be suspended at an early stage for the most serious offenders, rather than suspension being treated as a last resort.

12. New business models

¹⁵ © the way ahead: A Strategy for Copyright in the Digital Age, How was this Copyright Strategy developed? (October 2009)

¹⁶ Digital Britain, Creative Industries in the Digital World (June 2009)

¹⁷ UK Digital Economy Bill, 3.2.3 (November 2009)

- 12.1 New business models have emerged in the digital age and the BA welcomes future innovative products and services.
- 12.2 However, regardless of how successful new models may be, consumer choice should be maintained in accessing creative works and the value of intellectual property should not be undermined.

13. Booksellers participation in the digital world

- 13.1 Booksellers have already recognised the opportunities afforded by the digital world and are making content available to the public (eg via downloads, subscription services and the sale of e-readers). No doubt other new services will follow.
- 13.2 Booksellers have a vital role to play in the new digital supply chain and in ensuring a wide choice for consumers to safeguard the cultural health of nations.

14. Conclusion

- 14.1 We look to the Commission to provide the appropriate framework to permit all stakeholders to operate in a fair environment.
- 14.2 We believe that the current copyright legislation does not require a complete overhaul. The BA welcomes Commissioner Reding's reported comments to the Federation of European Publishers on 30th September 2009 that the Commission did not plan to reform copyright law and that there was an acceptance that rights had to be cleared for in-print and out-of-print books.
- 14.3 But with the digitisation of book content accelerating rapidly in the consumer market, a look at Copyright in the Digital World is timely and the Commission should be congratulated for taking this initiative.
- 14.4 We believe that adoption of our 10 Principles will provide a good working environment and we would welcome the Commission's support of our position.

Sydney Davies – sydney.davies@booksellers.org.uk
Tim Godfray – tim.godfray@booksellers.org.uk