

Introduction

In September 2015, the All-Party Parliamentary Group on Intellectual Property undertook a visit to Brussels to discuss the European Commission's proposals to deliver a Digital Single Market.

During the visit the Group met with members of the EU Commission, the UK's Permanent Representative to the EU and Members of the European Parliament. We were very pleased at the level, and willingness, of these institutions to engage with the Group and thank them for the time they took to meet us.

Before the visit the Group, and its individual members, had received a number of representations both as a group and individually about the Commission's work programme. Clearly it is ambitious in its objectives and timescale and is a priority for the new Commission. Those in the creative and other IP creating industries were keen to explain that they supported the overall objective of delivering a digital single market and the commercial opportunities that it would provide.

It was clear, however, that many of them were concerned that the plans to significantly reform copyright law, as part of the broader work programme, might lead to unintended consequences that could significantly impact the UK's creative industries, worth £76.9 billion to the UK's GVA and accounting for 1.7 million jobs. Whilst there is a thriving creative sector in many EU member states, the UK exports more of its content across Europe and therefore, depending on their nature, the policy proposals from Brussels could impact the UK's interests disproportionately more.

The Commission's work programme, and its subsequent legislative enactment, is therefore vital to the UK's economic interests.

Prior visit

The Group undertook a similar visit to Brussels in March 2013 in the early stages of the European Commission's scoping of potential copyright reform. This followed UK reform of the copyright framework that followed a report for the Government by Professor Ian Hargreaves. The Group at the time made the following conclusions:

- 1. We were very concerned to hear that the UK, with its international reputation for producing high quality content which is sought after around the world, is lobbying for a weakened copyright framework alongside those who have little creative industry output such as the Nordic countries and the Netherlands.*

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2. *The Government should clarify the position of Professor Hargreaves and his relationship with the UK Government. Whilst clearly he was commissioned to write his report, the Government should clarify that he is not in any way a representative of them or articulating their views.*
3. *The Government should lay out clearly what reforms it would like enacted at an EU level and provide an assessment of the potential impact of these reforms.*

UK Government position

Since that last visit, the Coalition Government published its view on the Digital Single Market in a 'Non-Paper- the UK vision for the EU's digital economy' in January 2015. We had heard from many in the creative industries that this paper, though containing many positive recommendations, was also taken in Brussels as a clear signal that the UK was supportive of extensive copyright reform, particularly in relation to cross-territorial licensing, which we as a group recognise is vital to many in the audio-visual sector for their ability to finance their productions.

We were therefore interested, in revisiting Brussels, to hear what the Commission considered to be the UK's position now, following the General Election. We had also noted the new Secretary of State for Culture Media and Sport, Rt Hon John Whittingdale MP OBE comments before the Culture Media and Sport Select Committee September when he made the following comments in response to questions from Paul Farrelly MP:

"The principle of the Digital Single Market I absolutely support. It is an area where there is tremendous change taking place. The principle of open markets across Europe is one that obviously lies at the heart of the European Union, but we need to be careful. The principle equally that underlies the success of a number of the creative industries is on intellectual property rights, and I am very keen to ensure that nothing is done to damage that. In terms of Digital Single Market, there are two different proposals that sometimes people have not distinguished between.

The first is the principle of portability, so that if I, as a UK citizen, purchase a subscription to, for instance, Sky, or BT, or whatever, then if I happen to be travelling around Europe I should still be able to enjoy what I have paid for. So that principle is one that we are extremely keen should be adopted, and we are talking to the rights owners about how they intend to deliver that. Generally, they have some concerns to ensure it is not exploited and becomes a loop hole, but in principle they agree that is desirable.

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Paul Farrelly: It was very difficult to see Stoke City play Liverpool in the South of France.

Mr Whittingdale: Indeed, and I do not want to deny the Farrelly family the opportunity to watch Stoke City when travelling around Europe. That is different from the issue of licensing on a territorial basis. A number of the rights owners—particularly the film industry and also some of the sports rights owners—believe very strongly that they have to license on a territorial basis and that, if they were required to make the product available on the same basis across Europe, it would cause real damage. For instance, some films might not even get made. I am very keen to distinguish between those two things to protect the right of territorial licensing, while at the same time pushing ahead on portability.”

It appeared to us before our visit that the UK Government had subtly modified its position, recognising the potential impact of the Commission’s copyright proposals on the creative industries, whilst still being supportive of the overall programme to deliver a Digital Single Market.

Findings

1. The Digital Single Market offers significant opportunities for the UK’s creative industries but there are also some threats that need to be closely watched.
2. The European Commission does appear to acknowledge that English language content could be disproportionately impacted by reforms that would restrict content owners’ ability to contract on a territorial basis.
3. There are different views within the commission as to what reform of copyright will look like. There remains significant opportunity to deliver an outcome that helps to deliver the Digital Single Market, without disproportionately impacting the UK’s creative industries.
4. It appears that portability of content by consumers across national borders is likely to be the first major reform proposed. It appears that a safeguard of ‘place of residence’ is likely to be developed to ensure this right is not exploited more broadly than intended. Questions remain as to how ‘portability’ will be defined however.
5. The Commission does seem to be listening to concerns as to the economic impact of reducing the ability to licence content on a territorial basis. There remain influential voices that believe, however, that because certain content is not always available in every member state, there needs to be fundamental reform of copyright rules.

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6. Linked to both territoriality and portability is the ability to ‘geoblock’ content and services by distributors. We were reassured that the Commission made the explicit statement that these proposals do not relate to digital content, though the Commission could do more to be clarify how it defines digital content.
7. The Commission appears determined to standardise copyright exceptions across the EU. When it comes to exceptions relating to text and data mining, certain parts of the Commission believe licensing could still provide a solution, but others are still sceptical and would prefer to see legislative changes.
8. The Commission’s broad proposals for copyright reform are likely to be published in the first half of 2016. We were pleased to hear that they are now looking at publishing these as a package, rather than individually, given the interconnectedness of so many of the issues. In particular, it does appear that the Commission is looking at how proposals for enforcement and protection of IP rights might now be developed concurrently with other proposals.
9. It will be some months before EU Parliamentarians begin studying the Commission’s proposals, but we were struck that some UK MEPs are already taking an active interest in the debate and discussions. We were also pleased that the UK Intellectual Property Office has invited a number of MEPs to meet with them.

Conclusions

1. The UK Government appears to now understand the implications for the UK’s creative industries if copyright reform at an EU level fails to take into account the business models that rely on territorial sales for their investment. We would encourage the UK Government to restate its position on a series of crucial issues being considered, as other EU countries have done. These should include the issue of territoriality, geoblocking, portability and text and data mining. We would also encourage the Secretary of State for Culture, Media and Sport, to actively and personally engage with policymakers at an EU level to ensure they understand the UK’s position, over and beyond work being undertaken by the UK Permanent Representative and the IPO.
2. We believe that the UK Permanent Representative should be actively proposing solutions in Brussels that can deliver the Commission’s objectives whilst protecting the UK’s creative industries.

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3. We would encourage the UK Government to engage with the Copyright Hub to demonstrate to the EU Commission how licensing can improve distribution of content and to support its further development
4. We would urge the Commission to look at non-legislative measures that can deliver their desired outcome.
5. Any legislation proposed by the Commission must be supported by robust evidence.
6. We would urge the European Commission to pursue new means to protect copyright at the same time as they consider reform to the copyright legal framework.

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