

BRITISH COPYRIGHT COUNCIL

Response to Ofcom consultation on:

A new approach to public service content in the digital media age – the potential role of the public service publisher

The British Copyright Council is an association of bodies (see attached list) representing those who create, or hold interests or rights in literary, dramatic, musical and artistic works in which rights of copyright subsist under the United Kingdom's copyright law (Copyright, Designs and Patents Act 1988 as amended), and those who perform such works.

Our member organisations represent authors, journalists, script and screenwriters, photographers, artists and sculptors, illustrators, designers, composers and songwriters, directors and independent producers and other trades and professions working in the audio visual sector including musicians and performers. Our members also include software designers, music, book and journal publishers, picture libraries and agents representing other groups within our membership. These creative contributors operate as sole traders, micro businesses and SMEs and earn their living through the creation and provision of content to broadcasters and publishers, amongst many others. Copyright provides our members with a business model by which they can license their work in exchange for fair remuneration and through which they can ensure recognition and respect for their work.

Public Service Publisher

It is not entirely clear from the consultation paper how the services offered by any PSP will differ from those already being provided or developed by public service broadcasters operating within the UK. We await the outcome of this consultation and would be very pleased to make a further contribution to the discussion, once the concept and purpose of the PSP is clearer.

While the possibilities of a new body to commission and use creative content can be seen as a positive move and one which should benefit our constituency, we are extremely worried about that section of the consultation starting at 5.14 and entitled 'A New Rights Approach' and it is on this we wish to concentrate our comments.

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A New Rights Approach

We do not understand why a new rights approach is necessary. No evidence of need is provided and the tone of the proposal seems to be based on a misunderstanding or misinformation about the copyright model. Surely the most effective procedure for effective exploitation of content is one which is tried and tested. Copyright is a model which broadcasters and publishers are already experienced with whether they are dealing with their creative contributors or amongst themselves. A range of copyright licensing models, from collective to individual, is available to suit the needs of any PSP.

As a representative of authors and creators, particularly those who will contribute substantial amounts of creative content to any PSP, the British Copyright Council is concerned by the suggestion that the traditional copyright model should be overridden to provide for special treatment linked to the use or presentation of content by a PSP as opposed to other publishers.

The discussion paper refers to the Creative Commons model. However, we would point out that Creative Commons and other forms of open access licence are themselves founded on the copyright model. We recognise that Creative Commons may be useful for making available certain types of material for reproduction and adaptation in the educational environment and this may be particularly true when users of new services are invited to contribute their own works for use in services, subject to appropriate consents being obtained. However, we do not believe this is appropriate for PSP dealings with all creators, whether individuals or SMEs, as in many cases their livelihood depends on their ability to deal in their rights. Copyright is the right of the creator to manage the use of his/her creations and to earn a return from that creativity; its primary purpose is not, as suggested in the consultation, 'the task of managing dealings between a limited number of professional organisations' though it can also be also effective in that context.

As regards the interests of the creator and performer, copyright is the major means by which most earn their living and without which they are afforded little protection or have little incentive to create. Making content available to users and allowing extensive re-use of material is already possible within the existing copyright system and from the point of view of many creators and performers, it is an entirely desirable outcome. What advocates of alternative licensing systems are perhaps unwilling to recognise is the need to provide appropriate payment for that additional

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use. The suggestion that the Creative Commons model should be used in this context smacks more of a 'rights grab' than it does of 'content sharing'.

The Council recognises there will be increased demand for interaction and the potential to modify content in the future and believes that the copyright system is well able to deal with this through licences permitting adaptation in certain contexts, as it already does, but reminds OFCOM that the moral rights of authors and creators must be taken into account within whatever system is used to deal in creative works. Moral rights do not exist to inhibit use of work but to protect the identity of the author and integrity of their works. We believe these rights have the potential to protect the public as much as they ensure respect for the author in the digital media age.

The British Copyright Council would be pleased to co-operate with OFCOM on the further development of a suitable rights management approach which also considers the interests of the creator.

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British Copyright Council Members

The following organisations are members of the British Copyright Council:

Association of Authors' Agents
Association of Illustrators
Association of Learned and Professional Society Publishers
Association of Photographers
Authors' Licensing and Collecting Society
British Academy of Composers and Songwriters
British Association of Picture Libraries and Agencies
British Computer Society
British Equity Collecting Society
British Institute of Professional Photography
Broadcasting Entertainment Cinematograph and Theatre Union
Chartered Institute of Journalists
Design and Artists' Copyright Society
Directors' and Producers' Rights Society
Equity
Mechanical Copyright Protection Society
Music Managers' Forum
Music Publishers' Association
Musicians' Union
National Union of Journalists
Performing Right Society
Periodical Publishers' Association
Publishers Association
Publishers' Licensing Society
Royal Photographic Society
Society of Authors
Writers' Guild of Great Britain