



Response to Digital Copyright Exchange (DCE) Feasibility Study: Call for Evidence

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Introduction

The Authors' Licensing and Collecting Society Limited ('ALCS') is the UK collective management organisation (CMO) for writers. Established in 1977 and wholly owned and governed by the writers it represents (of whom there are currently 85,000) ALCS is a not-for-profit, non-union organisation. Since its foundation, ALCS has paid writers over £270 million in fees and today it continues to identify and develop new sources of income for writers.

ALCS exists to ensure that writers receive a fair reward when their works are used in situations in which it would be impossible or impractical to offer licences on an individual basis. By entering into partnerships with bodies representing creators and other rights owners in the UK and internationally, ALCS provides high-volume rights clearance solutions, enabling simple, flexible access to content for enjoyment, learning and business development. In the terms used in the Call for Evidence, the ALCS operation predominantly involves working with other rights managers to provide copyright licensing schemes, ensuring that fair remuneration is channeled back to rights owners. More broadly, ALCS provides a collective voice for writers on pertinent issues and develops and sponsors projects to support writing and promote a better understanding of how copyright is central to creators and creativity.

Using a pre-determined starting point, the paper presents a high-level overview of issues and discussion points around copyright and licensing in the digital age. In our response we have confined ourselves to areas within our own experience, using supporting evidence wherever possible.

Section 1 – The Hargreaves Hypothesis

“Copyright licensing, involving rights owners, rights managers, rights users and end users across the different media types, in the three defined copyright markets, is not fit for purpose for the digital age.”

We don't agree with this statement. “Copyright licensing” encompasses a wide range of activities founded on the core principle that authors should have the right to authorise others to use their work. The returns that authors derive from this fundamental right encourage and

support the creation of new works. A sustainable flow of original content is arguably the only truly irreplaceable element within a creative economy that aspires to flourish culturally, technologically and financially. Copyright licensing is therefore fundamental: the real question concerns the extent to which licensing systems and practices need to evolve and adapt to meet the demands of a changing environment.

To state that copyright licensing is “not fit for purpose for the digital age” is to suggest that an entire overhaul (or even replacement) of current licensing systems is required. However, as the definitions section of the paper recognises, the digital age is characterised by “rapid change and uncertainty.” In our sector, licensing and remuneration schemes are developing to meet the demands of rights users. (A key part of this process, absent from the paper, is the collective development of international systems for identifying and tracking works and rights information on-line). This phased approach, whereby existing structures evolve based on defined demand, will support the migration to a predominantly digital-use world far better than a wholesale restructuring process. In our view, a successful Digital Copyright Exchange initiative will build itself around a series of constantly evolving cogs, rather than attempt a reconstruction of the surrounding wheel.

As part of the range of solutions considered in Phase 2 of the review, it may be worth looking at a smaller-scale initiative to develop a single, well-signposted on-line information portal providing details of the different component rights and relevant links to agencies and other bodies for licensing in those areas.

Copyright Licensing is:

Expensive; Difficult to use; Difficult to access

The paper separates out expense in terms of the costs of the licensing process and the cost of the rights being licensed. To the extent that the cost of rights is perceived as being a problem with the current copyright licensing system, a DCE (or similar framework) will not provide the solution. All the way along the chain from authors to end-users, rights are valued and traded, through processes of negotiation in accordance with the rules of the relevant markets. A DCE can help to bring a licensor and potential licensee together, but it should not be seen as a means for interfering in individual or collective bargaining processes.

As for the costs of the licensing process, the collective management sector within which ALCS operates provides streamlined rights clearance for large repertoires of works granted to multiple users at a single point of contact.

In the publishing sector, the CMOs representing authors (ALCS), artists (DACs) and publishers (PLS) jointly mandate rights to the Copyright Licensing Agency (CLA) to provide such licences for the education, business and public sectors. This provides a simple means of accessing hundreds of thousands of books and serials (including overseas titles through CLA bilateral agreements) at a single point.

This model has been shown to be both cost effective and efficient when compared with the task of seeking individual permissions. Economic analysis within Higher Education has found that the annual cost to this sector of clearing these rights on an individual basis would be between £145m - £720m, whereas the overall annual cost of a CLA licence is around £6.7m. In terms of total spending budgets within the different sectors, the CLA licences account for 0.03% (schools), 0.04% (HE), 0.05% (central government) and 0.0006% (business).¹

The CLA scheme is easy to use as licensees are not required to undertake searches to establish whether particular content is included with the licensed repertoire, a facility underpinned by statutory rules on indemnity-backed licensing schemes².

ALCS is also a member of the Educational Recording Agency (ERA) which brings together a uniquely broad group of bodies representing the different rights owners in audio and audiovisual productions³. ERA licenses educational establishments to copy and access a huge range of broadcast content at reasonable rates. When the scheme launched in 1990, the rate for Primary Schools was 15p per student; in 2011 the fee per pupil was still only 32p per student. To simplify access to the scheme, ERA offers Local Authorities a single application for the schools under their control. This option provides for a 30% discounted rate, resulting in a rate of just over 22p per pupil per year.

The statutory framework under which ERA is established removes the need for educators to ascertain whether individual works are covered by the scheme, providing a high-volume rights clearance solution that is delivered in a simple way at the point of use.

¹ *An economic analysis of copyright, secondary copyright and collective licensing*, PricewaterhouseCoopers LLP, March 2011, pp. 42-44

² Copyright, Designs and Patents Act (1988), s.136

³ <http://www.era.org.uk/>

Insufficiently transparent

The licensing structures within which ALCS sits make it more of a ‘member-facing’ than ‘licensee-facing’ operation and we aim to provide the writers we represent with appropriate levels of information. As well as adhering to standard corporate reporting practices, such as the publication of annual financial statements, ALCS uses a variety of means to share information with members including: our website, social media networks, on-line newsletters and through meetings with members. To inform these initiatives, we hold regular focus groups with members to identify the levels and channels of information required.

In terms of the transparency of the wider rights management sector, ALCS has been working with colleagues from other CMOs within the British Copyright Council to develop a framework of principles for good practice⁴. In line with the processes established under the framework, ALCS will publish its own Code of Conduct later this year.

Siloed within individual media types

The copyright licensing that ALCS is involved in requires partnerships and collaborations with bodies representing different classes of rights owner; in this way the rights relevant to different combinations of the ‘media types’ listed on page 4 are delivered to the end user in a single package. This applies to the CLA and ERA schemes referred to above as well as the rights owner consortia we work with to license the overseas retransmission of UK broadcast content and the wider international networks that enable us to collect fees for the authorised use of our member’s works around the world. These rights owner collectives provide groupings within which user requirements can be evaluated and reviewed and new licensing terms both for ‘mixed’ and ‘cross’ media can be developed.

Alongside licensing practices, rights owners are also developing the means for linking information on rights, works, contributors, licensing agents, etc. to facilitate simplified, joined-up rights clearance in the on-line environment. ALCS has been instrumental in the development of new standard identifiers the International Standard Name Identifier (ISNI) and the international Standard Text Code (ISTC), and is closely involved in testing the ARROW system (see below). Through the CISAC IPI system CMOs have developed global networks providing signposting for rights and licensing data for audio and audiovisual works.

⁴ BCC Principles of Good Practice can be found at: <http://www.britishcopyright.org/>

Victim to a misalignment of incentives between rights owners, rights managers, rights users and end users

ALCS is a not-for-profit organisation owned and governed by writers, run for the benefit of its members. Our primary incentive is to ensure that those members receive a fair return for the use of their work. We set out in more detail below how we seek to achieve this in the context of high-volume, collective rights schemes.

As for the general relationship between owners/managers of rights on the one hand and users on the other, some misalignment of incentives is inevitable when it comes to discussions on price, which will be resolved (or not) through a process of negotiation. This reinforces why the 'cost of rights' cannot be seen as a systemic 'problem' that a construct like a DCE could or should seek to address.

In the context of collective rights licensing, the Copyright Tribunal is available to users to review the terms of new or existing licensing schemes. In 2007, the IPO commissioned a review of the operation of the Tribunal which included recommendations for a more balanced approach whereby licensing bodies could also refer proposed schemes⁵. This recommendation was supported by a report published by then the then Innovation, Universities, Science and Skills Committee⁶ but has yet to be taken forward.

Insufficiently international in focus and scope.

Through agreements with licensing bodies overseas, the collective operations described above are extended to provide an international repertoire available for use under the UK schemes and protection for UK works in equivalent schemes overseas. ALCS currently has agreements covering the use of its members' works with 55 bodies in 40 countries; we have made payments to authors in over a hundred countries worldwide.

⁵ <http://www.ipso.gov.uk/ctribunalreview.pdf>

⁶ The work and operation of the Copyright Tribunal, House of Commons papers 637 2007-08

Seven claims:

The size of the pie for rights owners / managers is smaller than it could be; the share of the pie going to rights owners is smaller than it could be

Most negotiations probably leave one (sometimes both) parties feeling that they have not secured enough of the pie. In cases where collective licensing applies, the so-called ‘many to many’ approach means that users get added value in terms of ‘blanket’ rights permissions and individual rights owners have a collective bargaining position to secure a fair price for this value.

In terms of the share of the pie going to rights owners, ALCS has a straightforward role: to secure fair remuneration for the use of our members’ works all over the world and deliver that remuneration to them in an effective and efficient way. Last year, ALCS collected £30m from 145 different licence sources in 28 countries. Over 2 million micropayments were processed (the smallest being 1p) resulting in payments to around 57,000 writers. Currently 98p of every pound collected is allocated for distribution and we are working with our partners on better data provision to improve on that figure.

The paper notes that “pounds in the analogue space become pennies in the digital space”. While it is to be hoped rewards for authors don’t diminish quite so starkly, our own experience is that the volume of data relating to uses of works is ever-increasing and we are working to develop the systems and processes to cope with this while keeping operational costs in check. In 2003/4 collections totalling £12.9m were administered by 35 staff, for the £30m administered in 2010/11 this figure had only risen to 38.

Clearly, many challenges lie ahead as digital access and use becomes ubiquitous. ALCS is trying to take a longer-term view in developing systems to support writers in creating the content at the heart of this changing world. Despite the difficult economic climate, UK copyright policy needs to take a similarly far-sighted approach and recognise the need for structures and systems that underpin an author’s right to receive a fair return for the use of their works.

New digital businesses within the creative industries are being held back / innovation is being held back

An underlying theme from the Hargreaves review, which predated the evidence gathering process, is that copyright/ copyright licensing is a barrier to innovation and growth in the digital space. In its evidence, ALCS responded that copyright licensing income provides a broader platform for new creation and innovation in two ways:

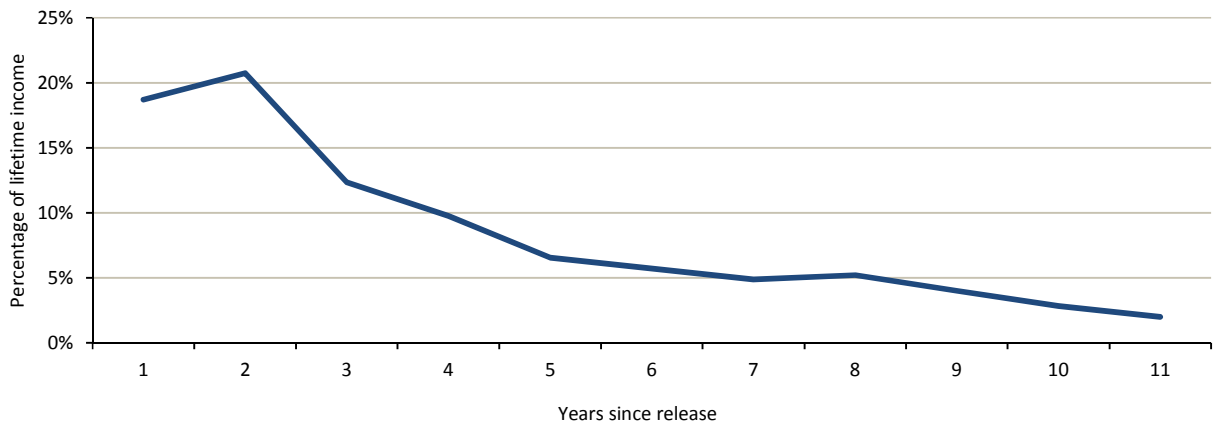
Firstly, as a result of copyright licensing, innovation is supported through the facilitation of easy access for education, through schemes such as those operated by CLA and ERA. As a result of this simplified access to content, drivers of innovation such as knowledge and skills are promoted.

Following on from this, the remuneration distributed under these schemes plays a significant role in supporting further innovation. Writers are innovators by nature; they operate in a risky, highly uncertain environment where rewards are generally low, but a major commercial success could be just around the corner. Independent research commissioned by ALCS⁷ demonstrates that writers need to 'stay the course' to reach the point at which their output generates significant commercial returns which in turn have the greatest impact on wider economic growth. The research showed typical annual earnings for professional writers of £12,330; for writers in the early stages of their career (the 25-34 age-group) the median annual earnings figure drops to just £5k.⁸

In many cases, ALCS payments derive from the secondary use of older works that have passed their initial commercial peak. These fees supplement the often declining royalty income that writers receive between projects. In this way the secondary rights income that ALCS receives from CLA, ERA and other UK and international sources captures the added value represented by the long-tail of copyright works – the kind of works that are becoming increasingly accessible in the digital world. To illustrate this, the graph below shows how secondary-use revenue from a book persists long after its initial publication and 'commercial peak'.

⁷ Authors' earnings from copyright and non-copyright sources, [Centre for Intellectual Property Policy & Management](#), Bournemouth University (December 2007)

⁸ Ibid, Table 3.4, page 27



Source: ALCS distribution data

It is difficult to fit this interrelationship between the use of existing material and the creation of new works on to the A,B,C market segmentations set out in the paper. However it is clear that the income from ‘secondary uses’ plays a significant role in the creation of new works for release into the ‘primary’ commercial markets. The successful operation of this regenerative cycle is borne out in the comments we have received from our members, for example:

“Educational writers don’t usually get advances as fiction writers often do, so I use my copying fees to live on while I work on my next book. If I don’t receive copying fees in future, I may not be able to continue my writing career; these regular payments are crucial.” Clare West, freelance educational writer

“I am strongly in favour of secondary payments systems such as PLR and ALCS. Before I had a bestselling book, the annual payments for the use of my work often made a difference to my ability to continue working in the way I was doing.” Philip Pullman, children’s author.

In terms of developing digital products and services around content, the rapid growth in sales of e-books and e-readers based on new licensing arrangements suggests strongly that copyright does not inhibit innovation.

Infringement of copyrighted content remains persistent

There are various reasons why people infringe copyright. Research commissioned by Ofcom on attitudes to illegal file-sharing indicates cost as the primary factor (unsurprisingly, free is often cited as a preference) but also a range of secondary factors⁹. Clearly, the problems in this area run far deeper than issues associated with copyright licensing structures and a better general understanding of these issues is needed if workable solutions are to be found. The Hargreaves report highlights enforcement and education as other key points of focus, noting that the latter requires evaluation and monitoring to be effective and ALCS has embedded these elements in the two copyright education and awareness projects¹⁰ it is currently sponsoring.

The end user is deprived of access to a significant amount of commercially and culturally valuable content e.g. archive material / UK GDP is estimated to be losing out to the tune of £2bn per year because of barriers in the digital copyright market

This response has highlighted how collective licensing, in appropriate circumstances, can operate effectively to facilitate access to content. In the case of archive content, systems are being developed to improve data exchange processes for large collections of older material; ALCS and PLS are currently working with the Wellcome Library on a project to pilot the European ARROW system¹¹.

The evidence supporting the Hargreaves report estimates that by 2020 a Digital Copyright Exchange could add a further £2.2bn to UK GDP, the majority of which would result from 'productivity and induced ICT investment'. Clearly, much of this relies on the assumption that the UK creative economy continues to perform strongly which in turn presupposes a ready supply of new, high-quality content being produced. The proposed shift in balance between authors' rights and access rights evident in the current Copyright Consultation casts serious doubt over many of the assumptions that are being relied upon to produce forecasts of future, sustainable growth in this area.

⁹ GfK NOP Social Research, Chapter 6, (August 2011)

¹⁰ For more details of these projects see: <http://www.copywrite.org.uk> and <https://www.whatthedickens.org>

¹¹ For more details see: <http://www.arrow-net.eu/news/arrow-will-provide-identification-services-wellcome-library-digitisation-project.html>

Section 2 – Definitions

We appreciate that the paper employs high-level terminology to convey a broad overview of the market definitions; in that context the ALCS operation does not fit precisely into the model set out in Figure 1 of the paper. Hopefully, the comments in this response and the presentation given at our offices have provided the review team with useful further material in developing their overall market assessment. We have three general observations on the elements included in the market definitions.

Firstly, the ‘media types’ listed in the paper do not match the different rights and right owners recognised by copyright and related rights. Currently, licensing is built around these rights/ right owners as they follow the rules established by international treaties. That is not to say that the current system is incapable of delivering a joined-up approach to licensing the ‘media types’ referred to in the paper. The schemes we have outlined above bring together various organisations capable of providing ‘volume mandates’ for different classes of rights and rights owners. This not only provides a simplified platform for granting licences to end users, but also creates a space for different rights owner groups to discuss and review new models within the sectors they license.

Secondly, the list of bullet points on page 5 identifies a world where rewards are diminishing and works may be used, reused and distributed with ease by almost anyone. In such an environment an author’s moral rights become increasingly important. In the digital space, works can be modified or presented out of context by others. Equally authors may choose to offer new material at a reduced price or even for free. In either case, an author’s right to protect the integrity of their work and have their name clearly associated with it is essential.

Finally, in an environment of ‘rapid change and uncertainty’, policy interventions must be supported by reliable data. Significant research funding is being made available by the Government for detailed analysis of copyright and new business models. This would seem to provide a logical place to test certain assumptions and assertions around copyright licensing prior to committing to particular courses of action.