

HOUSE OF LORDS DEBATE: VALUE OF THE PUBLISHING INDUSTRY WEDNESDAY 6 FEBRUARY, MOSES ROOM, 5PM

Lord Dubs will be leading a debate in the Moses Room on Wednesday 6 February about the future of the publishing industry and Government support for publishing. DCMS Spokesperson, Lord Gardiner of Kimble will be responding on behalf of the Government.

Introduction

The Society of Authors exists to protect the rights and further the interests of authors. The Society was founded in 1884 and today has over 9,000 members writing in all areas of the profession (from novelists to doctors, textbook writers to ghost writers, broadcasters to academics, illustrators to translators). Authors are eligible to join if they have been offered a contract from an independent publisher, broadcaster or agent or have sold over 300 copies of a self-published book. Most of our members are self-employed. They own copyright in their work and depend for a significant proportion of their income on equitable remuneration from licensing the use of that work. The members of our council are listed at <http://www.societyofauthors.org/about-us/council.Introduction>.

Summary

- 1 The publishing industry is a significant exporter and driver of growth.
- 2 The Society is concerned that several of the Government's current policies are creating barriers to growth and hindering development of the publishing industry.
- 3 The Enterprise and Regulatory Reform Bill has some concerning provisions in particular:
 - a. Proposed educational exceptions;
 - b. Reducing terms of protection;
 - c. Introducing change by statutory instrument.The Government should be mindful of weakening a stable and successful copyright regime in favour of one that will inevitably reduce revenue for creators and therefore the UK economy, and will create a climate of uncertainty and litigation.
- 4 PLR should be extended to audiobooks and ebooks.
- 5 The Government should reduce the anomaly between print and ebooks, and support a change of the VAT directive at EU level to allow ebooks also to attract the zero rate.
- 6 The Government should create an educational and general environment from primary level upwards, which emphasises the value of culture and the importance of copyright.

The EBacc should include a sixth pillar of rigorous creative subjects.
School libraries should be compulsory and reading and writing for pleasure should be encouraged

High street bookshops, local theatres, and libraries, all underline the importance of books, culture and learning and should be supported and allowed to flourish.

- 7 The strategic oversight of and coherent direction for the creative industries is lacking. the Creative Industries should be a Minister of State and attend Cabinet, allowing for a more joined up approach to growth in this sector and allowing for the greater prominence on IP, to be promoted through cross-Departmental activity.**

We have read the submission from the Publishers' Association ("the PA") and agree with its contents but wish to add and emphasise some issues which are of particular concern to authors.

1 The Publishing Industry

The PA rightly points out that the publishing industry is a vital component of the creative economy, and employs 33,000 people across 2,500 companies. In addition there are a large number of professional authors working full or part time, often self-employed, who create the content on which the industry relies and who enable the publishing sector to be the largest exporter amongst the creative industries. The quality and range of British writing is recognised around the world and 40% of publishing industry revenues are derived from exports, a bigger proportion than in any other country, Based on publisher turnover, the UK book market is fourth largest market in the world. The publishing sector has embraced the opportunities afforded by digital, and the consumer ebook market is flourishing: consumer ebook sales grew by 366% in 2011, with publishers successfully operating in a print plus digital world. In fact, the UK is the largest ebook market in Europe.

2 Barriers to growth

Despite this flourishing picture, the Society is concerned that several of the Government's current policies are creating barriers to growth and hindering development of the publishing industry despite the clear demand both in Britain and overseas for the high quality content produced by British authors. The largest barrier to growth for most authors is the difficulty of obtaining a proper return for their professional work. Authors' incomes continue to be squeezed: fewer books are published and sold; advances have fallen while more unpaid work is expected of authors in marketing and publicising their work, including appearances and use of social media. In a survey in 2006, ALCS concluded that writing is a very risky profession with median earnings of around £12000 for "professional" authors and around £4000 for all authors, less than one quarter of the typical wage of a UK employee. Benchmarking the results against the Society's survey, reported in 2000, indicated that the earnings of a typical author were deteriorating in real terms. This trend is continuing. Authors need to earn reasonable amounts from the considerable effort put into writing in

order to continue producing inspiring and informative books (in whatever format) in all genres.

3 Intellectual Property

The copyright framework underpins growth and facilitates investment and innovation in the creative industries. The importance of the copyright framework to the sector cannot be underestimated – copyright is the bedrock upon which content is exploited, revenue is generated and reinvested back into the economy. Copyright also allows for the exploitation of works across national boundaries, and is a key driver of exports. The promotion of growth in the publishing industry relies on maintaining a strong and balanced IP framework; one which balances a respect for rights holders' efforts in producing content and their right to be sufficiently remunerated against the requirements of those wishing to make use of this content. This balance must be carefully calculated to ensure the IP framework provides optimum value to the economy and to society.

Unfortunately, recent reviews of the Copyright framework have moved in the wrong direction, challenging the foundations and success of the creative industries. DCMS and BIS should be working together to support the creative industries and the intellectual property framework that underpins them. The promotion of exceptions over well-functioning licensing solutions is not the way to do this, and **the Government should be mindful of the risk of weakening a stable and successful copyright regime** in favour of one that will inevitably reduce revenue for creators and therefore the UK economy, and will create a climate of uncertainty and litigation. Examples of this include the Enterprise and Regulatory Reform Bill (currently before Parliament) which proposes:

3.1. Exceptions to Copyright by Regulation

Clause 66, enabling the extension of exceptions to copyright by regulation without full parliamentary debate is unacceptable. The government's amendment clarifying that this shall extend only to exceptions permitted under the EU InfoSoc Directive is welcome – but the risk remains that future governments will introduce large "bundles" of changes, further reducing Parliament's power of scrutiny. If exceptions to copyright are to be made by Regulation, the procedure should be to introduce a separate Regulation for each change to be made. This will allow Parliament to decide whether to approve or to reject each change on its merits.

3.2 Educational Exceptions

It is proposed that regulations will be enacted to "simplify copyright licensing for the education sector and make it easier for teachers to use copyright materials on interactive whiteboards and similar technology in classrooms and provide access to copyright works over secure networks to support the growing demand for distance learning handouts for students". Such licensing is already simple through well established and carefully negotiated licensing systems. Authors are concerned that the effect of the regulations will simply be to give free access to educational establishment of materials which are currently

licensed thus leading to a fall in authors' incomes. Educational establishments have to pay for premises and other supplies: it is only fair that they should pay for the use of copyright materials.

3.3 Term of Protection

We are concerned at the recommendation in clause 67 which gives the government power by means of Regulations to reduce or end the term of protection which currently applies for works which are unpublished and which were written before the provisions of the Copyright Designs and Patents Act 1988 (CDPA 1988) came into force (effectively this means unpublished works in existence in 1989) and works which have been published and were in existence before the CDPA 1988 came into force and are of unknown authorship because their author chose to be published under a pseudonym or anonymously and their identities cannot be ascertained by reasonable inquiry.

The power may be exercised so as to bring the term of copyright in the works affected to an end on the commencement of the regulations or at any later time. The operation of such Regulations could deprive rightsholders of their vested proprietary interests without compensation and without compensatory benefit to the UK economy and would be contrary to the United Kingdom's international treaty obligations under the Berne Convention, under TRIPS, and under the EU Term Directive. Although the Explanatory Notes give the impression that the Clause is intended to facilitate the digitisation and communication to the public of medieval manuscripts and other very old material held by cultural institutions it is of wider application and is capable of affecting works of relatively recent origin whose rightsovers are easily located, for example, Ford Madox Ford, the author of the novel sequence *Parade's End* which was recently broadcast by the BBC died in 1939.

Consequently, all his published work has been in the public domain since the beginning of 2010. Any unpublished work (correspondence, diaries, drafts) is protected under current UK law for a further 25 years from 2013.

The following safeguards should be included:

- ⊙ We understand that the Copyright Term Directive of "life plus 70 years" will continue to apply to all works, and specific reference should be made to this on the face of the Bill.
- ⊙ Under the 1988 Act (Schedule 1 12(3)) works are not considered anonymous or pseudonymous if the identity of the author becomes known at any time in which case the general rule applies (life of the author plus 70). The Regulations should be amended to make it clear that this provision will still apply and to provide an obligation to make a diligent search in accordance with orphan works guidelines before any work is deemed anonymous or pseudonymous.

4 Digital Economy Act and Public Lending Right ("PLR")

The Rental and Lending Directive (2006/115/EC) creates a "rental and lending right" under which authors have the exclusive right, subject to limitations, to authorise or prohibit the rental or lending of their works [Art. 2(1)]. The rental and lending right may be transferred.

However, even once the rental and lending right is transferred, the author or performer retains an inalienable and unwaivable right to equitable compensation for the rental and lending of their works.

The PLR scheme provides authors with a modest payment each time one of their books is borrowed from a public library. PLR is designed to balance the social need for free public access to books against an author's right to be remunerated for the use of their work. PLR is particularly important to authors whose books are sold mainly to libraries and to those whose books are no longer in print but are still being read. PLR provides a significant and much-valued part of authors' incomes.

S 43 of the Digital Economy Act 2010 extends PLR to audiobooks and ebooks "lent out" from library premises for a limited time but these payments have never been implemented. This is patently unjust and we urge that this provision be brought into force and that extra funds be made available to cover PLR payments for such lending. We have been in long correspondence with DCMS on this subject and in relation to lending from volunteer libraries (which are likewise excluded from PLR).

The amendments in section 43 of in the Digital Economy Act 2010 only extend PLR to audiobook and ebook files downloaded within the library premises, as downloading from outside library premises may constitute 'communication to the public' rather than 'lending'. We urge you to recommend the Government to implement s43 without further delay and, if remote ebook lending from libraries is to be authorised, to ensure equitable remuneration to authors in relation to the resulting "communication to the public." The failure to implement these payments is a clear breach of the Rental and Lending Directive

5 VAT

Print books attract a zero rate of VAT, but their electronic equivalents attract a rate of 20 per cent in the UK. Other EU countries, such as France and Luxembourg, have unilaterally reduced the rate of VAT on ebooks. This means the UK is now at a competitive disadvantage, as ebooks sold in the UK are more expensive than those sold elsewhere. Most of the major players in the ebook market are based abroad. Given the rapid pace of development in the ebook market, there is an urgent need for removing VAT on ebooks to avoid the UK slipping behind European competitors. The Society joins the PA in its call to the UK government to reduce the anomaly between print and ebooks, and to **support a change of the VAT directive at EU level to allow ebooks also to attract the zero rate.**

6 Supporting the creative economy

Authors would benefit enormously from an educational and general environment from primary level upwards, which emphasises the value of culture and the importance of copyright. IP rights are very lucrative to the UK economy. It is important to create an environment in which they are encouraged and can flourish.

The National Curriculum should include, perhaps within the citizenship modules, instilling in children an understanding of the value (artistic and commercial) of intellectual property rights. Knowing that they own copyright in what they have written, and what that means, can be a cause of excitement and pride in students; it increases a sympathetic awareness of value, and an understanding of the harm done by piracy.

School libraries should be compulsory and reading and writing for pleasure should be encouraged. . Beyond Key Stage 3, the English Baccalaureate (EBacc) league table was introduced by Michael Gove, Secretary of State for Education in 2010, with a certificate and new exam proposals being announced in September 2012. The EBacc focuses on five subject areas: Maths, English, Sciences, Languages (Ancient and Modern), and Humanities (defined as only History or Geography). It does not include creative subjects. The omission of rigorous creative subjects (and consequently education about intellectual property) should be reversed through the introduction of a sixth pillar of creative subjects. This was suggested in the independent review of Cultural Education authored by Darren Henley, on behalf of DCMS.

High street bookshops, local theatres, libraries, all underline the importance of books, culture and learning and should be supported. .The habit of culture should be as much a fundamental aspect of the environment as is, for example, the country's architectural heritage.

7 Furniture of Government

We strongly agree with the PA's observation that the importance of sector expertise cannot be underestimated. A coherent industrial strategy must be overseen by sector champions who can support and take informed action to promote the creative industries, not least with regard to the value of copyright. Continuity of staff – both at official and at Ministerial level – is vital, as is strategic oversight across and between Departments. At present, the **strategic oversight of and coherent direction for the creative industries is lacking**. There is no discernible plan for growth for the creative industries, despite it being one of the fastest growing sectors of the UK economy, and responsibility for policies affecting the creative industries are spread across a number of Departments, leading to a lack of coherence. For example, whilst IP policy is developed in the Intellectual Property Office, ostensibly under the governorship of the Department for Business, Innovation and Skills (BIS), (whose oversight and engagement of this policy area is minimal), official responsibility for the creative industries and for broadband and internet policy has moved from BIS to DCMS. This results in policies being developed in the IPO, in isolation of the DCMS, despite the fact that IP underpins growth within the creative industries. The Creative Industries Council, whilst promising to deliver joined up Government, has failed to deliver anything concrete. As a first step, the Creative Industries Minister – who would also have some formal responsibility for IP policy – should be a Minister of State and attend Cabinet, allowing for a more joined up approach to growth in this sector and allowing for the greater prominence on IP, to be promoted through cross-Departmental activity.

The Society of Authors

BRIEFING NOTE

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We hope that these points are helpful. We would be happy to provide any further information which may be useful

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