

The Society of Authors

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

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 200 copies of a self-published book. Services include the confidential, individual vetting of contracts, and help with any professional queries. In addition, the Society collectively negotiates terms on behalf of writers, most notably with the BBC for radio broadcasts. It also organises a varied calendar of events, publishes a quarterly journal, *The Author*, maintains a database of members' specialisations, and administers a wide range of grants and prizes such as the Authors' Foundation, one of the few bodies making grants to help with works in progress for established writers. The Society also acts as agent for the estates of a number of authors including George Bernard Shaw and Virginia Woolf, negotiating and licensing rights and granting permissions.

The Society has read the submissions from The Authors' Licensing and Collecting Society Limited ('ALCS'), the UK collective management organisation (CMO) for writers and the British Copyright Council and agrees strongly with the points made in those submissions. Rather than repeat those submissions, the Society adopts them as a whole and confines itself in this submission to a few supplemental points within our own experience.

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 do not 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 or not, as they choose. The rewards that authors derive from licensing this fundamental right to control their own property encourage and support the creation of new works. Copyright law and licensing is therefore essential, the real question concerns the extent to which licensing systems and practices need and are able to evolve and adapt to meet the demands of a changing environment. The Society believes that, current copyright law and the publishing industry are flexible enough to cope with these challenges without significant change. We would emphasise that authors' rights to prevent the use of any work must also be safeguarded as must their moral rights to be identified as author and object to derogatory treatment of their work.

Copyright Licensing is:

Expensive; Difficult to use; Difficult to access

There is a difference between the costs of the licensing process and the cost of the rights being licensed. If the cost of rights is perceived as being a problem with the current copyright licensing system, current individual or collective bargaining processes are not perfect but a DCE (or similar framework) will not provide the solution.

Individual licensing, often when work is commissioned or first licensed, can be complex. One of the Society's main roles is advising members on publishing contracts. These vary enormously in wording and terms and it would be helpful to all if some standard terminology and contracts could be developed within which individual terms could be agreed. We would like to see some more radical suggestions of industry-wide agreement of basic terminology (including "digital rights") and recommendations towards simpler model licences along the Creative Commons model. Another simple measure would be to extend the Unfair Contract Terms Act to cover Intellectual Property claims.

As for the costs of the licensing process, we agree that ALCS and 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.

Authors are reasonably comfortable with these arrangements which provide an income to authors at a low cost for rights which they could not hope to license individually.

Other collective negotiations and licensing arrangements, such as those the Society has with the BBC, seem to work effectively to negotiate payments for use of an author's repertoire.

Insufficiently transparent

The Society's members generally feel that the information provided by ALCS is reasonably transparent and welcomes the British Copyright Council's development of a framework of principles for good practice¹ and in particular the Codes of Conduct for CMOs.

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

The Society does not perceive a misalignment of incentives between rights owners, rights managers, rights users and end users other than the general wish of rights holders to retain maximum control of their work and license it for the highest price while users will wish to obtain maximum rights for the lowest price. This is a marketplace tension which cannot be resolved by a DCE. Our experience is that both sides would prefer simple easy to understand licensing arrangements.

Insufficiently international in focus and scope.

Different legal regimes in different countries can make copyright licensing confusing and difficult for authors and international harmonisation of contracts would be welcome.

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

As ALCS says, most negotiations probably leave one (sometimes both) parties feeling that they have not secured enough of the pie. Many authors are struggling to make a living and it is not unusual to see publishing contracts which offer unfair or inadequate returns. More could be done to ensure a level playing field for authors in negotiations.

We agree with ALCS' view that 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.

However collective bargaining is not suitable for all negotiations and any reforms must ensure that authors always maintain their rights to control the use of their own intellectual property and protect their moral rights.

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. We do not accept that. Authors and other rights holders provide the creative impetus and imagination which enables innovation and fuels new digital business. Copyright and copyright licensing income are crucial to ensuring that authors will continue to write and innovate rather than turning to other easier ways to make a living. ALCS quotes research which 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 £5000.

Authors need primary and secondary licensing income in order to survive.

Some of our members, such as educational writers, are particularly reliant on secondary income. In 2011 ALCS paid out just over 7million to over 18,000 authors for the educational uses of their works. This works out to an average payment of £380

- Over 1,600 Members received more than £1,000 last year from Educational sources alone from ALCS.

Section 2 – Definitions

We do not recognise the diagram and description of the three defined copyright markets as being relevant to our members. Authors can license rights in any of the three markets you mention and at the time of the creation of the work the size of the market is often unclear. When we review an initial publishing contract, particularly for works of fiction, no one knows whether the book will sell several million copies or under one hundred. Indeed we note that you cite JK Rowling as an example of large payers/ large transactions. While that is true now, it would not have been the case with her first book contract which would not have fitted within any of your three categories. Publishing contracts cannot easily be categorised as either business to business or business to consumer and we find these distinctions deeply unhelpful.

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