



1. **The European Commission has highlighted a number of areas for consideration in its Intellectual Property Strategy**
- 1a. **Are there any comments you would like to make on the proposals that have been highlighted?**

BAPLA welcomes the IPO's invitation to input into its vision of EU's copyright strategy.

BAPLA is supportive of initiatives that enhance to the discoverability and licensing opportunities of photographs. This would include:

- steps to identify rights holders and manage rights in a digital workflow such as metadata and
- Flexibility for business / creators to respond to rapid changes and the demands of a digital economy.

We are not supportive of a revision of the Copyright Directive.

As Head of WIPO Francis Gurry argues “infrastructure is as important a part of the solution as law.”¹

We are particularly supportive of initiatives that promote flexible infrastructures around ‘fit for purpose’ copyright licensing. Of particular importance is rights holders’ ability to directly license users². This can only be achieved by the removal of exclusive obligations imposed by some CMO's and a neutral approach towards **all** business models.

We are not supportive of initiatives that come at the expense of one set of business models – for example an over emphasis on collective licensing, or sector – music. These limited perceptions have an undermining affect on multi territory, multiple use, direct licensing of photographic images.

We are supportive of initiatives that strive towards greater transparency both in EU and UK decision-making copyright policies.

¹ http://www.wipo.int/pressroom/en/articles/2011/article_0005.html

²http://ec.europa.eu/internal_market/copyright/docs/management/hearing20100423/panel_3_rtl%20group_en.pdf

In particular, we are supportive of the UK's stance for the need to back decisions with robust economic evidence. We would welcome the UK's approach for funding from the EU in the area of research and data gathering. This evidence approach assists the EU/ UK governments but could also support innovation and more informed decision making of those who derive their livelihoods from the economic gain of copyright.

We are supportive of the codes as a framework for policy decision-making, and its stance on supporting the economic and moral rights of creators, but like the code's authors, this does not imply that we are supportive of introducing a unified European legal framework. We are not in favour of an overly legislative approach.

We are particularly mindful that the focus of the next EU presidency will be on the economic recovery of Europe. IPO are aware of the importance of copyright to the creative industries, and ergo the importance of economic growth of the creative industry. We anticipate the outcome of policies to date and their impact on the UK economy.

1a(1) Creating a legal framework for the collective management of copyright to enable multi-territorial and pan-European licensing

1a refers specifically to “collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market”

IPO is aware that licensing music is not the same as licensing other forms of content. The consumption patterns and environments are totally distinct.

We are supportive of the principle central to this work: “greater transparency and improved governance of collecting societies through strengthened reporting obligations and right holders’ control over their activities”

On the subject of multi territorial licensing, our members already operate MTL. Because of the competitive markets in which they operate, licensing structures must be efficient and reflective of client’s needs and working practices.

1a(2) Examining whether the current exceptions and limitations to copyright granted under the Copyright Directive (2001/29/EC) need to be updated or harmonised

There is no need to re-open 2001/29/EC.

UK has already undergone a series of steps towards the examination of exceptions to copyright. It would be prudent in our view, to wait and reflect on the impact of proposed exceptions to copyright, which will be introduced in 2014.³

Until such time, the lesson this process has revealed, is a need for clear definitions around the application of exceptions, in particular the fair use doctrine. We impress upon the UK not to support its introduction, especially as a basis for the “non commercial use” argument but to take this message of concern to the EU.

1a(3) Reviewing private copying levies

The 2012 WIPO survey on Private Copying⁴ confirms that the UK has no private copying levy, unlike countries such as France and Germany who allocate funds for the development and support of the arts, cultural events and in the case of Germany, substantial pensions.

We agree with Creative Rights Alliance conclusion that harmonisation of the levy system is to be welcomed. “If it is possible to do so in a manner that leaves the legislative door open to innovative licensing solutions in the future, that would be excellent.”

1b. Are there any further steps which need to be taken to complete the Single Market in this area? If so, what?

Our members operate in numerous, often very specialist markets at home and abroad. They recognize that each licensing transaction brings with it particular nuances of the client and sector trading practices, as well as the idiosyncrasies of trading between and across member states.

³ WIPO Copyright Treaty Article 10 Limitations and Exceptions
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http://www.wipo.int/export/sites/www/freepublications/en/copyright/1037/wipo_pub_1037.pdf

The EU has overly emphasized the importance of collective management that reflects practices in the music industry⁵. Steps should be supported to understand and promote a nuanced approach to markets, particularly those that are hard to automate

We would be supportive of moves that restore the locus of trading towards the author / their authorised representative and away from inefficient, often inaccurate assumptions on usage and distribution payments.

Additional requirements

Economic data to determine:

1. The transitional / development costs / benefits to industry to enact UK copyright policies: exceptions, automation, the copyright hub, ECL & OW etc.
2. Cultural and educational implications / economic benefits and costs.

Within context of EU:

3. Cost / benefit analysis in context of EU proposed policies over next five years?

We would be supportive of pilot programmes schemes, over broad sweeping changes to test these first.

What we need:

1. Definitions and licensing boundaries in the digital age – that differentiate between direct, transitional reuse, secondary commercial and non-commercial.
2. Clarity and agreement on where one terms starts and another ends?
4. What's the tipping point from non-commercial use to commercial success?

1c. Are there any areas where European copyright law needs amendment to ensure it is keeping pace with technological development? If so, where?

Copyright law, whether national or pan-national has a misinterpreted flexibility in keeping pace with technological developments. It's role is not to inhibit such developments but to provide the rights holder with the right to generate an income from their creation. If there has been a perception of hindrance or lack of pace, it has been created by organisations using siloed business models to over-complex systems. Due to a strong competitive market, the photographic industry has kept up with developments as client's demands have changed. The impediment in our industry is a lack of copyright

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<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0205:FIN:EN:PDF>

education and respect – the connectivity between content users and rights holders (as artists earning an income) has not been sufficiently supported, rather exploited to feed technological developments without fair remuneration.

Technology per se should not be the driving force of EU economy. The EU should continue to be informed by industry and creators alike as mutual partners. An approach that supports, monitors and facilitates transactions within the copyright framework would be supported.

Proponents of “free use” argue that technological protection measures and the emerging licensing environment are converging to shift the use of copyright materials to a pay per view environment, which limits access to those who can pay⁶.

But these systems can also allow for controlled and free access, and provide invaluable usage data into consumption and distribution patterns that translate into new fads and trends and later new business models and practices.

Just as a car requires dials to track distance, fuel and performance, initiatives that monitor exchange practices at a micro granular level should be supported.

If we resort to broad stroke measures that allow for wide spread unchartered non-commercial free use, we all lose out, that is, with the exception of ISP’s.

2. Of the four areas highlighted by the European Commission for their “Licences for Europe” dialogues, are there particular points that you would like to raise?

2a Cross-border access and portability of services

BAPLA is supportive of initiatives that protect the identity of the rights holder, such as metadata.

2b User-generated content and licensing for small-scale users of protected material

Photo licensing is not so overly complex that photographers and their picture libraries representatives cannot manage these directly themselves, both at a granular and international level. For this reason, collecting societies are not particularly prevalent or active in

⁶ <http://www.ifla.org/publications/limitations-and-exceptions-to-copyright-and-neighbouring-rights-in-the-digital-environm>

our sector - relative to the high volume of clearances via direct licensing.

Technology we believe will facilitate one to one, micro licensing over a collective licensing approach. We believe that this is the most robust and equitable approach to take for image creators and image licensing.

We are supportive of collective licensing in instances where market failure prohibits or makes uneconomic the use of direct licensing. The role of traditional collecting societies within traditional secondary uses, such as print, is clearly understood, but often lacks consensus and clarity in digital use. We hope to work in partnership with CMO's to gain a greater understanding of its application and possible revenue potential in a digital workflow.

In broad terms, we treat UGC as we do other types of rights within our members' repertoire.

To manage transformative use, we believe what is required is the correct permissions-based environment, one that facilitates collaboration and sometimes, but not always, the creation of a new work.

More often it is only by working closely with the work, the creator and the client / co creator(s) that these sorts of choices and discussions can take place. Such a nuanced approach seems alien to a collective model.

2c Audiovisual sector and cultural heritage

With a proportionate number of cultural heritage members BAPLA is supportive of schemes that support fair remuneration. We are opposed to mass digitization schemes that include images, as these fall foul of the copyright directive.

2d Text and data mining for scientific research purposes

BAPLA is in favour of a licensing framework solution to allow for data mining over an exception for scientific research purposes.

Who we are

Picture libraries and agencies provide many types of users with access to many millions of unique images, either wholly owned by them or by the photographers and estates that they represent. BAPLA (the British Association of Picture Libraries and Agencies) is the trade association that represents their interests in the UK.

Our members' content is available – often after considerable investment - via searchable databases and fully e-commerce, automated systems, designed with their respective target clients in mind (in print and online, for example editorial publishers, TV, newspapers or bloggers).

Our members depend upon a robust copyright system to support their UK and international businesses. They rely on reasonable fees for use of their images and this revenue supports the photographers, as well as the continued digitisation of their analogue work, and correspondingly growth and innovation.

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