Creators' Rights Manifesto

1 Your contribution as an individual creator is uniquely valuable to our culture, our democracy and our economy.

2 You have the right to be credited for your work, and to defend its integrity. This is a human right and should be protected like any other.

3 You, in common with creators in all other fields, need strong laws and sound contractual practices to defend your rights. Left unregulated, the market will fail.

4 You should receive fair pay for all uses of your work, throughout the life of copyright.

5 You must be able to negotiate collectively, alongside other creators, to protect your rights and gain a fair share of profits from your work.

6 You must be able to enforce the rights you have, so courts and legal processes must be affordable.

7 You have a right to know the facts about the value of creativity.

This document goes through these principles one by one. It outlines the issues behind them and give our recommendations for how these principles can be implemented to benefit creators, consumers, our culture and the economy alike.

www.creatorsrights.org.uk

A Manifesto for a New Creative Age

Introduction

If you have ever written a poem, story or blog, written music, taken a photograph, sung a song, drawn a friend or videoed a wedding – whether you do it professionally or not – you are a creator. If you're an illustration student or a 'weekend-warrior' in a rock band, you're part of a continuum of creativity that goes from anyone who does it 'just for me', right through to award-winning professionals who do it for a living.

The Creators' Rights Alliance is an affiliation of fifteen organisations representing the interests of over 100,000 original creators of music, journalism, illustration, photography, writing, film and TV directing. On the creativity continuum, the CRA represents people towards the professional end.

We live in a time of unparalleled creativity. In the internet age everyone can be a published creator. And international law says that from the moment that you create and record your work – whether it's in writing, on a website, on tape, audio mp3, in film or even via email – this work is your intellectual property[1]: you have the right to say how it is copied and used.

You created it: it's yours.
This is a human right.

As a creator, your work has value. Enshrined in and protected by copyright, this value is the base of what our government calls the UK's 'creative economy'.

1 In UK law the exception to this rule is if you are an employee – if you create work as part of your employment, by default the intellectual property is owned by your employer

Copyright, and the exploitation of this right, provides the basis of the income by which all professional creators make their livelihoods. The world would be much the poorer if creators could not make a living – could not do their work professionally – whether that work be, for example, writing novels, or exposing corruption as a journalist, or making photographs, or composing music for films or TV.

But even if you are far from being a professional, even if you want never to be a professional creator, your creativity has a value. You might not recognise it, you might not even agree that it should, but it has a value nonetheless.

Sometimes, it is only when someone tries to use your work against your wishes, or gets financial gain from your work that you didn't expect, or didn't agree to, that you become aware of this value.

The arrival of Facebook, Flickr, remixes and mash-ups marks a new creative age – an age in which there are more opportunities than ever before for everyone to have outlets for their creative urges and talents. Unfortunately, this also means that there have never been more opportunities to extract value from creators' work without permission, without prior knowledge and without payment.

This document puts forward a seven-point manifesto of principles for this new creative age. These principles are necessary for all creators along the continuum, not just for the professionals that the Creators' Rights Alliance represents but for all, for hobbyists and semi-pros too.

We are all part of this new creative age. Understanding how to make the most of it by respecting the rights of creators of intellectual property is the best way for everyone to keep this creativity flowing.

1 Your contribution as an individual creator is uniquely valuable to our culture, our democracy and our economy.

> "Artistic creativity constitutes a decisive factor for the preservation of the identity of peoples and the promotion of a universal dialogue. We are thus fully aware of the essential contribution that can be made by the arts and artists to improving the quality of life, to the development of society, and to the progress of tolerance, justice and peace in the world."[2]

Creators and cultural identity

Creators' capacity to preserve, focus and foster identity is clear and well documented. Cultural identity is often most powerfully defined by creative output. Examples abound: artistic forms like Argentinian Tango, American Jazz or the paintings of the Southern Ndebele of South Africa; and individual works, like the Cuban photographer Alberto Korda's iconic image of Che Guevara or the writings of Dostoyevsky.

Moreover, the ability to protect this creativity and receive a fair share of profits made from its use is the linchpin of an economy that derives income from creativity. Creativity's value is recognised in copyright and rewarded in royalties.

Without a strong system for linking copyright and royalties to the individual creator, the creator can easily be left unrewarded for the work's value.

Although it was a universally recognised image, copied on every conceivable format, Korda never received a penny in royalties for the use of his most famous photograph – of Che Guevara. However, the image generated a great deal of income for those who exploited it.

The ability to protect and reward our creators through copyright, so they can sustain themselves through their work, is vital to both the UK's cultural identity and our economy. It is also critical to preserve and develop our democracy itself.

2 UNESCO (1997) *Final Declaration of the World Congress on the Status of the Artist*.

Creators and democracy

A well-managed system of copyright legislation and provision, which facilitates individual creators, underwrites a democratic culture. One respected commentator put it like this:

> "By according creators of original expression a set of exclusive rights to market their literary and artistic works, copyright fosters the dissemination of knowledge, supports a pluralist, non-state communications media, and highlights the value of individual contributions to public discourse".[3]

It is no coincidence that cultures with the best-developed systems of intellectual property (IP) protection, which value individual creators, are also the societies with the best-developed democracies.

Freedom of association, free expression and the resulting diversity of opinion, output and viewpoint – from amateurs to experts who have dedicated a lifetime to honing their creative output – are good for democracy.

Democracy cannot function at all without the professional skills to describe government and party policies to voters – whether exercised by journalists or satirists. How else would we choose how to vote? By consuming the spin-doctors' raw output?

Professional creators routinely create work of enduring value and meaning, having crafted their skills over many years. This dedicated experience offers two main dividends for creativity at large:

> **1.** Professional creators provide benchmarks for creative excellence for amateurs and semi-professionals to aspire to; and
>
> **2.** As their livelihoods depend upon the protection of copyright, professional creators are at the vanguard of protecting rights that the wider population enjoys and needs.

Extending or even maintaining diversity of creativity depends upon protecting the interests of professional creators.

Some of the less thoughtful advocates of the anti-copyright slogan 'information wants to be free' suggest that all our needs for software, culture, and reporting could be met by hackers, amateurs and bloggers doing it as a hobby and living off a day job. It is alarming to think how many people would be excluded from making their creative contribution in such a world.

So a healthy culture, democracy and creative economy needs diverse creativity.

3 Netanel N (1998) "Asserting Copyright's Democratic Principles in the Global Arena", *Vanderbilt Law Review* 217

What is needed: 1

Allowing the broadest range of creators to enter creative professions, while encouraging existing creators to support themselves, will be essential to maintaining and improving the quality and quantity of our nation's intellectual property and cultural character.

The vast majority of creators work as freelancers. To make the most out of the contribution that creative individuals make to our culture and economy, the UK needs legislative and policy frameworks that recognise the value that freelancers contribute to the UK's culture and economy – particularly in terms of flexibility and diversity of output – and to take account of the unique challenges that freelancers face in sustaining their contribution.

However, working conditions for creators – particularly freelance or independent creators – despite their unique value, can put them at a disadvantage to workers in other sectors.

Reasons for this include:

- The need to find and manage relationships with a large number of clients, and sporadic work patterns with periodic unemployment;
- Poor and unpredictable income levels due to irregular payments of fees, royalties and resale rights – plus the necessity to devote unpaid time to research, personal and creative development and administer a micro-business;
- Poor individual bargaining power;
- The effects of combining creative work with another job, in order to survive financially;
- An unpredictable marketplace driven by the need to keep up with fashionable interests;
- Unavoidable job mobility, leading to isolation and giving a poor bargaining position; and

- Dependence on intermediaries of various kinds such as agencies, publishers, producers and others[4]

Individual freelancers rely for their earnings on fees and secondary income from royalties, all usually arising from commissions. They effectively run their own businesses: finding work, building networks, investing in their own training and career development, buying and replacing technical equipment, retaining accountants and investing in their own pension and sickness protection.

Aside from a handful of high-profile stars, creators' incomes are very modest. In the most recent survey of membership of 1700 of the Society of Authors' 9000 members, their average total gross income was £16,600. Over three quarters of their members earn less than half the average national wage. In a 2004 survey by the British Academy of Composers & Songwriters of the 36,750 writer members of the Performing Rights Society, only 7% (2500 writers) earned over £10,000.

Their status as freelancers offers advantages to them, their clients and the market. It allows creators freedom to develop their skills through work for a variety of clients, and creates a climate in which the best succeed while the worst leave the industry without fuss. This ensures a steady supply of new talent and ideas to cope with shifting tastes and markets.

However, neither taxation systems nor market conditions provide a comfortable environment in which young entrants can hone both their creative and their business skills. They are frequently viewed by rights exploiters as a cheap and expendable pool of labour.

Understanding, recognising and rewarding the value of freelancers will maximise their chance of gaining just rewards for the key part they play in underpinning our culture, democracy and knowledge economy.

4 Da Silva, H. (1999) Report on the Situation and Role of Artists in the European Union. Brussels, European Commission

2 You have the right to be be credited for your work, and to defend its integrity. This is a human right and should be protected like any other.

When a creator gives life to a new work – by writing, painting, playing an instrument or taking a picture – they create an original manifestation of their intellect (or 'soul' if you will). The work is a piece of them.

This connection between the work and the creator was first enshrined in international law in the Berne Convention, which underpins European and UK IP law. It says that all creators must have:

1. The right of attribution – a creator's right be identified as the author or performer, and:

2. The right of integrity – a creators' right to prevent their work being used in contexts, or modified in ways, that are 'derogatory' to their reputation.

These rights are called a creator's 'moral rights'. They are human rights that should inextricably join a creator to the work that they have created. In the words of the UN Universal Declaration of Human Rights:

> "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."[5]

In a digital-use environment where an individual's work may be readily shared, republished or simply plagiarised, the legal protection that the moral right of attribution offers to the creator is vital.

Together, the rights to a credit and to defend the integrity of a work are essential to creators maintaining their income. They also provide an essential guarantee to those who read, see or hear the created work – that is, to the public – that the work is what it is represented as. Instant digital copying and easy digital editing make this guarantee to the user more essential than ever.

5 United Nations Universal Declaration of Human Rights Article 27 (2)

What is needed: 2

The CRA believes that UK law should be modified to take greater account of the spirit of the Berne Convention, to which it is a signatory. The relatively minor changes we propose would bring benefit not only to individual creative workers but to the economy as a whole for reasons which are laid out in the body of this document.

The concept of moral rights was first introduced into UK law by the 1988 Copyright, Design and Patents Act (CDPA). However, despite the fact that this Act expressly cites the Berne Convention as its guiding international law, creators' moral rights are poorly served by the UK's principal law governing IP.

The Berne Convention defines the moral rights thus:

> "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation."

and:

> "Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner or form."[6]

The moral rights need to be automatic

Under the CDPA creators are required to assert their right to be identified as the author of their work, in writing. This is unlike the economic aspect of copyright, which is automatically ascribed to the creator as soon as a work is 'fixed' or recorded in some way.

The CDPA's requirement for 'assertion' – involving specific reference in either the document by which the work is licensed or assigned (for instance, in a publishing or recording contract), or in another legal instrument – adds unnecessary complexity and, as we shall see, is wide open to abuse.

The moral rights need to be permanent

Moreover, the Act permits creators to 'waive' their moral rights – and in so doing, to divest themselves of both their right of attribution (called the 'paternity right' in discussion of UK law) and their right of integrity.

This problem was flagged up as soon as the Act became law. Blackstone's Guide to the CDPA in 1989 stated:

> "The existence of a power to waive moral rights calls into question the effectiveness of the entire code of moral rights"[7]

6 Articles 6 and 9 of the Berne Convention 1886 (last revised in 1979)
7 Gerald Dworkin and Richard Taylor (1989) *Blackstone's Guide to the Copyright Design and Patents Act 1988*

The CDPA thus makes it all too easy for producers and rights exploiters to coerce creators into being parted from their moral rights. Many rights exploiters are quick to take advantage of this, with this waiver forming an early clause in many contracts with creators.

Although there are plenty of examples of good practice in the UK – perhaps the director will be named on the credits of a film, a violinist listed as member of an orchestra, a photographer credited when a photograph is published in a paper or on-line or a newspaper reporter given a by-line – creators are regularly bullied into parting with their moral rights. Contracts which insist upon a waiver of these rights have become the norm across a range of industries, with this coercion being seen as 'standard'. In its current formulation, the CDPA facilitates this onerous situation.

For instance, the typical contract from a major broadcaster for copyright works commissioned from freelance contributors contains this standard clause:

> "You unconditionally and irrevocably waive all moral rights conferred by the Copyright Designs and Patents Act 1988 and all other moral and author's rights of a similar nature under the law of any other jurisdiction"[8]

It was occasionally possible to justify a few such practices in the pre-digital age on the grounds of rights exploiters' need to bring products and services to market quickly and easily. However, the situation has changed with digital technology which is capable of 'bundling' identifying information inseparably with the work itself. This presents a counter-argument to the historic reasoning behind many of the statutory limitations on UK moral rights.

Moral rights must apply to all works, including news

The same argument applies to specific exclusions of moral rights from the provisions of the CDPA – for example, in anything published in newspapers and periodicals. This has been justified by the notion that the ability of authors to enforce attribution and integrity rights may interfere with the process of preparing and rapidly disseminating news items.

However, in the digital age, publishers and editors have straightforward means at their disposal both to attribute and to track use: for instance by incorporating into digital files 'metadata' that associates the work with the creator, or by insisting that this metadata is incorporated by the creator before work is accepted digitally. This recommendation is discussed in more detail below.

Attribution and integrity rights are abused regularly. Here are just a few examples that demonstrate the impact of inadequate legal protection:

- Educational book authors who, having been forced to assign all rights including moral rights, have no right to edit or check the work – and then find that the published version contains serious errors;
- Documentary photographers whose work was produced in one context find the image is re-used in an advertising context (for no further re-use

8 Legal templates at www.creativeinsightuk.com

fee) in a way which undermines the serious editorial documentary character of the original photograph;

- Illustrators find their images are re-used in a new book or article, and digitally manipulated. For illustrators with a recognisable style the public may not know that this is not the art work of the illustrators;

- Poor translations of books and film scripts cannot be stopped either by authors whose work they pretend to be, or by film directors.

As the Copyright Design and Patents Act cites the Berne Convention as its guiding international law, the CDPA should be equipped to enforce its intention.

The CRA therefore **recommends** prohibiting the moral rights waiver; removing the need to 'assert' moral rights before the creator of a work must be attributed with its creation; and making the moral rights available to all creators.

The moral rights need to be enforceable in the digital age

Another simple way of helping IP legislation to associate digital works with their creators and owners would be to extend the 2001 CDPA Amendment Act's Article 7. This allowed creators or other IP owners to act against those who remove digital signatures that identify them.

However, although it is now prohibited to remove digital signatures and rights information, *it is not compulsory to include them*. This leaves the legislation incomplete and less effective than it could be. To ensure the connection between the UK's creative content and its creators and rights owners, the CRA **recommends** that it should be compulsory for all digitised copies of creative content to be encoded with the details of all rights holders – including details of the creators who originated the work.

This includes players and composers on pieces of material, photographers, by-lines on written articles etc.

It is also unclear how effective Article 7 will be: it provides that creators may seek the same remedies that would be available against those who make unauthorised copies of their work; but these are limited to the market value of the unauthorised copy. (This is in itself a hindrance to creators ensuring fair compensation for all uses of their works: see below.)

The courts may have difficulty, to say the least, in determining the market value of a by-line *per se*.

Moral rights benefit consumers too

The measures we propose would have considerable benefits for consumers in the digital age. The market demand for 'choice' grows steadily. Success will follow those providers who are able to satisfy this appetite, and to direct consumers to the content that they require.

Consistent 'branding' of creators' work through the proper application of moral rights will achieve this. Digital encoding that allows the consumer to follow the

work of individual performers, writers, photographers, journalists and artists (and to find them via internet search engines) will go some way towards letting them find the work of creators that they are interested in and buy their work.

These are simple ways of associating the creator of a work with any copy of the work, digital or otherwise, and therefore making piracy and other abuses of the creator's rights easier to track and prosecute.

Other benefits of universal moral rights

A universal moral rights regime, with no requirement to assert these rights; with no waiver of these rights; and in which all digital copies were required to identify the creator, would also have other benefits:

- It would be a means of identifying and thus asserting the distinctiveness of the UK's creative output in the global marketplace;

- It would aid current and future initiatives aimed at creating digital libraries, so as to provide authoritative information to both users and rights owners;

- It would make sense of any provision for licensing of 'orphaned' works – those for which no creator can be identified – by giving every creator the right to be identified, and thus minimising the chances of a work being 'orphaned'.

The CRA therefore **recommends** that without universal moral rights any legal provision for 'orphaned' works would be logically and legally nonsensical.

3 You, in common with creators in all other fields, need strong laws and sound contractual practices to defend your rights. Left unregulated, the market will fail.

The concept of copyright springs from market failure. As we see in many parts of the world, left unregulated, the open market fails creators by allowing widespread piracy of their work, and will not reward them in such a way as to give them incentives to continue investing in their creativity.

However, as we have already seen, contradictions within the UK's current laws regarding copyright weaken their ability to protect creators.

In legal theory, the Copyright Design and Patents Act protects creators by granting them an automatic right of ownership once a work has been created and recorded.

In principle, this right of ownership, backed up with the force of law, should give creators the ability to secure reasonable income from their work. It should confer the ability to control exploitation of the work by others who might want to reproduce, perform or broadcast it. This control would be exercised by licensing rights to the exploiter. During the limited life of copyright, the force of the law should also give creators the ability to seek reasonable redress if these rights are infringed.

That's the theory. However, in practice things do not work like this.

Unfortunately, the CDPA treats this right of ownership of creative work as no different to ownership of *physical* property like a car or a sofa. This simplistic concept neglects the ease with which the *intellectual* property in creative work can be copied or otherwise plagiarised, especially in digital media. It also facilitates a form of binding contract whose future effects may be difficult to foresee – the so-called 'assignment' in which a creator passes the rights of ownership wholly or in part to another party, usually but not always for payment. Case law has shown that such a contract does not even need to be written down

to be effective – for example it can be implied in a conversation or by a commissioner's custom and practice.

In consequence, coercion, deception and other abuses abound. Whether by way of 'standard' contracts; total rights assignment for a one-off fee; the use of opaque language to disguise the effect of the transfer (for instance describing effective rights assignment as a 'licence'); or by making assignment of rights a condition for being paid, artists are regularly being separated from their rights because of the sanctity of contract in UK law.

What is needed: 3

The contract practices faced by many talented, experienced creators are a disincentive to remaining within the sector. They are a major factor in the 'brain drain' faced by the UK's creative economy.

In theory, creators' rights and royalties should be negotiated. Too often, in practice, 'standard terms' are imposed.

No more poor contracts; no more 'Rights Grabs'

There is no way to be polite about many contracts that creators are saddled with. Many of them are just shoddy, unfair and grasping and can only be described as 'rights grabs'.

We have already discussed the poor contracts that bully creators into parting with their moral rights. More broadly, we also regularly see the use of 'standard' contractual agreements by commissioners, broadcasters, publishers and producers, in which all rights and secondary income opportunities are bought outright from the creator in return for a one-off fee. Increasingly this includes 'bundling' of rights for digital exploitation.

In our experience, these contracts are already damaging the fragile economic base for creators and ultimately the healthy base of our creative sector. Media companies argue that buy-outs are essential to maintain a global advantage, but they present long-term problems for the economic sustainability of creators' careers. Creators, across all sectors, commonly complain that 'negotiations' consist of coercion and threats of blacklisting of those who fail to comply. Such negotiations are highly asymmetrical and are far from fair.

To ensure the future growth and competitiveness of the UK it is vital that this contractual inequity is addressed and the rights-grabs are brought to an end.

The National Union of Journalists sees examples of poor contracts offered to its members on a depressingly regular basis. For instance:

- Photographers refusing to sign an all-rights contract from a major UK magazine publisher are offered no further work;
- Major national magazine titles cancel commissions for photographic portraits when the photographer asked to retain their copyright;
- Media conglomerates whose standard contracts are for all rights, for the world.

The Association of Illustrators has documented cases of commissioners (particularly publishers) who demand ownership of physical artwork as part of their terms. This prevents the sale of the artwork by the illustrator and therefore stops the release of secondary revenue. They also regularly see increasingly detrimental contract terms gradually eroding the fees of their members.

Creators must be protected from unfair contracts

It is not just the CDPA that poorly serves creators: the explicit exclusion of intellectual property from the 1977 Unfair Contract Terms Act is another factor. In many creative fields, for example in photography, where individuals or micro-businesses deal with large publishing houses, photographers are faced with a situation in which unless they sign the offered contract, they don't work.

The CRA **recommends** that the government changes the law to include IP in the terms of the Unfair Contract Terms legislation. This would go some way to bringing the UK into line with broader European practice where copyright is seen as an author's right: a personal right, rather than an economic or property right.

The CRA further **recommends** the incorporation into UK law of the principles of the 2002 German law governing contracts for exploitation of creators' works: particularly that providing for re-negotiation of contracts in the event of 'windfall' income from a work that was not envisaged at the time the contract was struck, with arbitration in the event that the parties fail to negotiate successfully.

Government must itself lead in best practice

It does not help, of course, that HM Government is a copyright bully. It issues more than its fair share of poor contracts. It is standard practice among Government departments to make copyright assignment a condition of being offered work.

This is a curious position for the Government to take. The Government introduced, and Parliament passed, the 1988 Copyright, Designs and Patents Act. It gave creators more rights over their work than before, for example by fully recognising photographers as creators and by introducing moral rights (albeit in the enfeebled form discussed above). But many sections of the Government now actively work against its own legislation by insisting creators assign their rights to the Government.

The CRA **urges** the government to set an example by ending its current practice of seeking copyright assignment, and to adopt best practice that could be promoted nationally.

Exploitation of works should be by licence only

The CRA **recommends** that third-party exploitation of creative works should be by licence only.

This proposal will probably elicit complaints from rights exploiters with a vested interest in the current system. But in countries where the law works in this way, such as Spain, Austria and Germany, there has been no impediment to the creativity of the economies.

On the contrary, moving to a similarly flexible approach will have many benefits for the UK's creative economy in the future. The current situation is extremely wasteful of our stock of intellectual property under copyright: rights exploiters who own copyright to work outright are currently under no obligation to do anything with it.

Rights-grabs remove works from the economy and culture

The 'rights grab' means that there are currently thousands upon thousands of creative works, still under copyright, laying dormant because rights exploiters have demanded assignment of all rights. These assigned rights are not being exploited – so they are contributing nothing to the wider economy.

When creators have assigned all rights, or even granted an exclusive licence covering many uses, they are thereby prevented from making *their own* work available to the public. In an age where 'content is king', our content creators are being paupered.

This is not only wasteful, but in this multi-media age of emerging digital markets it is utterly unnecessary. Moreover, it is clear that today, when consumers are not able to access musical content that they want, they resort to acquiring it illegally, for instance via file-sharing websites.

The CRA therefore **recommends** that if rights remain unexploited, and the assignor has no evidence of any intention or plan to exploit the IP in the foreseeable future, the rights should be returned to the creator, so they can find another route to market for their work.

Contracts must be based on reality, not 'boilerplate'

There are many occasions when poor contracts demand rights which are not necessarily going to be exploited when the client may not have the ability or expertise in the relevant area. For example, greetings card and giftware manufacturers and children's book publishers are keen to lock up merchandising rights in characters created by illustrators, with no guarantee of exploitation.

Sometimes these contracts are put forward as much through ignorance as greed. For instance, terms of trade may be drawn up by company lawyers who are not in touch with conditions 'on the ground', with a view to 'simplifying' their IP and getting ownership of as much of it as possible.

This is impractical and leads to confusion because:

1. There is a lack of communication between the people commissioning, who are usually at a junior level in the organisation, and the devisors of the terms of trade (the legal department);

2. The people doing the actual commissioning seldom understand (and often have not read) their own company contracts;

3. Because these terms are so unreasonable, a lot of creative suppliers refuse to agree to them. Those with most clout are often successful in this. Those starting out or in need of money are more likely to capitulate and sign.

There is nothing like enough time, in most cases, to re-negotiate properly. The resultant agreements are therefore often crude amendments of the original contract which are themselves unsatisfactory, and ill–understood by either party.

'Creative Commons' are not the answer

Creative Commons licences[9] are a recent phenomenon aiming to providing creators with a sliding-scale of rights control, particularly designed for the digital age. Unfortunately, these contracts seem to invite unscrupulous rights exploitation.

The intention of CC is to allow a work to be placed in the public domain under a subset of copyright – for example it might be licensed to be freely copied provided no money is made from it with the caveat that the license must be passed on with the copy. The system provides a number of templates for various restrictions on the use of a work.

A Creative Commons (CC) licence might be effective in very limited circumstances – in particular as a marketing tool where it may give some comfort to a beginner launching a demonstration work in the hope of finding a market. But it is dangerous to creators in most other circumstances. In theory CC presents creators with a range of options, in practice the CC templates offered encourage creators to abandon their works to the public domain and sever their links with them.

Far from being a radical alternative to the existing system of copyright, CC relies on a strong existing rights regime as its starting point. If a creator really wants to give their work away, they can ensure that it *stays given* – that it cannot be privatised by a powerful corporation – *only if* they have strong rights that enable them to enforce the CC licence.

Many creators, particularly younger creators with little knowledge or access to advice or experience, have signed their work away without appreciating the consequences. It is often only once the contract needs to be invoked that the poor terms that it offers creators become apparent.

Once signed, default Creative Commons licenses saddle creators with an irrevocable, non-exclusive licence for all uses of a work, sometimes including commercial uses, without payment. Creative Commons admit as much in their online FAQs:

9 http://www.creativecommons.org accessed 04/03/2010

> "Creative Commons licenses are non-revocable. This means that you cannot stop someone, who has obtained your work under a Creative Commons license, from using the work according to that license. You can stop distributing your work under a Creative Commons license at any time you wish; but this will not withdraw any copies of your work that already exist under a Creative Commons license from circulation, be they verbatim copies, copies included in collective works and/or adaptations of your work."[10]

Young creators – such as musicians keen for exposure above all else – may not realise that this affects the likelihood of another licensor using the work, for instance in commercial exploitation.

Worse is the example of a Creative Commons licence leaving the creator to repent at leisure provided by the 2007 court case *Chewywong vs Virgin Mobile*. An advertising agency acting on behalf of the mobile telephone company Virgin had scoured the online photo resource Flickr for images with Creative Commons licences. It used them in a Australian national advertising campaign. It obeyed the terms of the CC licence (attributing the creator) but never offered payment nor even contacted the creator before the campaign had gone live.

One comment on the Flickr blog sums up the exasperation of professional creators at talented amateurs being being robbed of the potential value of their creativity:

> "People: if you are going to conduct business with your images, remember that is a business... Companies are very happy to increase their revenues by profiting off of your work and your investment in your photo gear. Respect the value of what you are doing – don't be taken advantage of."[11]

Beware greedy hosts

Aside from Creative-Commons-fuelled 'rights grabs', there are occasions when rights are demanded by online traders and hosting websites, even when the creative content is not the business end in itself, but a route to their customer.

This situation has only been remedied in cases where the rights exploiter (or would-be rights exploiter) has been challenged to explore the considerations and circumstances of creators more carefully. When they have done so, these traders sometimes concede the unfairness of these practices.

For instance, in June 2006, after public pressure, brought to bear primarily by UK singer-songwriter Billy Bragg, News International's online social networking site MySpace changed its terms and conditions which had previously allowed it to use and sub-license musical content that the site's users had uploaded onto MySpace, without any remuneration for the creator.

In August 2006, again after pressure from Bragg, the UK's most popular social networking site, Bebo, changed similar terms and conditions. Bragg commented:

10 http://wiki.creativecommons.org/FAQ accessed 04/03/2010
11 http://flickr.com/photos/sesh00/515961023/ accessed 04/03/2010

> "Social networking sites are a revolutionary tool for new artists who utilise them in order to gain a following. Any ambiguity about the ownership of rights could have serious implications not only for artists but for the sites themselves. If this new medium is to attain its full potential, it is crucial that artists are able to post content secure in the knowledge that doing so will not hinder their future career and earning potential. Recognition of artist ownership of content should be an industry standard for the new media."[12]

Bebo's terms and conditions now open with a clear declaration of artists' rights.

So if a 'rights-grab' approach carries over into the online age, it risks making creators' situation worse by assigning intellectual property that the new owner may have no intention of exploiting, or may exploit with little or no benefit to the artists that created this property.

As Bragg suggests, this affects not only the business of creators, but also the businesses of the would-be rights exploiters themselves. As many online services rely on word-of-mouth publicity to build a community of users, practices such as those illustrated above may harm their interests by alienating potential customers and users.

This business case may have been a motivating factor for both MySpace and Bebo's change of heart. Whether or not this was the case, it is clear that the clumsy profligacy of the 'rights grab' can hinder both creators and exploiters of IP, and thus jeopardise the UK's creative economy.

Creators' income is not only fragile and open to abuse, it is also time-limited by the terms of copyright. After that it is public property for all time.

Contracts should favour the creator when they are unspecific

Often assignments of copyright or unfavourable licences (as in the case of Creative Commons explored above) are made when creators are young or inexperienced.

Irrespective of age, contractual negotiations between creators and rights exploiters rarely take place with both parties on an equal footing – but equality is assumed by the legal principle of freedom of contract. Most often the creator conducts negotiations from a poor bargaining position which favours the prospective rights exploiter.

Unfortunately, this encourages wasteful as well as exploitative practises – as contracts are drawn up in intentionally unspecific terms to obscure the scope of the assignment, or simply to 'cover all bases' by taking as many of the creators' rights away as possible. There is seldom any plan or intention to exploit all rights assigned or licensed.

Shoddy, catch-all clauses such as the one quoted below are all too common:

12 Bragg B (2006) http://media.guardian.co.uk/site/story/0,,1856724,00.html accessed 04/03/2010

> "The Contributor hereby assigns to [name of exploiter] irrevocably and with full title guarantee the entire copyright (if any) in the Work whether vested contingent or future together with all rights of whatever nature in and to the Work including without limitation all rental and lending rights throughout the universe and in all media whether now known or hereafter invented for the full period of copyright including any extensions and/or renewals thereof to hold the same to [name of exploiter], its successors, assignees and licensees absolutely"

Therefore, in parallel with the recommendation that exploitation is by licence only and that rights in unexploited works return to the creator, the CRA **recommends** that contracts should be presumed in the favour of the IP creator where they are unspecific – so that what is not mentioned is not licensed.

This would give the IP creator more autonomy and financial security against potential future income. It would also render unspecific contracts unenforceable, and go some way to end the wasteful 'rights grab' engaged in to acquire IP at contract stage, hoping to cover any eventuality. It would focus the rights exploiter's attention on how they were going to use the IP they were licensing from the creator.

4 You should receive fair pay for all uses of your work, throughout the life of copyright.

In section 1 we pointed out that, aside from a handful of high-profile stars, creators' incomes are very modest. In the most recent survey of 1700 of the Society of Authors 9000 members, their average total gross income was £16,600. Over three quarters of their members earn less than half the average national wage. In a 2004 survey by the British Academy of Composers & Songwriters of the 36,750 writer members of the Performing Rights Society, only 7 per cent (2500) earned over £10,000.

In a survey of its 53,000 members in 2007, the Authors' Licensing and Collecting Society's (ALCS) found that less than 15 per cent of authors surveyed have received payments for online uses of their work. The ALCS commented:

> "As digital technologies extend the life-cycle of works so solutions have to be found to provide for appropriate frameworks for rewarding their usage. Not just for the the first payment for their creation, but for the work's 'secondary rights' – the fees for uses that occur after the work's initial payment. To both acknowledge and protect the creator's long term investment it is imperative that the initial act of creativity is rewarded throughout the entire life-cycle of the resulting work."[13]

In an environment where there has been an explosion in the availability of creative content, creators' work is being undervalued as never before.

One instance of this undervaluation is a practice in the broadcast industry which is driving down the fees paid to music composers. Broadcasters have consistently defended low fees on the basis that composers' principal income is likely to come from the attendant broadcast royalty receipts. However, composers are increasingly being coerced into both parting with their rights, forgoing royalties and accepting ever-lower fees.

13 ALCS (2007) *What are words worth?* ALCS Ltd. London

Broadcasters who have negotiated a blanket licence with the Performing Rights Society to have access to the entire repertoire of its 43,000 composer members frequently make it a condition of the commissioning contract that composers assign their publishing rights to the broadcaster's publisher rather than the publisher of their choice.

These contracts are most often on terms that are less favourable than specialist music publishers' deals. In any case, since the 'publisher' which is being imposed on the creator is a broadcaster, and not a music specialist, such contracts offer little likelihood of any secondary exploitation of the work that could generate the very income which broadcasters cite as a justification for low fees.

This practice distorts the marketplace, leading to 'white lists' of composers who are prepared to sign away a proportion of their royalty income back to the users.

What is needed: 4

The matter of broadcasters imposing publishing deals has been brought to the attention of the Office of Fair Trading (OFT) by the British Academy of Composers & Songwriters supported by the Musicians' Union.

In September 2005 the OFT announced that it did not intend to take matters further at that stage due to 'lack of evidence'. However, it appears that the OFT did not communicate with any composers before taking this decision.

The CRA **recommends** that the OFT reviews this matter, and works harder to understand the mechanics of supply and demand in the creative economy, and adjusts its approach to this sector accordingly.

Policy approaches and legislation that will help creators receive a fairer income for their work will also improve the situation for diligent, legitimate rights exploiters, whose business is to market their works.

In general, to ensure that creators receive fair pay for their work, throughout the life of copyright, it is necessary to ensure, as recommended above and below, that:

1. exploitation is by licence only;
2. legislation against unfair contract terms applies equally to IP;
3. creators can negotiate minimum terms collectively; and
4. you can enforce your rights as a creator.

5 You must be able to negotiate collectively, alongside other creators, to protect your rights and gain a fair share of profits from your work.

At present, UK law forbids you as a freelance creator from getting together with others to negotiate as a group with those who use your work. Creators' groups are even forbidden, throughout Europe, from publishing recommendations to their members setting out fair terms or payments – only surveys of what terms have been offered and achieved are permitted. For example, musicians' groups cannot make an agreement with a record label that sets out basic standards for terms that will it will offer to composers and performers.

This is because the law in the UK treats each individual self-employed creator as if they were a large corporation. It is obviously wrong if salt manufacturers get together to fix prices – cartels work against consumers' interests. But, if they are doing their job properly, salt manufacturers' products are identical – pure salt is just what it says it is, and the manufacturers are competing on price alone. It is right that the law forbids this. It is wrong that the law treats creators as if they were a conspiracy of salt-makers, or a would-be supermarkets' cartel.

Why? It is in the nature of creativity that you compete with other creators to get your work seen or heard, whether for money or not. You compete on the basis of what is unique about your work – your vision, imagination, analytical skills, original expressive power, whatever.

You compete, that is, on quality. The law that pretends you compete on price alone makes a self-fulfilling prophecy – it encourages broadcasters, publishers and other users to go for the lowest price. It is the enemy of quality.

The effect on the public is that work by dedicated professionals can be pushed out of the market by work done as a sideline. The National Union of Journalists, for example, has reports of editors explicitly refusing to offer enhanced rates for specially challenging, independent reporting, arguing that such work benefits the journalist as a 'showcase' and that is reward enough for the extra work involved.

This thinking has pushed rates for junior work in local newspapers so low that only people living off their parents can afford to do it and eat. This is against the public interest in that it weakens our democracy by reducing independent scrutiny by journalists who are most representative of the public.

What is needed: 5

The effect on creators of this inability to negotiate collectively is that companies can impose 'boilerplate' contracts that are often remarkably similar across an entire sector, whether it be music publishing or illustration of non-fiction books. They can do this because they can rely on a supply of creators who do not know their rights, do not understand what their rights mean, or simply cannot be bothered to read obscure (or deliberately obscured) contracts.

The changes the CRA seeks can be achieved without the sky falling. Indeed, the issue of Intellectual Property rights has been long been recognised as an anomalous area of competition law in European and other international law. It is accepted that it deserves separate consideration from physical property rights. (In fact, the EU has fully recognised closely parallel arguments for collective bargaining in the case of football – see below.)

IP rights are by their nature protectionist. They help to maintain competition where a premium is put upon quality alongside other competitive considerations, for instance, price. If the UK is to compete globally at the highest level, encouraging competition that drives up the quality of the UK's output is in the interest of our creative economy. Sadly, current interpretation of the UK's competition law, as enshrined in the 1998 Competition Act, threatens the prospects of our creative economy competing qualitatively in the long term.

The 1998 Competition Act prohibits 'agreements between undertakings, decisions by associations of undertakings or concerted practices' which may either affect trade within the UK or practices which intend to prevent, restrict or distort competition with the UK.

The situation is especially difficult in the UK because of the supremacy of contracts in law. This is based on the legal fiction that you as an individual creator sit down across a table from Rupert Murdoch or Silvio Berlusconi to negotiate as equals, and that you must be prevented from forming a cartel with your competitors just as Rupert and Silvio ought to be prevented from forming a media cartel.

Germany, in contrast, passed a law in 2002 aimed at encouraging creators' organisations and media organisations to negotiate basic terms agreements – the 'stick' being that where there is no agreement either side can go to arbitration, and the 'carrot' being that quality is recognised, to the benefit of all. The UK would do well to consider the benefits of this approach.

In the UK, competition law currently works against creators by forbidding them from making any recommendations about prices or from negotiating basic terms. It falsely equates this with the situation in which a cartel of business seeks to impose minimum prices on customers. This is fallacious – there are powerful arguments which put basic terms agreements made on behalf of creators outside the scope of the Competition Act, by virtue of their being inherently pro-competitive. However present thinking applies the detail of the Act indiscriminately, reading it in isolation, without reference to the conditions in the creative sector. This can lead to a narrow interpretation of competition which may, for example, put price competition above considerations of competition in quality.

For instance, the OFT has viewed collective agreements by the British Academy of Composers and Songwriters on behalf of its members as contrary to the terms of the Competition Act. However, it is demonstrable that they can be pro-competitive. Without such agreements, there is an incentive for contracting organisations to use a small pool of lowest-price providers in order to drive down costs, not just in fees, but also in negotiation and legal costs. By contrast, these agreements increase the number of competitors who are active in the market competing to supply musical services and products of the highest quality. It would help if the OFT-imposed restriction were eased for bodies representing sole trader or freelance creators.

The CRA **recommends** that the body charged with regulating the UK's competitive environment, the Office of Fair Trading (OFT), needs to work harder to understand the cultural and creative economy when interpreting the Competition Act and to recognise the importance to the creative economy of competition which drives up quality; and further **recommends** that the OFT recognises the need for collective or representative bodies to negotiate on behalf of freelancers in order to maintain the quality of the UK's creative output.

Creators need a level negotiating table

Without the ability to work with a body to bargain collectively on their behalf, creators often find themselves in a weak negotiating position. As individuals they are highly vulnerable to exploitative practices. There is a growing need for creators' services and the IP that they create. If they are merely left to compete individually, the market will fail to arrive at the practices which are most helpful to our culture and economy's long-term health.

Collective bargaining enables creators to derive a fairer return for their work and thus sustains their contribution to the creative economy. Many CRA-affiliated organisations are involved in the negotiation of codes of best practice between their members and commissioning organisations. These can redress the imbalance of the negotiating position between the individual and the large organisation, reduce the counter-productive tensions that exist in the creative marketplace and so drive up quality.

In one example, in the *Guidelines for the Commissioning of music for BBC programmes* developed by the Musicians' Union and British Academy of Composers & Songwriters, clause 8 reads:

> "The offer of a commission for the BBC is not dependent on publishing rights being assigned to BBC Worldwide Music. It is recognised that publishing is in the gift of the composer and the composer is under no obligation to assign publishing to BBC Worldwide Music or any publisher"

The Association of Illustrators has entered into discussion with BBC Worldwide, Oxford University Press and Future Publishing about their rights-grab contracts, but no satisfactory conclusions have been reached.

Football kicks off

It is illuminating to compare the negotiating situation in the creative sector with that existing in football – another great industry powered by talented individuals. The EU itself offers advice as to how the needs of sport may lead it to fall outside the scope of competition policy in certain respects. The European Parliament's Fact Sheet on Media and Sport Policy states:

> "Sport comprises two level of activity: on the one hand, the sporting activity itself which fulfils a social, integrating and cultural role to which the competition rules of the Treaty do not theoretically apply. On the other hand, there exists a series of economic activities generated by sporting activities to which the competition rules of the Treaty do apply. The interdependence and particularly the overlap between these two levels render the application of competition rules more complex."[14]

As a result the International Federation of Professional Footballers (FIFPro) is currently in discussions with the European Commission. FIFPro state:

> "The discussions with the European Commission have also led to an initiative intended to bring about a social dialogue, which should ultimately result in a collective bargaining agreement for European football. The European Commission has assigned FIFPro the task of giving substance to this social dialogue."[15]

This precedent from football can be usefully applied to develop the cultural role of creative output and its economic potential. It shows that the underlying intention of EU Competition Policy is to be helpful to each and every business, not indiscriminately restrictive.

In the way that the EU recognises the benefit of FIFPro's collective negotiation, it has shown that it is amenable to modifying Directives to accommodate these considerations. The CRA therefore **recommends** it do so to ensure that creators have a right to negotiate.

14 http://www.europarl.europa.eu/facts/4_18_0_en.htm accessed 21/04/2006
15 http://www.fifpro.org accessed 04/03/2010

6 You must be able to enforce the rights you have, so courts and legal processes must be affordable.

As it stands, the law is weak in its protection of creators' rights.

In theory, the law provides protection for your work as a creator, considered as property.

In theory, the law provides that those who use your work without permission can be jailed. But we can find no examples of anyone being prosecuted under this bit of the Copyright, Design and Patents Act.

In practice, if someone or some company uses your work to profit at your expense, or uses it without crediting you, or uses it in a place you wouldn't be seen dead in, your only legal remedy is to sue them. But the law currently says that you can only sue them for the value of the work, and this raises a major problem for the individual creator acting alone.

It is sometimes argued that creative workers are a specially privileged group who do not deserve any special protection from the law. For example, you see stories about huge advances to book authors – but they are a tiny minority – and many of the stories are based on the authors' agents' exaggerations anyway. You may hear about musicians selling shares in their future output for large sums but they are a minuscule exception.

The truth is that the majority of creators license large numbers of small chunks of work, each for relatively small sums of money. When there is abuse, most often, what has been stolen is the income from one article, or one song, or one illustration. And what is the cash value of a missing credit, anyway?

The civil courts, in which you would sue if you could, sensibly apply a rule of proportionality: it would *in general* be daft to spend £20,000 or even £2000 in lawyers' fees and court costs to recover a £200 debt. That is why the Small Claims Courts were set up. But the Small Claims Courts in England and Wales no longer deal with copyright cases, in the belief that they are 'too complicated' for junior judges.

So a creator with little means risks being ordered to pay substantial costs, win or lose. In a case heard recently in the Patents County Court, an NUJ member who brought a claim against a well-known publisher, representing herself in the County Court 'multi track', succeeded in her claim on liability and was awarded £400 damages. She was, however, also ordered to pay the defendant publisher's legal costs of £2000 on the basis that the action she had taken was disproportionate to her claim.

This needs to be fixed. You as a creator must be able to go after those who abuse your work. There is no point having laws unless *everyone* has access to justice.

What is needed: 6

Legislative reforms will founder if the ability for legal redress remains as it is currently enforced. Very few creators have the funds to be able to take cases of rights infringement to court. Those that do, and win their cases, most often see rights abuse punished with scant penalties. This not only affects the creator; it also puts honest rights exploiters at a competitive disadvantage.

The CRA therefore **recommends** that the government reviews the methods of enforcement available for IP infringement, including infringement of moral rights.

If the UK is to become 'the world's creative hub', as Ministers repeatedly propose[16], the IP that the UK creates will be one of our most important economic assets. Safeguards, guidelines, and where necessary penalties for action that threatens our creative economy, should reflect the importance of this sector to UK plc. This should also be the case for all abuses of IP which similarly threaten our creative industries.

Do not go directly to jail

The CDPA does not provide for punitive damages that can be awarded to make it worth challenging an infringement of rights. The maximum term for contravention of the terms of the Act is a scale five fine or two years' imprisonment, irrespective of the scale of the crime – and CRA members know of no instances of these criminal provisions being used to protect individual creators' rights, or at all, since they were passed in 1988.

In this absence of effective criminal penalties, and in any case to recover lost income, creators have to rely on civil law, and their access to justice by this route is severely impaired.

The CRA **recommends** that Trading Standards officers, having been given responsibility for dealing with IP infringements, must be fully funded and reinforced to investigate and prosecute them.

16 For example see http://www.culture.gov.uk/what_we_do/Creative_industries/ (accessed 04/03/2010) and the eponymous Green Paper

Creators must be able to track uses of their work

It is increasingly difficult in the digital marketplace for individual creators – for instance, writers or musicians – to effectively monitor and audit the use of their works on-line. The technical and financial resources required to make regular and effective searches of all media will, in most cases, be beyond their reach.

Furthermore, even if an individual creator discovers infringing activity in relation to their work, the processes for effecting the removal of that work (whether from an on-line source or physical location), or securing adequate recompense for consequent loss or damage, are likely to be too costly to undertake.

The CRA welcomes the government's proposals to make Internet Service Providers (ISPs) more accountable for rights infringements committed by customers using the ISP's services. We hope that service providers will engage fully with this process, with creators and rights holders, to find a solution that will allow the growth of the creative sector in the digital age.

For photography, especially online where it is easy to duplicate works, the ability to respond quickly to illegal activity and enforce the law is essential. Otherwise there is a risk that the work will become widely spread throughout the world through the Internet, after which an action against the primary infringer is no longer sufficient.

It must never be cheaper to steal work than to use it legally

In the present situation, even when a court decides that an infringement has been committed, creators are usually awarded only the amount they could have achieved had their work been licensed – there is no punitive element. Licences are not usually expensive because the value of work for publication is usually more transient than in the other areas of intellectual property – for example patents. So, in practice, the cost of a legal challenge of infringements is completely disproportionate to the licence fee and is unlikely to be awarded in full by the court – a considerable disincentive to pursuing infringers.

To remedy this inequitable situation, the costs resulting from litigation should be made proportionate to the damages suffered by the creator. This could be achieved either by steps to reduce the costs to mirror the amount of damages, or by awarding additional damages – a deterrent to others contemplating infringing copyright.

The CRA **recommends** that, in the case of commissioned works, the statutes should clearly state that, when considering the nature of the contract between commissioner and creator, courts should not imply licences that are not explicit but accept, as a default position, that copyright ownership rests with the author of the work.

County courts, where copyright infringements can be challenged, are usually not familiar with copyright or business practice in creative fields, which often results in unfair judgements. There are some specialist routes open like the Copyright Tribunal but seeking redress through this method is not only expensive and

complex but far too slow to be effective against digital proliferation. However, the Patent Court hears some copyright cases and has shown itself to be effective; the knowledge of this court should be extended to other County Courts.

The CRA **recommends** that the time taken to bring IP cases to court must be reduced; procedures be simplified; and barriers to individual creators accessing justice be removed.

7 You have a right to know the facts about the value of creativity.

For the creative sector to thrive, creators, consumers, rights exploiters and policymakers all need to have a full grasp of the issues behind intellectual property.

As discussed at length in earlier sections, abuses of creators' works are encouraged by ignorance. It may be a case of using a FaceBook photo in a million-Euro advertising campaign without payment or passing a piece of writing off falsely as a product endorsement, destroying the writer's reputation.

What is needed: 7

There are already some excellent projects in the UK aimed to increase understanding of the value of creative works. For instance, there are workshops at the British Library Business & IP Centre provided by the Intellectual Property Office, and advice services for the business community from Business Link. The Qualifications and Curriculum Authority (QCA), has projects in the development of the curriculum on citizenship aimed at highlighting plagiarism and associated issues in the education sector.

Consumer-oriented initiatives such as the acclaimed 'Knock-Off Nigel' campaign by the Industry Trust for IP Awareness are also helpful. They go some way to underlining the message that piracy is not a victimless crime. However, while recent research[17] suggests that consumers continue to make the connection between piracy and crime and piracy and loss in revenues such as taxation, there is little evidence that consequent losses to creators with low economic status or, indeed, loss of future creativity itself, are seen as significant.

Content providers also have a role to play in promoting an understanding of IP rights and the balance between creators and users. The pilot BBC Creative Archive project (CA), for example, provides strong messages regarding user interaction

17 Bryce J. & Rutter, J. (2005) *Fake Nation*, Intellectual Property Theft and Organised Crime Project

with works within the archive[18]. This is an ideal point-of-contact opportunity for the BBC and its partners to ensure that rights awareness messages are communicated, especially the possible public misconception that BBC CA content is all publicly owned material. It is not. A great deal of it is licensed from creators and this should be made explicit.

Unfortunately, there are many instances where consumers' knowledge of intellectual property rights is basic at best.

For instance, the Association of Photographers (AoP) have found that members of the public rarely understand that copyright exists in photographs as it does in other media forms – for example, music. Currently this situation is being abused by broadcasters and newspapers who encourage amateur photographers to submit images for publication or broadcast. The standard terms and conditions of these companies provide for an assignment of copyright from amateur photographers, who in general are not aware of their rights. (The cynicism with which some of these terms are written is underlined when they require an indemnity against defamation or other actionable liabilities that exposes the unwitting contributor to potentially very large, uninsured risks.)

This movement harms the field of professional photography and encourages a lack of respect for the medium. It is also a missed opportunity to encourage best practice and educate casual IP creators – knowledge of intellectual property issues should encompass all sectors, from students, creators and users to the general public.

The failure to educate is widespread. It is striking that even in specialist education for creative subjects, students are not made fully aware of their rights and how to deal with them in business.

As a measure of the seriousness of the problem, for example, the AoP has invested significantly in education materials for the general public, as well as for the industry, in order to raise awareness about copyright.

Many students in design or media courses at colleges and universities leave with no copyright education at all. Being ignorant, this future generation are easily abused by unscrupulous commissioners and may themselves become abusers when they rise to commissioning positions. This undermines all creators: if new entrants readily accept artificially low fees or freely assign copyright, the market is distorted and, as noted earlier, the quality of output of the UK's so-called cultural industries suffers.

Effective tutoring to cover aspects of the law that affect them should be made compulsory in all creativity-related courses, including those in photography and in other image-making, design, journalism, music (and indeed fine art). Publications like the Association of Photographers' book *Beyond the Lens*[19] provide a good model. But while colleges affiliated to the AoP are required to use this publication

18 See http://creativearchive.bbc.co.uk/ accessed 11 May 2008
19 www.beyond-the-lens.com

in their course material, the AoP can't ensure that students in other establishments are made aware of their rights and responsibilities.

Education about Intellectual Property needs to happen from the earliest stage. The CRA welcomes the 'Cultural Offer' provision of five hours per week of cultural activity in schools. Developed by the Department for Culture Media and Sport's Creative Economy Programme, one of the stated aims of this provision is to encourage more and more diverse entrants into the creative industries.

The CRA **recommends** that a fundamental part of this provision should involve education about intellectual property. This need not be complicated. All schoolchildren should be encouraged in the habit of using the © symbol with their work, whether it be an essay or a musical composition.

The concept behind copyright is so simple that a child can understand it:

"I made it: it's mine."

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Creators' Rights Alliance