Submission from the Creators' Rights Alliance to the Select Committee on Business, Innovation and Skills: the Hargreaves Review

Member organisations of the Creators' Rights Alliance represent over 100,000 creators, from novelists and illustrators to journalists and composers and musicians, in the UK[1].

We draw the Select Committee's attention to our submission to the Hargreaves Review and to the National Union of Journalists' submission to your Committee, which we are aware raises important further questions about the specific case of authors who are journalists.

In this short submission the Creators' Rights Alliance highlights some essential issues that have been bypassed in the Hargreaves process to date.

- Originality is the heart of the matter
- Everything has changed – but probably not in the way you think
- Every citizen is a creator, and needs rights
- Enforcement – not just for the big players
- Orphan works
- Matters of governance

Originality is the heart of the matter

The Creators' Rights Alliance is deeply disappointed that the government, responding to the Hargreaves review of intellectual property law, failed to take this opportunity to deal with the fundamental issues that Professor Hargreaves considered outside his narrowly economistic brief.

We take this opportunity to remind the government once more of the necessity of new, original creation to the "creative economy". Not only in the interests of the economy, but for the sake of culture and democracy, it must possible for creators to make a living as independent professionals dedicated to making high-quality new work. The focus on making it easier for organisations, such as web-search engines, to make money by reshuffling existing work is equivalent to proposing that the "service economy" be built around households taking in each others' washing.

[1] See www.creatorsrights.org.uk for details.

Everything has changed – but probably not in the way you think

Professor Hargreaves' brief excluded probably the most important consequence of the new communications technology: one that plays far too little part in public and political discourse.

This is that almost every child now in school will be a published or broadcast author or performer before they can vote. Some – no-one can know which – will go on to be the professional creators on whose work the "information economy" is founded – but only if they can negotiate on a level playing field to obtain fair remuneration for their work. This too must be addressed.

Any proposal to make the proposed "Digital Copyright Exchange" effectively compulsory – for example by failing to correct the serious obstacles to access to justice for creators who do not register their work with it – would be to discriminate against those starting out on their careers (and, indeed, citizens who will not develop any wish to become professional) and will be resisted.

Every citizen is a creator, and needs rights

Every citizen needs an enforceable right to be identified – that is, given a credit or byline and to defend the integrity of our work. We all – especially, perhaps, politicians – need these rights as a protection against the abuses of creative works and news reporting that are so sadly common when copying, manipulation and out-of-context use are a matter of a few taps on a keyboard or screen?

It is more important than ever that citizens should have a right to know the source of the information they are receiving: this can only be achieved through creators taking responsibility for their work through strengthened rights of identification and integrity.

In detail – albeit rather a large detail – the Creators' Rights Alliance points to the logical and legal absurdity of legislating to permit use of works whose creators cannot be identified, without at the same time giving all creators an unwaivable right to be identified. The right of identification is essential to prevent a burgeoning of such "orphan works", especially when some online services automatically strip identifying information from works distributed through them.

The recommendation in the Hargreaves Report for a "Digital Copyright Exchange" equally requires that these deficiencies of UK law be remedied, not least for the reasons identified by CRA member the National Union of Journalists: in summary, if it were to be possible for a journalist's work to be "one-click licensed" by any advertiser, let alone a purveyor of dangerous goods or their least-favourite political party, without the redress that the rights of identification and integrity provide, that could end a career and would certainly undermine public confidence in news reporting. Similar, if less stark, considerations of ethics and reputation apply for other kinds of creator.

The CRA welcomes the government's decision that entering works into such an Exchange, if it gets off the ground, will be cost-free; and that participation in any extended collective licensing scheme would be voluntary.

Enforcement – not just for the big players

The CRA strongly welcomes the proposal for a Small Claims procedure to enable individual creators to pursue those who use work without permission.

We would welcome an opportunity to discuss with the Select Committee ways in which this proposal could be expedited – as well as the further proposals for enforcement by individuals and for levelling the playing field on which they negotiate fees for use of their work, discussed in our submission to the Hargreaves Review.

Orphan works

The CRA is slightly encouraged by the spirit of the government's proposal (contrary to Hargreaves) that, if use of work by uncontactable authors is licensed, the fee should reflect the commercial value of such uses.

Any such licensing of so-called "orphan works" must be done by bodies accountable to creators in that field of work; and the licences must be reviewed if the creator shows up.

It is also necessary to make it once more plain that *if* there is to be any provision for the licensing of so-called "orphan works", then one absolutely necessary concomitant to this is, again, the extension of enforceable "moral rights" to all creators, including journalists.

The crispest of the many arguments for this is that to do otherwise would ensure that many more works were made "orphan" in the future.

Matters of governance

We would draw the Committee's attention to the points that the Creators' Rights Alliance made to the Hargreaves Review about the governance of collective licensing systems:

- Collective licensing provisions must be structured so as not to preclude true micropayment systems developing later;
- That is, a part of the creative ecology must include support for platforms and ways to market for individual creators;
- They must not undermine fees for primary commissions of creative works;
- Collective licensing is acceptable only with provisions to ensure that actual creators get rewarded;
- They are acceptable only when administered by bodies that are truly representative of the creators affected; and
- They must be transparent in their accounting.

The transparency requirement, in fact, should apply to business models that in some ways emulate collective licensing.

The requirement that such systems be administered by bodies that are truly representative of the creators affected is an essential feature of legislation in the

Nordic countries that have implemented such systems – not an optional extra. If creators are asked to relinquish the exclusive control over the use of their works guaranteed them by international and European law, they must control the mechanism that compensates them for this; any legislation that provided otherwise would be open to challenge in international forums.

The CRA would be happy to expand on this submission at the Select Committee's convenience.

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