

Copyright Matters: A Look at the Ongoing Pressure on Copyright Around the Globe

Barbara Hayes, Book Summit 16, Toronto, Canada, June 2016

A European Perspective

Ladies and gentlemen, it's great to have been invited to talk to you all today and I'd like to thank the organisers, especially John Degen, for bringing us all together.

I work for the Authors' Licensing & Collecting Society. It's the UK's collecting society for writers and each year our licensing schemes bring in around £30m or \$56.3m Canadian dollars. This year we've paid out to over 77,000 writer members, though we have around 90,000 members. We are pretty similar to Access Copyright here in Canada – though we don't have your broad 'education exception' to hamper us – yet!

In the UK the creative industries are a success story. Government figures tell us:

It's the same story in the European Union where figures tell us:

So what's not to like and wouldn't you think that with such spectacular figures being touted around that we'd have governments across Europe seeking to bolster this industry and protect Intellectual Property?

I have worked for the Authors' Licensing & Collecting Society since 2004. In all that time we've experienced what seems like a never-ending number of consultations and reviews, Gowers in 2006, Hargreaves in 2010, by the UK government and the European Commission. And they've been lobbied hard by those who want – and I quote – easier access and

sometimes free access to your content. These campaigns include lobbies by libraries, consumers, Search Engines, Internet Service Providers and basically anyone who can make money out of your content – and they have the same message: Copyright is broke, it needs fixing and it is not fit for purpose in the digital age.

And with enough people saying this to those who influence policy, well they start to believe it! In fact we have the comic scenario in the UK whereby many of the policy advisers at one particular well known search engine often end up as policy advisers at our Treasury or at No 10; conversely many advisors at the Treasury or at No 10 find their next job at this particular search engine. Cosy. And this positioning makes it very hard to get our message across...but we keep on trying.

I'm going to concentrate on our own parallels with Canada in this session and focus on the Education Exception – suggested variations of which appear from time to time from either the UK government or EU Commission. Now, as most of you here will know, an exception is a provision in copyright law that allows for a copyright protected work to be used without seeking a licence or permission from the copyright owner.

Currently in the UK – and this may change after our referendum on 23 June - we are subject to implementing legislation prescribed by the EU as well as the UK government. The current President of the European Commission has placed reform of copyright into his main goals for Europe.

In December 2015 the European Commission published a Communication entitled *Towards a modern, more European copyright framework*. This document states: The Commission will take action to ensure that the EU framework on exceptions that is relevant for access to knowledge, education and

research is effective in the digital age and across borders. The Commission is assessing options and will consider legislative proposals on EU exceptions in order to in our case: provide clarity on the scope of the EU exception for 'illustration for teaching' and its application to digital uses and to online learning.

In fairness this document does address the issue of remuneration for authors as well as a review of exceptions. Within the copyright directive from Europe of 2001 there is a menu of about 20 exceptions which member states can select from and implement.

Listening to Vice President Ansip recently, who is responsible for the Digital Single Market, he told a Creators Conference in Brussels that he wants to 'harmonise exceptions'. The issue with Europe is that this will probably mean harmonising downwards. Working with 28 member states who all have different needs and agendas, this usually results in a compromise giving us the worst of all worlds.

Our reaction at ALCS has been to team up with the Publishers Licensing Society and the Copyright licensing Agency who partner us in the educational licensing scheme we operate in the UK and we've gone on a tour of the various departments within the Commission who have any influence regarding draft legislation to show them what a successful and innovative mechanism we have for working with licensees and developing products they need at reasonable prices. And we cite the situation in Canada regarding such legislation as something we want to avoid. So I can only say watch this space as the Commission evaluate the situation and gives us some draft legislation supposedly sometime in September of this year.

Now back in 2011 the UK government published plans for a major reform of copyright of which we welcomed many aspects. Many of the proposals stemmed from the Hargreaves Review of Intellectual Property and Growth from the year before and it followed a wide-ranging consultation and evidence gathering process.

Broadly speaking the proposals aimed to provide greater access to copyright works as a means of promoting innovation to support the UK economy. The suggested measures included legislative mechanisms for dealing with orphan works, extended collective licensing models and new rules for the regulation of licensing bodies like ALCS. Legislation around all of this has now been implemented in UK law. However, the proposals also included new measures not covered by the original review that concerned amendments for the framework for licensing copyright works in the education sector.

The UK system allows educational establishments permission to copy and re-use hundreds of thousands of published works and thousands of hours of broadcast content within clear prescribed parameters, through the licensing schemes operated by the Copyright Licensing Agency and the Educational Recording Agency respectively.

The advent of technology has provided alternatives, and will continue to do so, to the purchase and distribution of large numbers of books and these licences give educational establishments legal certainty about what and how much of a work in copyright they can copy for educational usage. The fees authors receive from these schemes through ALCS help to support and sustain the process of creating new materials, our own eco-system if you like. The CLA licence costs a school

approximately 0.03% of their annual budget. The ERA licence cost 32p per pupil per year.

The government proposed various options regarding educational exceptions, under which they intended to 'update copyright exceptions so that copyright doesn't unduly restrict useful activity'. The most extreme option considered was 'to remove the ability of licensing arrangements to restrict the use of exceptions'

We thought this would reduce or possibly eradicate the licensing remuneration for writers. Before we decided to kick up a fuss, we thought we ought to ask our members what they thought. In 2011 we paid out to 18,000 writers' money from education sources and in 2012 this increased to close to 25,000 writers. You can see from the slide here that 90% of respondents said that ALCS income received was important or essential in supporting the creation of new works. Our members also told us that 61% of them had a reduction in primary sales over the past 5 years; only 15% had seen an increase in royalties. We also learnt that a text book can take many months to write and that payment can be very low; if there is no financial incentive to write then either many would stop or would write for some other sector. There is a PWC report that says that any disruption to the licensing system could result in 30% less works being created – an unintended consequence.

I suspect this is all sounding very familiar to many of you.

The system in place also preserved the balance between access and reward established under international copyright treaties and the new proposals might have brought into doubt UK compliance with these treaties and endanger the networks

of reciprocal agreements providing export income for the use of UK works overseas.

The breadth of the content covered by the CLA and ERA 'blanket licensing' scheme provided certainty for educational establishments seeking to be copyright compliant. The new proposals would require educators to make complex judgements about the legality of their proposed uses of content and result in a considerably more fragmented system for securing compliance.

So unintended consequences might be less works written or created and loss of legal certainty whilst human judgment kicks in. We thought that didn't sound like something the government really meant to do so we asked our members to write to their Members of parliament and the Minister in charge of the consultation. It wasn't long before we were called to the Intellectual Property Office where the Minister asked us to ask our members to stop writing to her as she had many large bags full of objection letters from our members.

We wouldn't have minded so much if there had been any specific calls from the education sector for such drastic reforms and I am glad to say that the UK instigated a much narrower exception that made sense but gave more access of the type that educators needed. So whilst we felt we won a skirmish, we are in no doubt that we haven't won the war! We expect the licences to continue to be challenged over price at each and every renewal in the years ahead as we are expected to give greater access but need to ensure the content retains relevance.

Exceptions really should be instigated only when necessary and with accompanying remuneration for authors. This is what we continue to fight for in the UK and I can only say that your

own Canadian Collecting Society and your writers' organisations in Canada are promoting to the max! I hope your own situation will improve or be corrected in the near future.