



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to the call for evidence of the Digital Copyright Exchange (DCE) feasibility study (Phase 1)

February 2012

Summary

Consumer Focus is the statutory watchdog for consumers in England, Wales and Scotland, and for postal consumers in Northern Ireland. We want to see competitive markets in copyrighted content, where copyright owners and businesses respond to technological developments in a timely manner to meet consumer demand.

Consumer Focus welcomes the opportunity to make a submission to the **call for evidence of the Digital Copyright Exchange (DCE) feasibility study**. The call for evidence commences phase one of the feasibility study, which is diagnostic and seeks to identify the issues surrounding copyright licensing. Our submission focuses on what is termed the 'Hargreaves Hypothesis' and the proposed definitions.

We welcome the appointment of Richard Hooper to lead the DCE feasibility study. The DCE could potentially make a significant contribution to updating copyright licensing so that it supports the market opportunities afforded by technological developments in the digital age. In doing so it could ensure that consumer demand is met in a timely manner through innovative legal services. This could in turn make a significant contribution to reducing copyright infringement by consumers.

In summary we believe that the definitions established in the consultation are largely correct, where we believe the definitions need amending we suggest alternatives. Consumer Focus is not convinced that the DCE secretariat has accurately captured Professor Hargreaves' reasoning in what they term the 'Hargreaves Hypothesis'. We also believe that the DCE secretariat should refine its understanding of the link between competition law and copyright licensing in a digital network environment. The proposed features of the digital age should be amended accordingly.

In relation to the proposed definitions, the DCE secretariat should further develop the actors it has identified in licensing transactions. In relation to what the consultation document identifies as 'copyright owner', there is an overlap with what the consultation document later defines as Copyright Market A. What is described as Copyright Market B and C is confused and conflates the size of a business or organisation with the number of licensing transactions it engages in, and the size of the repertoire it seeks a licence for. We believe that at this stage it would be most helpful if the DCE maps copyright licensing for different types of content, such as music or film. It should establish which rights are licensed by collecting societies and which are licensed on an individual basis. It is important that the DCE secretariat establishes a complete picture of the copyright, related rights, as well as moral rights, which may be contained in a single work.

Consumer Focus recommends that the DCE secretariat:

- Amends the 'Hargreaves Hypothesis' to reflect the fact that copyright licensing does not currently support the market opportunities afforded by technological developments in the digital age
- Considers the findings of the Pinsent Masons LLP report on copyright licensing schemes in the educational sector which Consumer Focus and the National Education Network (NEN) have recently republished
- Adds the following features to the digital age definition:

- 'Creative and digital technologies industries are characterised by dominant companies with large market shares, as well as complex ecosystems of entrepreneurs, micro-businesses and SMEs'
 - 'Network effects are an important characteristic of the creative and digital technologies industries, which increasingly converge and are co-dependent'
 - 'Despite the dominance of big players, digital markets can experience a high degree of competition through the "neo-Schumpeterian" effect, ie rapid innovation and paradigm shift as small players compete on innovation to dislodge incumbents with new technology'
 - 'Digital technology reduces the cost of managing large quantities of rights and of mass licensing through standard contracts'
 - 'Consumer technologies proliferate within months, rather than years, increasing the need to licence rights for different platforms and technologies in a timely manner to meet consumer demand'
 - 'The content ownership model expands from physical objects, such as books and CDs, to also include digital products, such as an MP3 or e-book, and an access model is emerging, where consumer access their own content in the cloud or only own the right to use content in the cloud'
 - 'The passive consumer becomes the active user of purchased products (eg format-shifting) and is enabled to become a creator (eg user generated content)'
- Rethinks the use of the words 'rights managers' to describe collecting societies so as to accurately captures those collecting societies which are owners of copyright or related rights
 - Maps the collecting societies which currently operate in the UK and which copyright or related rights they licence
 - Rethinks the definition of actors in licensing transactions, with a view to accurately capture creators, venues and platforms, as well as licensees which can engage in onward licensing
 - Fundamentally reconfigures the proposed definition of the three copyright markets; which currently conflate what is defined as 'copyright owner' with 'large scale players' in Market A

The ‘Hargreaves Hypothesis’

Our answer to question one – ‘Do you agree with this hypothesis in whole or in part?’ can be found below.

Optimising copyright licensing for the digital age

The consultation document summarises what it terms the ‘Hargreaves Hypothesis’ as:

‘Copyright licensing, involving rights owners, rights managers, rights users and end users across the different media types, in the three defined copyright markets, is not fit for purpose for the digital age.’

We provide our reflections on the different actors identified in licensing transactions and the definition of copyright markets below. We would like to highlight that Prof Hargreaves has found a range of problems with copyright law. His conclusion that copyright law is not fit for purpose in the digital age was reached largely in relation to copyright law being out of step with legitimate consumer expectations, especially in relation to private copying.

Prof Hargreaves believes that the UK should establish ‘an efficient digital copyright licensing system, where nothing is unusable because the rights’ owner cannot be found’.¹ In order to ‘boost UK firms’ access to transparent, contestable and global digital markets’ Prof Hargreaves recommended that ‘the UK should establish a cross sectoral Digital Copyright Exchange.’² Other recommendations on copyright licensing include minimum standards for collecting societies, a licensing solution for orphan works and the IPO is currently consulting on facilitating extended collective licensing by collecting societies.

Prof Hargreaves recommendation for the DCE was guided by the question of:

‘how best to ensure that UK digital markets for copyright works are transparent, contestable and supportive to innovation, so that transaction costs are minimised and investment signals clarified. The goal is a functioning online licensing market to support delivery of legitimate content to consumers in attractive and competing offerings, through the many available channels (old and new). Realising these opportunities will offer rewards within the UK market, but will also over time support the sale of UK content and services in international markets.’³

He went on to say that:

‘The economic importance of the UK’s copyright intensive industries makes efficient markets for copyright licensing strategically important to the UK’s growth prospects. We need the system, and in particular the mechanics of clearing rights, to adapt to serve the market opportunities which digital speeds and volumes make possible. Our recommendations address a range of issues designed to improve licensing procedures.’⁴

Prof Hargreaves has not concluded that copyright licensing is not fit for purpose in the digital age, but that it could be made to work more effectively aided by digital technology.

¹ **Digital Opportunity – A review of Intellectual Property and Growth**, An Independent Report by Professor Ian Hargreaves, May 2011, pg.7

² Ibid, pg.8

³ Ibid, pg.28

⁴ Ibid, pg.28

The DCE is Prof Hargreaves' answer to the question of 'How could the UK achieve the fast, reliable and secure licensing exchange that so many businesses say they would welcome?'⁵ The reality is that copyright licensing does not work as well as it could in the digital age, that the UK has the opportunity to take the lead, and in so doing it could support and stimulate economic growth.

Consumer Focus therefore recommends that the DCE secretariat amends the 'Hargreaves Hypothesis' to:

'Copyright licensing, involving rights owners, rights managers, rights users and end users across the different media types, in the three defined copyright markets, does not support the market opportunities afforded by technological developments in the digital age.'

Consumer Focus recommends that the DCE secretariat:

- Amends the 'Hargreaves Hypothesis' to reflect the fact that copyright licensing does not currently support the market opportunities afforded by technological developments in the digital age

Evidence that copyright licensing can be optimised for the digital age

As a consumer watchdog, we have heard significant anecdotal evidence of problems with the current copyright licensing systems. Not all of the problems that have been identified by various stakeholders can be resolved by a DCE. Some of the problems that have been identified, particularly in relation to ensuring that collective rights management through collecting societies becomes more effective, will be addressed through the implementation of other Hargreaves Review recommendations. However, the DCE could make a significant contribution to enabling the timely licensing of new services by allowing licensees to locate copyright owners. Furthermore the DCE could, if developed into a trading platform, serve to reduce the transaction costs currently associated with rights clearance.

In relation to the possible benefits the DCE could offer we would like to draw the DCE secretariat's attention to the Pinsent Masons LLP report for BECTA on copyright licensing schemes in the education sector which Consumer Focus and the National Education Network (NEN) have recently republished as *Learning the copyright lessons – copyright licensing schemes in the UK education sector*.⁶ The report identifies a range of problems with the existing copyright licensing system for schools. Two of the key issues identified are that it is difficult for educational establishments to establish from whom they require a licence for the use of different types of work, and the administrative burden associated with educational establishments obtaining the necessary licences from different collecting societies.

Consumer Focus recommends that the DCE secretariat:

- Considers the findings of the Pinsent Masons LLP report on copyright licensing schemes in the educational sector which Consumer Focus and the National Education Network (NEN) have recently republished

⁵ Ibid, pg.30

⁶ **Learning the copyright lessons – copyright licensing schemes in the UK educational sector**, Consumer Focus and NEN, December 2011

Definitions and the digital market

Our answer to question two – ‘Do you agree with these definitions including the market definition?’ can be found below. We believe that the definitions established in the consultation are largely correct, where we believe the definitions need amending we suggest alternatives.

Definitions: features of the digital age

When listing the features of the digital age, the consultation makes a number of references to competition law related issues. For example: ‘The creative destruction of incumbent analogue businesses’, ‘rapid change and uncertainty’, ‘low barriers to entry and intensifying competition’, ‘the erosion of monopoly status’. These statements reflect a confused understanding of the interaction between copyright law and competition law, and the application of competition law in the network environments which characterise the digital age.

Prior to the Competition Act 1998 UK competition authorities generally considered intellectual property rights to be similar to property agreements, such as leases. Intellectual property rights, such as copyright, were thought to have a benign effect on competition.⁷ In contrast the European competition authorities have, since the mid 1980s, produced significant case law on the alignment between intellectual property rights and competition law under the EC Treaty. When the Competition Act 1998 became law it was understood that it would apply to intellectual property rights. The Department for Trade and Industry (DTI) at the time planned for European competition case law in relation to intellectual property rights to be applied in the UK. The DTI reasoned that:

‘...the boundaries of what is acceptable and what is anti-competitive is best established from European jurisprudence. Different treatment for intellectual property rights under the Competition Act regime and European regime seems neither necessary nor desirable and is likely to increase the burden on business of compliance.’⁸

It is therefore EU jurisprudence which offers the most helpful guidance on competition law in the context of copyright licensing and network environments. The two legal principles established by EU case law which we believe are most relevant here deal with abuse of dominant position and copyright licensing, and are known as the ‘new product’ test, first established in *Magill* (1989), and the ‘innovation balance’ test. Both tests relate to the interpretation of Article 102(b) of the EC Treaty, which is mirrored in section 18(2)(b) of the Competition Act 1998.⁹ The provision states that conduct amounting to abuse of a dominant position in particular if it consists in:

⁷ Catherine Colston & Jonathan Galloway, **Modern Intellectual Property Law**, Taylor & Francis, 2010, pg.26

⁸ Competition Act 1998, Exclusion of Vertical Agreements, Consultation on Draft Order, para 2, quoted in Catherine Colston & Jonathan Galloway, **Modern Intellectual Property Law**, Taylor & Francis, 2010, pg.26

⁹ Jae Hun Park, **Patents and Industry Standard**, Edward Elgar Publishing, 2010, pg.72; Damian Chalmers, Christos Hadjiemmanuil, Giorgio Montis & Adam Tomkins, *European Union Law Book and Updating Supplement Pack: Text and Materials*, Cambridge University Press, 2008, pg.78–79

*'(b) limiting production, markets or technical development to the prejudice of consumers'*¹⁰

In the 'new product' test and 'innovation balance' test consumer prejudice for the purpose of Article 102(b) is primarily interpreted in terms of consumer choice, or lack of it.¹¹ Consumer Focus believes that the two tests should inform the UK approach to competition law and intellectual property rights in the digital age, with a view to support innovation in UK-based digital and creative industries. In order for the UK to build a functioning competition framework that supports innovation and competition in the creative and digital technology industries, better account needs to be taken of the network effects operating in digital markets. While the 'new product test' primarily focuses on the development of new products for consumers in the downstream market, the 'innovation balance' test also considers innovation, limitations of markets and technological development.¹² Furthermore the 'innovation balance test', established in Microsoft (2007), specifically considered network effects. Therefore the principles of the 'innovation balance test' should guide the DCE feasibility study's definition of competition in the creative and digital technology industries.

Both the creative and the digital technology industry are characterised by dominant companies with large market shares and monopolies, as well as a complex ecosystem of entrepreneurs, micro-businesses and SMEs. This is a side effect of the 'network effect', where a single standard emerges as dominant once sufficient numbers of consumers have adopted it. As such, one producer tends to dominate the market and their products become the 'standard' or the 'gatekeeper' for complementary products. Despite the dominance of some players, such markets can experience a high degree of competition through the 'neo-Schumpeterian' effect; if they are characterised by rapid innovation and paradigm shift. Competition is on innovation, not price of a product, and companies will invest in innovation and development to dislodge the incumbent with new technology. This leads to fragile, temporary and serial monopolies.

However, the ability to dislodge the incumbent is reduced if the dominant company can prevent network effects by, for example, constraining consumer choice through lock-ins and high switching costs, or by preventing other companies from producing complementary interoperable products. A 'direct network effect' includes the utility consumers derive from the number of other consumers who choose to use the same product. An 'indirect network effect' is the sale of complementary goods and services. Consumers will attach a higher value to products, for example an operating system, if a high number of complementary products, such as software applications, can operate with the product. At the same time companies are more likely to develop interoperable complementary products for a product which has attracted a high number of consumers, known as 'positive feedback'. In economic terms companies that operate in markets with network effects produce products for a 'two-sided market', as they have to attract both consumers and producers of interoperable complementary products.¹³

Software, including video games, is the creative content most closely associated with network effects, although music and e-books equally rely on the effects.

¹⁰ Competition Act 1998, section 18(2)(b) & EC Treaty Article 102(b)

¹¹ Catherine Colston & Jonathan Galloway, **Modern Intellectual Property Law**, Taylor & Francis, 2010, pg.432

¹² Jae Hun Park, **Patents and Industry Standard**, Edward Elgar Publishing, 2010, pg.72: McMahon, Kathryn, **Interoperability: 'Indispensability' and 'Special Responsibility' in High Technology Markets**, Warwick School of Law Research Paper Series, 2009

¹³ Ibid

The need for other compatible goods, eg hardware and software which can read, reproduce, and interoperate with digital music or e-books, is the most obvious example of the network effect.¹⁴ Licensing practices, including the refusal to licence, allows copyright owners to influence the development of new products in these markets and consumer choice. Through network effects, copyright owners have a direct impact on downstream markets, such as the retail market and the associated hardware and software markets.

Thus copyright licensing has received increased attention from European competition authorities. The DCE could support competitive and innovative markets by facilitating the timely licensing of copyrighted content in response to technological developments and reducing associated transaction costs. It could, among other things, make it easier for potential licensees to find the copyright owners. The DCE secretariat should focus in particular on making copyright licensing easier for entrepreneurs, micro-businesses and SMEs, who are frequently the originators of truly innovative products and services. As such the DCE could nurture the ecosystems that ensures that monopolies in the digital age are fragile, temporary and serial monopolies, and that incumbents can be dislodged by smaller players who compete on innovation.

It is undoubtedly correct for the consultation document to highlight the following feature of the digital age: 'The cost of copying and distributing digital content is much less than the cost of copying and distributing analogue content.' Though the DCE secretariat should also recognise that in turn, it has become much cheaper to manage and licence large quantities of rights. However, not all collecting societies and copyright owners have responded in a timely manner to take advantage of technological developments. The DCE cannot deal with instances where copyright owners refuse to licence their rights in a timely manner as new platforms and formats emerge. But it would put the UK at the forefront in terms of reducing the time and transaction cost associated with copyright licensing. As such the DCE should contribute to competitive markets in copyrighted content and increased consumer choice.

It is, in our view, premature to say that it is one of the features of the digital age that 'the ownership of content model (a physical CD at home) transforms into an access model (accessing the song from a cloud-based music service)', principally because spectrum is not abundant – ie it is currently not possible or is prohibitively expensive to stream Spotify on a smart phone through a 3G connection. Not all UK households are yet connected to broadband at sufficient speeds that would allow them to permanently move to an 'access model'. The DCE must be able to support copyright licensing both for the physical ownership model, intangible or digital goods, and various access models. It is right to say that in the digital age 'passive consumers become active creators', especially in the context of user generated content. Though the DCE secretariat ought to also consider that in the digital age consumer become the users of the content they have paid for through private copying. In the absence of interoperability standards, private copying is necessary to allow consumers to consume what they have paid for on different devices. Format-shifting is not only the conversion of a CD into digital, but conversion between different file formats, for example a PDF e-book into Kindle format. If consumers were unable to format-shift the switching cost associated with changing music or e-book platforms would be so prohibiting high that it would constitute a quasi lock-in with negative impact on competition. For example, consumers who have purchased a large number of iTunes or Kindle e-books would have to re-purchase all their content if they wanted to stop using iTunes or Amazon Kindle. The UK Government is currently seeking to address these issues by consulting on the introduction of a private copying exception.

¹⁴ Susanne Royer, **Strategic management and Online selling: creating competitive advantage with intangible Web goods**, Routledge, 2005, pg.65

Consumer Focus recommends that the DCE secretariat:

- Adds the following features to the digital age definition:
 - 'Creative and digital technologies industries are characterised by dominant companies with large market shares, as well as complex ecosystems of entrepreneurs, micro-businesses and SMEs'
 - 'Network effects are an important characteristic of the creative and digital technologies industries, which increasingly converge and are co-dependent'
 - 'Despite the dominance of big players digital markets can experience a high degree of competition through the 'neo-Schumpeterian' effect, ie rapid innovation and paradigm shift as small players compete on innovation to dislodge incumbents with new technology'
 - 'Digital technology reduces the cost of managing large quantities of rights and of mass licensing through standard contracts'
 - 'Consumer technologies proliferate within months, rather than years, increasing the need to licence rights for different platforms and technologies in a timely manner to meet consumer demand'
 - 'The content ownership model expands from physical objects, such as books and CDs, to also include digital products, such as an MP3 or e-book, and an access model is emerging, where consumer access their own content in the cloud or only own the right to use content in the cloud'
 - 'The passive consumer becomes the active user of purchased products (eg format-shifting) and is enabled to become a creator (eg user generated content)'

Definition – copyright markets

The consultation seeks to define the various actors in licensing transactions. The following definitions are proposed:

Rights owners (sometimes referred to as rights holders) are those individuals or organisations which own the copyright, for example in the book industry the author, the illustrator or in the case of non-fiction often the publisher.

Rights managers are those organisations who manage rights on behalf of rights owners, for example the music collecting societies like PPL and PRS (sometimes referred to as CMOs, collective management organisations)

Rights users are those individuals or organisations who wish to acquire a licence to use other people's copyright, for example film producers in the feature film industry

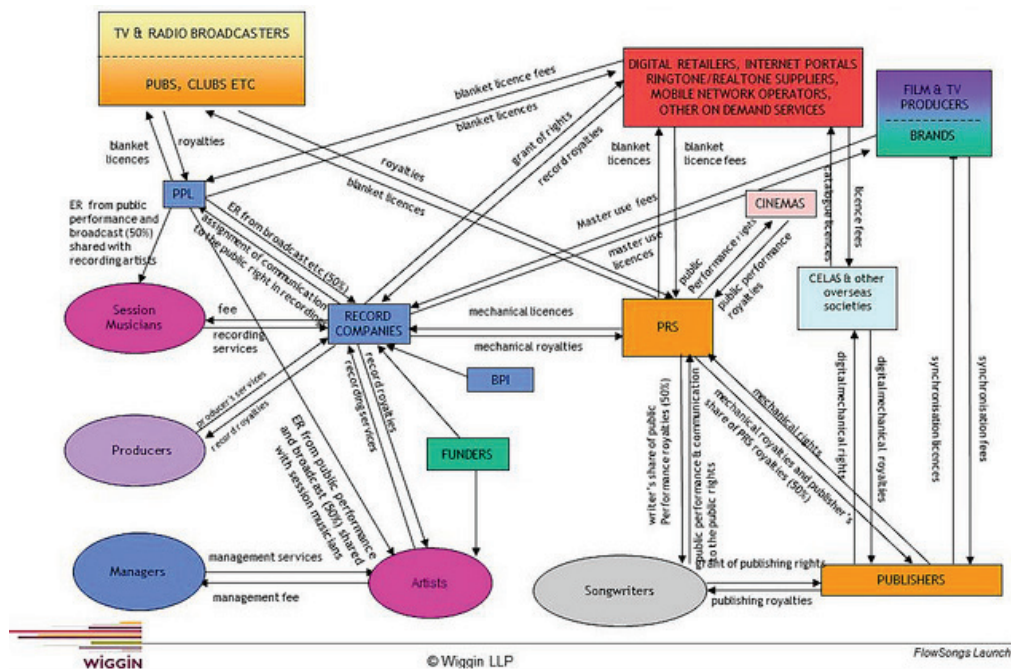
End users are the final consumers who access and enjoy the copyrighted content developed by rights users and rights owners. When those end users create content (eg uploading a video to YouTube) they become, without always being aware of it, rights users.'

Consumer Focus believes that it would be helpful to refer to 'rights managers' as collecting societies, to avoid confusion. Some collecting societies, such as PRS for Music, require their members to assign their rights, therefore it is not strictly speaking correct to term them mere 'rights managers'.

Collecting societies emerged shortly after the establishment of copyright law¹⁵ and, like copyright law, have historically evolved at national level. Today authors, composers, publishers, writers, musicians and performers are commonly represented by collecting societies. Rights typically administered by collecting societies include the right to public performance, eg playing music in clubs; the right to broadcasting, eg the broadcast of live or recorded performances; and mechanical reproduction rights in recorded music, eg the reproduction of recorded music as CDs. Collecting societies act on behalf of their members and issue copyright licences to licensees, authorising the use of the works of their members.

Collecting societies negotiate the royalty rates and other licence terms on behalf of their members, who are typically not directly involved in the licence negotiations. Once the license has been issued collecting societies collect royalty payments and distribute them to relevant members.¹⁶ There are currently in the region of 15+ collecting societies operating in the UK, and the DCE secretariat should map these agencies and establish which rights they licence on behalf of their members, ie the repertoire.

Consumers have an interest in effective collective rights management that does not impose unnecessary costs on collecting societies and does not stifle competition or the emergence of new digital content business models. Consumers do not obtain licences from collecting societies, but consumers enjoy copyrighted works in public and commercial premises which need to obtain a licence. This is particularly relevant to copyrighted music; for example, any retail outlet or pub playing music to consumers needs a licence, as do workplaces where employees listen to the radio. Broadcasters, pubs, clubs, advertisers, and online and mobile retailers cannot give consumers access to music, or meet consumer demand for music, without obtaining a licence from the music collecting societies, (PRS) and PPL.



Wiggin LLP: Working in Music, The flow of rights and royalties in music

¹⁵ **Collective Management in Reprography**, World Intellectual Property Organisation & International Federation of Reproductive Rights Organisations, pg.9

¹⁶ Ibid

In relation to collective rights management, the music sector frequently deserves special attention because, as the European Commission has stated, ‘no other sector operates such complex licensing arrangements.’¹⁷

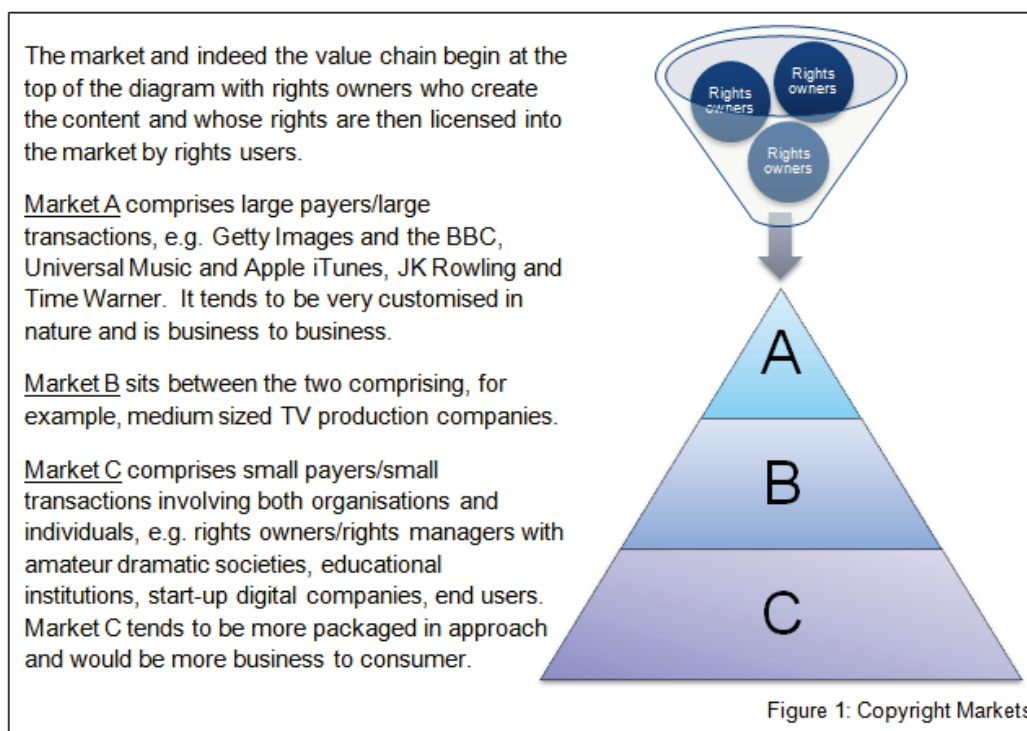
We have heard anecdotal evidence that in the UK film licensing is even more complicated than UK music licensing, though we are not aware of comparative research which has examined this proposition.

Consumers will not be significant users of the DCE, but the DCE must be usable by individual creators, entrepreneurs and business owners. Therefore we believe ‘venues and platforms’ should be added as an actor in licensing transactions. The above flow chart of UK music copyright licensing illustrates that collecting societies and the rights users, as well as venues and platforms need to be better understood. This is also the case in relation to literary works and film, though we are not aware of any flow charts which would help to understand how these types of content are licensed in the UK. It may be most fruitful if the DCE secretariat works with copyright lawyers, who have a very detailed understanding of copyright licensing, to cut through the mystery which currently surrounds UK copyright licensing.

The DCE ideally needs to work for as many licensing transactions as possible, and the feasibility study must establish which rights for different content types could be captured by the DCE. The reason why copyright licensing is so complicated is the horizontal division of rights – a single copyright protected work can have numerous economic rights and related rights, as well as moral rights, associated with it. It is right for the DCE secretariat to acknowledge the difficulty that comes with obtaining licences for multi-media work, but even obtaining all the necessary licences to use a single music track can be difficult or impossible, potentially requiring a licence from two collecting societies and at least one copyright owner (that is assuming that the performers are members of a collecting society). The proposed definition of copyright markets is in this respect not very helpful. As part of the feasibility study a flow chart of copyright licensing should be established for all content types, similar to the flowchart that Wiggin LLP established for music licensing.

¹⁷ **Commission Staff Working Document: Study on a Community Initiative on the Cross-Border Collective Management of Copyright**, Commission of the European Communities, Brussels, 7 July 2005, pg.7

The **three defined copyright markets**, for the purposes of this study are described in Figure 1:



The DCE should provide creators, as well as organisational copyright owners, with access to the copyright licensing market. In this respect it is not helpful to lump both together as 'rights owners', because they are distinct groups with different needs. Organisational copyright owners of particular interest for the DCE are large corporate copyright owners, such as Universal Music, which own, manage and exploit significant back-catalogues. But, the definition of 'copyright owners' currently also includes individual creators. In many cases individual creators only have access to the market through collecting societies which facilitate the cost effective mass licensing of their works to radio stations, educational establishments, broadcasters and others. Or, alternatively individual creators licence or transfer their rights to large corporate copyright owners such as Universal Music. Furthermore there appears to be an overlap between what the consultation document terms 'rights owners' and Market A, ie the likes of Universal Music and Time Warner are actually copyright owners. We therefore believe that the DCE secretariat should reconsider how it captures different types of creators and copyright owners, and the licensing transactions between creators and copyright owners.

The DCE must be able to capture the full range of rights that are entailed in work and therefore the DCE must differentiate between creators such as 'authors', which may own the copyright and assert their moral right, as well as 'performers', which own related rights, and organisational copyright owners, which can only ever own economic rights. With reference to authors, the DCE needs to include information on the moral right to attribution, where it has been asserted, as it places an obligation on any future copyright owners and licensees. The DCE also ought to accommodate licensees who can engage in the onward licensing of copyright and it may be useful if such licensees were added as actors in licensing transactions.

The proposed definitions for Market B and C appear to be particularly confused. The number of transactions and the size of transactions are not necessarily connected to the size or turnover of the company or organisation. This is particularly true in the digital field where companies with fewer than 10 employees can run platforms with significant user base, requiring licences for large or multimedia repertoires.

In turn, where collecting societies provide the necessary licences, the mass use of copyrighted content can be licensed through a single transaction, for example a radio station can acquire the rights to play thousands of songs through a single licensing transaction. In reference to the Pinsent Masons LLP report on copyright licensing schemes in the educational sector we also believe it is not correct to assume that educational establishments only engage in a small number of copyright licensing transactions. It may therefore be more helpful to define copyright markets in relation to the number of transactions or size of repertoire, and as such establishing which rights are licensed through a collecting society and which are managed individually.

Consumer Focus recommends that the DCE secretariat:

- Rethinks the use of the words ‘rights managers’ to describe collecting societies so as to accurately captures those collecting societies which are owners of copyright or related rights
- Maps the collecting societies which currently operate in the UK and which copyright or related rights they licence
- Rethinks the definition of actors in licensing transactions, with a view to accurately capture creators, venues and platforms, as well as licensees which can engage in onward licensing
- Fundamentally reconfigures the proposed definition of the three copyright markets; which currently conflate what is defined as ‘copyright owner’ with ‘large scale players’ in Market A



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