Copyright World
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POLICY MANIA
WHAT ELSE IS THERE TO REVIEW?

Another day, another call for evidence. In my confusion, I started to count the reviews taking place, almost simultaneously, at my own UK doorsteps:

(1) The Labour Party Manifesto for the 2005 election included a commitment "to modernise copyright and intellectual property regimes, so that in a digital age, creators, entrepreneurs and creative industries can invest in ideas and talent knowing that they will get a proper reward for their investment". On June 16th 2005 James Purnell, the new minister for creative industries, announced a working party (jointly chaired with the science and innovation minister Lord Sainsbury) to examine Digital Rights Management (DRM), and the interoperability of new technologies. Purnell's key note address also made favourable reference to the music industry's demand to extend the copyright term for sound recordings from 50 years to the 95 years available in the US.

(2) In the context of this policy agenda, a parliamentary select committee (Culture, Media & Sport) launched an Enquiry into the impact upon creative industries of recent and future digital technology, including "unauthorised reproduction and dissemination of creative content", and the BBC's Creative Archive (extended deadline for submissions: 28 February 2006).

(3) At the same time, the All Party Parliamentary Internet Group (APIG) chaired by Derek Wyatt MP began to hold a public inquiry into the issues surrounding DRM and new types of content sharing licenses (such as Creative Commons), with a report to be published this month (April).

(4) The Patent Office runs consultations on improvements to the Copyright Tribunal (deadline 31 May), as well as on the inventive step requirement under patent law (deadline 31 May), and on trade mark examinations for clashes with earlier marks ("objections under relative grounds" – deadline 17 May).

(5) In December 2005, Gordon Brown's Treasury commissioned a wide-ranging review from Andrew Gowers (a former editor of the Financial Times) "to provide a solid foundation for the Government's long term strategic vision for IP policy, based on sound economic principles". The brief (available at www.hm-treasury.gov.uk/gowers) absorbes the review of (i) the term for sound recordings, but also includes (ii) copyright exceptions, (iii) digital rights management, (iv) orphan works, (v) licensing of public performances, (vi) archives, as well as the cross-cutting issues of enforcement/sanctions and competition policy. The call for evidence closes on 21 April.

At the European level, there is (6) the ongoing review of the legal framework of copyright and related rights, tidying up the "first generation directives" (1991/250

Computer Programs; 1992/100 Rental/Lending Right; 1993/83 Satellite and Cable; 1993/98 Term of Protection) in the context of the Information Society Directive (2001/29/EC). This review also includes the term for sound recordings and performers' rights.

(7) After years of consulting on a possible directive "on the management of copyright", the European Commission issued last October a Council Recommendation. Aimed at improving the governance of collecting societies and forcing Europe-wide direct licensing for the online use of musical works, this is now being aggressively pursued under competition law (Statement of Objections against parts of the CISAC model contract, issued by the Commission on 7 February).

(8) The evaluation of the 1996 Database Directive (96/09 EC) (published in December 2005 – three years overdue) concluded that the economic case for the sui generis right in incentivising investments remains unproven. Consultations closed on 16 March.

(9) Finally, we have the Commission's "Roadmap" negotiating the future of copyright levies in the light of digital rights management technologies, due for adoption in autumn 2006.

I cannot even begin to sketch the international arena where reconfigurations of copyright take place in at least three UN bodies: WIPO (e.g. Webcasting Treaty, Development Agenda); ITU Information Society World Summit; UNESCO Convention on Cultural Diversity).

Are we now to spend our lives responding to these consultations, answering questions such as "do you seek multiple overlapping forms of IP protection" (Gowers Review: question 2(a))? "Yes Sir, give me a right and I appropriate as much value as I can." "Never Sir, I always use a right in accordance with its policy objectives." If you are acting as a lobbyist, this is your job. And therefore, most of the submissions to these reviews will be of the second "Never Sir" kind.

Easily the most intriguing of the current reviews is the Gowers Review, as it appears to perform a u-turn in government policy. The right owner centred language of the Creative Industries gives way to a view that the encouragement of firms and individuals to innovate and invest must be balanced against certain costs: "principally limited competition, high prices, and limited 'spill-over' benefits of that knowledge".

When I questioned the DTI's Lord Sainsbury at a recent seminar on the surprising appearance of the Gowers review, doubling and usurping existing reviews, he answered with a seasoned politician's reference to the Labour Party Manifesto.

Not long ago, the world of intellectual property policy was a world of backroom deals, brokered by specialist lawyers on behalf of industry groups, forever adjusting and finetuning regulation to new technological challenges. A more open, and better resourced approach to policy making may come with a health warning: review mania.

About the author

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