

## Guest editorial

# Copyright reform: end of a dream?

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Copyright reform has been a hot topic in Europe over the past few years. It's not just a topic for lawyers. Supporting copyright reform, and the creative industries, carries with it political cachet. This was illustrated in rather grand fashion in a speech David Cameron delivered back in November 2010 when he commented that "The founders of Google have said they could never have started their company in Britain . . . they feel our copyright system is not as friendly to this sort of innovation as it is in the United States . . . so I can announce today that we are reviewing our IP laws, to see if we can make them fit for the internet age. I want to encourage the sort of creative innovation that exists in America."

Breathtaking stuff . . . and the harbinger of much of the UK consultations and reforms that followed including the Hargreaves Report and subsequent IPO Consultations.

Similarly, at a European level, the European Copyright Consultation launched on 5 June 2013 asked the copyright community to grapple with issues as weighty as the "making available" right, territoriality, fair dealing and fair remuneration of authors, in anticipation of the release of a white paper in Summer 2014.

Taken together it looked as if we were poised for at least a very significant leap forward, if not a revolution, in copyright legislation. But towards the end of 2014, where do things stand? True, the UK has introduced a number of specific changes to its fair dealing regime, so there are now permitted acts in respect of parody, private copying for personal use, data mining and others. And there are new developments dealing with "orphan works" and mechanisms for efficient copyright licensing. But it would be a stretch to characterize this as making our laws "fit for the internet age" let alone catching hold of the breathless "American dream" . . .

At the European level the outcome is even starker. After the wide-ranging consultation attracted over 10,000 responses from interested parties, each with their own view on how copyright law could best be developed (or at least best be developed for them . . .) one EU Commission official admitted that the European legislators found themselves in an "analysis paralysis"; a comment that has been borne out by the DG Internal Market now confirming that, despite early assurances to the contrary, no White Paper will be forthcoming. It is all now in the hands of the new Commis-

sion that has said only that copyright reform proposals will be tabled in the first half of office term . . . so at some point in the next two and a half years . . .

It's easy to poke fun . . . but might it just be that the policy makers simply set themselves too ambitious a task? They envisaged their role as being one of updating copyright law to respond to "business needs". But there is no single business need. Each business needs something different, depending on what it does, where it stands in the distribution chain and how its business has already been structured so as to make money from the existing copyright regime. And those needs change in any event with startling rapidity given the pace of technological change. Against that background, is it any surprise that a consultation asking for comments on the best way forward received 10,000 different suggestions?

Copyright law has undergone significant development over the ages, but back to the very beginning of its development, the rationale and motivations have been rather simpler.

- The first true copyright act, the (newly united) UK's 1709 Copyright Act or "Statute of Anne" bore the full title "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors" – it was designed to protect authors, and learning.
- The Berne Convention (established in 1886) bears the stated purpose of "protecting the right of authors in their literary and artistic work" rather than making any wider claims about the protection of publishers or other player in the chain of disseminating works to the public.
- Even the 2001 European Copyright Directive modestly pronounced its key aim as promoting a "harmonised legal framework . . . and increased legal certainty."

To continue that tradition would see the development of copyright law in a manner that is coherent, clear and balanced. Businesses and their "needs" can take care of themselves. Businesses can flex and change and can refine distribution models to make money from (within reason) whatever copyright system is in place. Asking the law to respond quickly to business demands is altogether more problematic and is much more likely to lead to unfulfilled dreams.

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