

The legislation

From the very first Green Paper in 1988, when the Commission rather far-sightedly addressed “Copyright and the Challenge of Technology”, a major programme of harmonisation of intellectual property rights has taken place covering everything semi-conductors, satellite and cable to databases. Following a major Green Paper in the mid-90s, finally in April 2001 a new EU Directive for Copyright and related rights was passed to adapt copyright law to reflect the latest technological developments. This was part of the effort to encourage the development of an Information Society for the already ubiquitous internet. (1)

In 2005 the idea of a European Digital Library (2) was born and the Commission published a new Communication which included legal challenges to established copyright legislation. The initial launch of this digital “Europeana” led to several further Green Papers, Communications and Consultations about what to do about “creative content online” (3) and was followed in 2009 by the Communication on Copyright in the Knowledge Economy (4). The Commission aimed to tackle the challenges of mass-scale digitisation and the dissemination of copyrighted content by asking us to consider certain new exceptions to copyright especially when it is hard to identify who owns copyright works (**so-called Orphan works**). While many observers would acknowledge the role played by exceptions and limitations in copyright law, this ran counter to the work of publishers, libraries and collecting societies through ARROW. (5) We are delighted that Commissioner Barnier is looking at a new way of licensing orphan works through a system of **mutual recognition based on diligent search**.

In terms of the **enforcement of rights**, two directives have been passed but, with the exponential increase in piracy from the internet, the European Commission in 2009 launched an **Observatory (6) on Counterfeiting and Piracy** to improve the quality of information and statistics related to counterfeiting and piracy on the Internal Market of the EU. On 22nd March 2010 we were pleased to hear the new Commissioner’s unequivocal commitment to combating piracy in balanced and effective ways, including penalties, bearing in mind the adverse economic consequences of piracy for growth and jobs.

At the end of the Barroso I Commission, Commissioners Reding and McCreevy (in charge at the time of the Information Society and the Internal Market) published a **Reflection Document** in October 2009 which built on the “creative content online” agenda they had pursued over the previous few years and set out their ideas for the future. They listed three challenges arising from the growing importance of the internet, and in particular of digitisation technologies, which they recognised as opening up new possibilities for distributing creative content online:

1. Consumer access
2. Commercial users’ access
3. Protection of rightsholders

There was one startling omission in that Document - **automated rights management**. In focusing mainly on the music and audiovisual industries, the overall message seemed to be about simplification of licensing music and audiovisual content, with a special emphasis on collective management solutions; through

collecting societies, or through extended collective licensing with third parties. This emphasis was in our view at odds with significant developments in individual rights management solutions and especially the latest developments and future potential for greater use of technological solutions to deal with the simplification of licensing. However we now look forward to developing political support in the new Commission for our work in this area, in particular for ACAP www.the-acap.org

Useful references to past legislation and consultations

(1) http://ec.europa.eu/internal_market/copyright/docs/docs/com-88-172_en.pdf

http://ec.europa.eu/internal_market/copyright/documents/documents_en.htm

http://europa.eu/legislation_summaries/internal_market/business/intellectual_property/l26053_en.htm

(2) http://ec.europa.eu/information_society/activities/digital_libraries/index_en.htm

(3) http://ec.europa.eu/avpolicy/other_actions/content_online/index_en.htm

(4) http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/greenpaper_en.pdf

(5) <http://www.arrow-net.eu/resources/useful-information.html>

(6) http://ec.europa.eu/internal_market/iprenforcement/observatory/index_en.htm

talk to use

For further information, contact:

Angela Mills Wade
EPC Executive Director

Tel: +44 1865 310 732;
angela.mills@wade.uk.net

or Heidi Lambert

Tel: +44 1245 476 265;
heidilambert@hlcltd.demon.co.uk

Alternatively visit
www.epceurope.org