



British Screen Advisory Council

'Bringing the audiovisual industries together'



Response to the
Intellectual Property Office (IPO) consultation:

Industrial Strategy:
Intellectual Property Call for Views

Comments from
The British Screen Advisory Council (BSAC)

15 November 2017

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Intellectual Property Office (IPO) consultation: Industrial Strategy: Intellectual Property Call for Views

***Comments from* The British Screen Advisory Council (BSAC)**

Introduction

1. The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people working across the value chain in the UK audiovisual industry, including television, film, video games and new digital media businesses. BSAC Members include not only all of the segments in the UK audiovisual value chain (including development, production, sales, acquisition and licensing of content), but also leading technology firms and Internet Service Providers (ISPs)¹.
2. We welcome the IPO's call for views on intellectual property (IP) with reference to the Industrial Strategy. There are indeed some very important IP issues that should be taken forward as part of the Industrial Strategy. In this respect, we have already provided a number of contributions about IP, and other matters, following publication of the Industrial Strategy Green Paper, including views on matters that are relevant to the current call for views. We note that this call for views is limited to exploring non-regulatory interventions. Whilst these may, indeed, if appropriately devised and targeted, help to maximise the incentives provided by the UK's IP system, it is essential that these are not considered to be a replacement for action on other IP issues that we have highlighted in the past, including those that arise as a result of Brexit.

1 For a full copy of BSAC's Membership list, see our website, at <http://www.bsac.uk.com/membership/>

Background

3. BSAC has, as indicated, been very active in providing submissions covering IP and other important matters relevant to the Industrial Strategy Green Paper. We provided an initial response to that Green Paper in April 2017². The key points that we made in this response regarding IP were that:

‘The current IPR regime underpins our success. The aim should be to preserve the current framework whilst also considering measures to improve enforcement, resisting arguments to weaken IPR protection (by, for example, adopting the US concept of ‘fair use’) and acting now to more forcefully oppose the current attack on territoriality in the EC’s Digital Single Market (DSM) proposals.’

4. All of these points continue to be crucial. They were emphasised again in a paper specifically about IP issues³ and also in the paper we provided in August 2017 setting out our priorities for a sector deal⁴. We therefore welcome the fact that these points have essentially been recognised in the recently published Independent Review of the Creative Industries by Sir Peter Bazalgette⁵. This Review highlights the importance of a robust IP framework and strengthened enforcement and we very much hope that the various activities that the IPO is engaged in fully reflect these aims.
5. The IPO did, of course, consult earlier this year on a very important enforcement issue for the audiovisual sector, namely illicit IPTV streaming devices. BSAC provided a response to this consultation supporting a multi-pronged approach to deal with the growing and very challenging problem of IPTV piracy⁶. We trust that the outcome of this consultation, and the action that the Government intends to take, is provided in the very near future as this remains an issue of deep concern for the audiovisual sector. Regarding the copyright framework more generally, we trust that any demands from those wanting another major review of copyright that might lead to calls for its weakening will continue to be rejected. Regarding the EU DSM proposals, we believe that the Government must continue to question the provisions in the proposed transmissions Regulation given the interactions with other

2 See the BSAC response to the BEIS Industrial Strategy Green Paper, ‘Building our Industrial Strategy’ (17 April 2017), at <http://www.bsac.uk.com/wp-content/uploads/2017/04/BSAC-Response-to-BEIS-Industrial-Strategy-Green-Paper-FINAL.pdf>

3 See one of the two papers BSAC submitted into the review of the Creative Industries that Peter Bazalgette conducted – ‘Paper B: “Developing Intellectual Property”’ (26 May 2017), at <http://www.bsac.uk.com/wp-content/uploads/2017/05/BSAC-Bazalgette-Review-Paper-B-FINAL.pdf>

4 See the BSAC paper, ‘Priorities for a Sector Deal: supporting continued growth in the UK audiovisual and interactive entertainment sector’, (2 August 2017) at <http://www.bsac.uk.com/wp-content/uploads/2017/08/BSAC-Industrial-Strategy-Sector-Deal-FINAL.pdf>

5 See Sir Peter Bazalgette’s ‘Independent Review of the Creative Industries’ (September 2017), at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649980/Independent_Review_of_the_Creative_Industries.pdf

6 See the BSAC response to the IPO’s Call for Views on Illicit IPTV streaming devices (4 April 2017), at <http://www.bsac.uk.com/wp-content/uploads/2017/04/BSAC-IPO-IPTV-Piracy-Consultation-2017-FINAL.pdf>

Commission initiatives that threaten the principle of exclusive territorial licensing. We provided detailed comments on this and other matters in the DSM proposals⁷ and hope that the issues we raised continue to be fully taken into account.

6. It will be most important that all of these key points remain at the forefront of what the IPO does as it develops various strands of work in the context of the Industrial Strategy. It is also essential for IP issues to be properly dealt with in the context of Brexit. We believe that the IPO considers the most difficult issues in this context concern registered rights, in particular the EU unitary IP rights. We have, in the Annex to the paper on intellectual property that we submitted into the review of the Creative Industries earlier this year⁸, identified essential issues regarding unregistered IP rights that should also be dealt with as a result of Brexit. For example, ensuring that there is an agreement so that the consumer benefits of cross-border portability of digital content services can continue after Brexit, and that the country of origin rule continue to operate as now for broadcasts made by satellite, are important for the audiovisual sector. The IPO should therefore make sure that issues such as these are treated as seriously as those concerning registered rights in the context of Brexit.
7. The current call for views on targeted, non-regulatory interventions that the IPO could make, must not, therefore, be at the expense of continuing to engage with stakeholders and adopting the right approach to each regulatory issue.

Non-regulatory IP interventions proposed by BSAC

8. Regarding non-regulatory interventions that are the subject of the current consultation, BSAC has already made some relevant suggestions which are summarised here and explained further in our paper on intellectual property provided as a contribution to the Bazette Review⁹.
 - a) ***Safeguard IPRs as critical to attract investment in the creative industries, and then gain a return on that investment, and better understand what parts of the IPR framework are most important to investors*** (Section A in our earlier paper, with further elaboration on the copyright framework and enforcement in sections B and D respectively).
9. The first part of this proposal concerns the need to ensure that there are effective and enforceable IPRs in the UK. We provided detailed comments on the copyright framework, including the need to resist any major reviews, maintain the current benefits of the EU IPR provisions following Brexit and counter threats from EU proposals and initiatives that undermine exclusive

⁷ See the BSAC response to 'IPO's call for views on the Digital Single Market proposals, published by the European Commission on 14 September 2016' (6 December 2016), at <http://www.bsac.uk.com/wp-content/uploads/2016/12/BSAC-Response-EU-Sept-2016-Copyright-Package-FINAL.pdf>

⁸ See BSAC, 'Paper B: "Developing Intellectual Property"' (26 May 2017), as referenced in footnote 3, above.

⁹ See BSAC, 'Paper B: "Developing Intellectual Property"' (26 May 2017), as referenced in footnote 3, above.

territorial licensing, as well as outlining actions that should be taken to strengthen enforcement. As we have indicated above, all of these issues are extremely important, but apparently outside the scope of the IPO's current call for views.

10. This proposal also suggested that the Government could commission a targeted analysis of which IPR provisions are important to investors, so that there is a greater understanding about what underpins choices to invest in the UK, rather than, say, other European countries. This is clearly relevant to the current call for views. We would like to stress, however, that this is not a suggestion for a wide-ranging review, but rather for research that is limited in scope and that would fill a gap in our current knowledge. We have indicated that we would be happy to support and, where possible, facilitate such an analysis.
11. We note that the IPO has very recently published a report on IP Valuation¹⁰, which raises some issues that appear relevant to what we have proposed. On page 10 of this report there is acknowledgement of the limited ability to use IP to raise finance as one of the barriers inhibiting companies from carrying out an IP valuation. This is an issue that could perhaps be explored further. The report does then go on to say that equity investors, on the other hand, do consider IP as important and wish to see evidence that it is being developed and safeguarded. This report therefore touches on our proposals, but does not seem to go into much detail beyond broad statements, especially regarding investment in the creative industries. It may therefore be appropriate to undertake further work to provide a detailed understanding of which IPR provisions are important to investors in the creative industries.

b) Improve the ways that SMEs and start-ups in the creative industries can obtain relevant information about IPRs, particularly copyright (Section C in our earlier paper).

12. We indicated a need for the IPO to ensure that the delivery of its goals, as set out in its corporate plan¹¹, is sensitive to the reliance that businesses in the creative industries, including the audiovisual sector, have on copyright rather than registered IP rights. We pointed out that the Creative Industries Federation (CIF) has proposed a business booster network for the creative industries¹² in its response to the Government's consultation, 'Building our Industrial Strategy'. We suggested that the Government could work with organisations, such as the CIF, to facilitate access to the right information at the right time for SMEs, perhaps through a portal that is specifically focused on the needs of the creative industries.

10 See IPO, 'Hidden value: A study of the UK IP valuation market' (27 September 2017), at <https://www.gov.uk/government/publications/hidden-value-a-study-of-the-uk-ip-valuation-market>

11 See IPO, 'Corporate Plan 2017-2020' (April 2017), pp. 30-35, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607989/IPO-Corporate-Plan-2017-2020.pdf

12 As indicated in CIF, 'A Blueprint for Growth: Creative Industries Federation response to the Government's consultation: "Building our Industrial Strategy"', p. 11, at <https://www.creativeindustriesfederation.com/sites/default/files/2017-06/WEBSITE%20-%20Blueprint%20for%20growth.pdf>

c) *Expand the UK's global influence on IPR issues underpinned by strong and enforceable IPRs in the UK (Section E in our earlier paper).*

13. We urged the UK to be prepared to use its new relationship (following Brexit) with other countries to increase the effect it can exert in international fora, such as WIPO. We indicated that any free trade agreements should include provisions about tackling copyright piracy in other markets, underpinned by the UK showing that it is willing to act fast to deal with new forms of piracy and maintaining a robust IP framework here¹³. We welcomed the work of IP attachés and urged that this type of help be rolled out in more countries where there might be markets for UK creative content.

Comments on IP proposals in the Bazalgette Review

14. We are surprised that the IPO's call for views does not acknowledge the recently published Independent Review of the Creative Industries by Sir Peter Bazalgette. Although this Review is intended to inform a sector deal, it does not seem to make sense where there are similar issues being explored for the IPO to work on ideas, which then feed into the Industrial Strategy through another route, without regard to the overlaps.
15. As indicated above, we are pleased that Chapter 4 of the Bazalgette Review, 'Capitalising on our Intellectual Property', includes overriding views on the importance of a strong IP framework, with the ongoing work to strengthen enforcement being key. Regarding the recommendations on IP, they are generally sensible. There are, moreover, some overlaps, which we have indicated below, with the non-regulatory IP interventions we have suggested, as indicated above.

a) *Government should increase the support offered to businesses to protect and exploit intangible IP*

16. We have identified the need to improve the way that start-ups and SMEs in the creative industries obtain information about IP. The lack of IP understanding within businesses identified in the Review confirms the need for action of the type we have proposed. Providing better tools so that the value of IP can be better assessed and understood by financiers and businesses, as proposed in the Review, is also important.

13 As referenced in paragraph 3, above.

b) Government and industry should conduct a comprehensive joint work programme on IP valuation

17. This proposal in the Review seems to build on the first one. It is clearly important to better understand IP valuation methods and how valuation services are provided. We have proposed that there should be a better understanding of which parts of the IPR framework are most important to investors. Any work taken forward as a result of proposals within the Review could take this idea on board.

c) Government and industry should develop a joint strategy to improve data transparency around creative content

18. We note that the Review has indicated the current work being taken forward by the IPO with the music industry. We look forward to the outcomes of that work and possible future proposals for collaboration with other sectors in the creative industries.

Comments on ideas in Annex of the IPO call for views

19. We have not commented on the proposals that are not relevant to the IP rights important to the audiovisual sector.

a) IP Trading Platforms

20. We are not convinced that significant resources should be devoted to setting up IP trading platforms¹⁴. In the copyright area, the Copyright Hub has, of course, been established, but it has not so far delivered significantly on early expectations. Industry, which has provided much of the investment needed to take that idea forward, might therefore be reluctant to support any new ideas at this point in time.

b) B2B model IP agreements

21. We are not convinced that there is a need for B2B model IP agreements in the audiovisual sector. Some types of licensing in the audiovisual sector is subject to some standards as a result of collective agreements between different parts of the value chain, such as broadcasters/producers and the representatives of actors. These standards have been renegotiated from time to time to take account of changing business models. There are, of course, proposals in the EU draft DSM copyright Directive regarding fair remuneration in contracts of authors and performers¹⁵. We have questioned the need for these proposals in

¹⁴ The call for views seems to make the wrong assumptions about why IP assets may be hard to realise. In this respect, how IP rights might terminate on insolvency, so that banks have nothing left to sell if they were to lend on IP assets, is an important issue and not something that would be solved by IP trading platforms.

¹⁵ See Articles 14 to 16 of the European Commission's draft Copyright Directive (14 September 2016), at <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-593-EN-F1-1.PDF>, as well as BSAC's comments in response to this paper, as referenced in footnote 7, above.

the UK where strong unions reach collective agreements with producers and broadcasters to ensure that underlying right holders are treated fairly in terms of both transparency and remuneration. The EU proposals seem to have been developed as a result of possible problems in other Member States but, if imposed in the UK, would have serious unintended consequences. The idea of B2B model IP agreements could also lead to such risks.

c) *Voluntary IP Register*

22. The last time we commented on the idea of a registration system for copyright was in response to a consultation by the EU Commission¹⁶. We rejected the idea of an EU register, including because it would be unfeasible or unfair to make it a requirement to register copyright that already exists in a new registration system. We noted that voluntary registration systems established by various sectors are probably less likely to be overly bureaucratic, and more likely to be kept up-to-date when there are changes in the ownership of rights, than a single EU registration system. The same is likely to be true for any UK official registration system. We indicated that encouraging such voluntary, industry-led approaches, facilitating ever better use of metadata and exploring how to support other practical initiatives would be a better approach. These comments would also apply for the UK alone.

d) *New financial products*

23. This idea overlaps with our proposal for a better understanding of which parts of the IPR framework are most important to investors and the recommendations in the Bazalgette Review. We agree that there can be a problem with mainstream UK lending not properly appreciating IP.

e) *IP Valuation standards*

24. This is linked to the idea immediately above and our other comments as indicated. We agree that a better understanding of IP valuation markets could be helpful.

¹⁶ See BSAC's answers to questions 15 to 17 in our response to 'Public Consultation on the Review of EU copyright rules' (5 March 2014), at <http://www.bsac.uk.com/wp-content/uploads/2014/03/eu-public-consultation-on-the-review-of-the-eu-copyright-rules-bsac-response.pdf>

Information about us

25. The call for views requests that responses include information relevant to the respondent. As we are an umbrella group, it is not really possible to provide simple answers for a number of the questions indicated in the call for views, but we hope that the following answers are nevertheless helpful.

Are you responding as an individual, business, intermediary, representative body?

26. As indicated in the first paragraph of this response, BSAC is a representative body in the audiovisual sector.

What does your business do / in what sectors do you operate?

27. As also indicated in the first paragraph of this response, BSAC is an umbrella body representing many of the most influential people working across the value chain in the UK audiovisual industry, including television, film, video games and new digital media businesses.

How large is your business, and what proportion of your assets are IP-based?

28. BSAC itself is very small, but the audiovisual sector in the UK is very large. In this respect, there is a significant amount of relevant information in some of our earlier contributions to the Industrial Strategy¹⁷, including the following:
- the UK is the world's second most successful exporter of TV content (behind the USA)¹⁸. Total revenues from TV exports are worth over £1.3 billion per year, with significant recent growth to countries such as China and India¹⁹. Global hits include *Dr Who*, *Downton Abbey*, *Sherlock*, *War and Peace* and *The Crown*;
 - the UK film sector had a turnover of £4.1 billion in 2015, making it the third largest film market in the world after the USA and China²⁰;
 - the UK is Europe's leading international broadcasting hub, home to more channels than any other EU country by a wide margin (1,400 channels, compared to our nearest rival, France, with just over 400 channels). More than half of these UK-based channels are international, broadcasting not to the UK but to EU markets;

17 See, in particular, BSAC response to the BEIS Industrial Strategy Green Paper, 'Building our Industrial Strategy' (17 April 2017) and 'Priorities for a Sector Deal: supporting continued growth in the UK audiovisual and interactive entertainment sector', (2 August 2017), as referenced in footnotes 2 and 4, above.

18 Source: EURODATA TV / MEDIAMETRIE. Figures relate to the period: 1 March 2015 to 28 February 2016.

19 See Pact, 'Impressive growth in UK television exports, up 10% to £1,326m' (3 February 2017), in respect of sales to international markets in 2015/16, at <http://www.pact.co.uk/news-detail.html?id=impressive-growth-in-uk-television-exports-up-10-to-1-326m>

20 See BFI Research and Statistics, 'The UK Film Market as a Whole' (August 2016), at <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-statistical-yearbook-uk-film-market-2015-2016-08-25.pdf>

- the UK is a world-leading hub for visual effects (VFX) production: it houses four of the world's largest VFX companies, whilst the overall facilities sector has an annual turnover in excess of £2 billion and employs more than 25,000 people²¹; and
 - the UK games sector is a global success story. Today there are almost 2,000 games firms – including the creator of *Grand Theft Auto V*, the best-selling entertainment product of all time – employing 24,000 people across 12 established games clusters²².
29. As indicated in our earlier paper about IP submitted to the Bazalgette Review²³, the current IPR regime underpins this success. The ability to choose where, when and how the rights arising from copyright in audiovisual content are exercised is crucial to ensuring that there can continue to be the same levels of investment in the creation and distribution of the content that consumers enjoy. Although a range of IPRs can be relevant sometimes, copyright is the most important IPR for the audiovisual sector.

In what UK regions do you operate?

30. BSAC Members provide experiences from and knowledge about operating in many parts of the UK, as well as many other countries. UK audiovisual content is enjoyed by consumers throughout the UK and, as indicated above, in many other countries.

In what international territories do you operate?

31. See the answer to the question immediately above and the information about the size of the business, where some of the important export markets have been identified.

Is there more the IPO could do to help UK companies operating overseas?

32. See above regarding our comments on increasing the UK's influence in international fora, ensuring IP enforcement is part of any free trade agreements and rolling out more IP attachés.

What do you spend on IP?

33. We cannot identify a separate figure for what is 'spent on IP' rather than figures for turnover and so on of audiovisual content as indicated above regarding the size of the business. Given that IP, particularly copyright, underpins the success of the audiovisual sector, all of the money spent on production, distribution and so on of audiovisual content is arguably 'spent on IP'.

21 See UK Screen, 'The UK Facilities Sector: a key contributor to the film and television industries and to the UK's creative economy' (March 2010), at <https://web.archive.org/web/20120119110832/http://www.ukscreenassociation.co.uk/news/articles.htm?id=2558>

22 See NESTA, 'A Map of the UK Games Industry' (September 2014), at http://www.nesta.org.uk/sites/default/files/map_uk_games_industry_wv.pdf

23 See BSAC, 'Paper B: "Developing Intellectual Property"' (26 May 2017), as referenced in footnote 3, above.

Which aspects of the IP system do you use?

34. As indicated above, copyright is the most important IP right, but other rights, such as trademarks, can also be important.

What do you particularly value about the UK's IP system?

35. We value the current UK copyright framework (apart from concerns about enforcement, as explained above), including the ability to choose where, when and how the rights arising from audiovisual content are exercised in order to ensure that there can continue to be the same levels of investment in the creation and distribution of the content that consumers enjoy.

Do you face barriers when using the UK IP system?

36. This question sounds more relevant to those who use the UK IP system to register rights as there is no barrier to the acquisition of automatic rights, such as copyright. Regarding how the copyright system works for the audiovisual sector, in general, as we have indicated above, it works very well at the moment. We are, however, also as indicated elsewhere in this response, concerned about the difficulty of enforcing rights and the activity under the EU DSM and other initiatives that might undermine territorial licensing of rights, which is essential to funding new content and the ongoing global success of the UK industry. These are therefore in effect the 'barriers' that we would identify in answer to this question.

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