

# THE REPORT OF THE GOWERS REVIEW OF INTELLECTUAL PROPERTY

## A summary for a digital curation audience.

The recent report by the Gowers Review of Intellectual Property found that the UK's intellectual property system is "broadly performing satisfactorily" but highlighted a number of areas where reform is necessary to improve the system. The recommendations of relevance to digital curation include:

### COPYING FOR RESEARCH AND PRESERVATION

- **Allow private copying for research to cover all forms of content.** Fair dealing for the purposes of non-commercial research and private study, currently excludes sound recordings or film. Extending it to all forms of content will assist in using material for genuine academic purposes. This recommendation relates to copying but not distribution of media.
- **Permit libraries to copy the master copy of all classes of work in permanent collection for archival purposes and allow further copies to be made from the archived copy to mitigate against subsequent wear and tear.** The Review noted that the UK has far more stringent restrictions on copying for archiving and preservation than other countries. The legislation is out of step in three areas: the number of copies allowed, the types of work that may be copied for preservation, and format shifting. Currently there is an exception to copyright for libraries but, again, it does not include sound recordings or film. The inability of depository libraries and archives to make archive copies of sound recordings, even for preservation, has raised real concerns for the protection of cultural heritage.
- **Enable libraries to format-shift archival copies by 2008 to ensure records do not become obsolete.** Given the potential costs of having to copy something on the original medium and the advances in technology which allow works to be viewed in a number of ways, the Review felt that the limitation on format shifting is unnecessarily constricting a library's potential for preserving and sharing cultural goods.

### ORPHAN WORKS

- **Propose an orphan works provision to the European Commission.** An orphan work is a copyrighted work where it is difficult or impossible to contact the copyright holder. This is a problem for potential re-users of a work including those who wish to make copies for archival or preservation purposes and need to seek permission. The amendment to the Information Society Directive (InfoSoc Directive) that is suggested by the Review would allow the UK to put provisions in place that would make it easier to re-use 'orphan' copyright protected works, thus unlocking previously unusable material.
- **When an orphan works exception comes into being the Patent Office (UKPO) should issue clear guidance on the parameters of a 'reasonable search' for orphan works.** Even once an exception is in place users may still need guidance on what constitutes a thorough search to protect them from incurring liability. It is suggested that the guidelines are created in consultation

with rights holders, rights owners, collecting societies and archives. The guidance will vary by medium.

- **The UKPO should establish a voluntary register of copyright.** A registration system of copyright would greatly facilitate a search by someone wishing to use an orphan work. However, compulsory registration is contrary to international treaty obligations so any registration would have to be voluntary. The UKPO could either host a register itself or provide a portal service to existing private schemes such as the UK Copyright service.

*An externally commissioned paper focussing on the issue of orphan works and copyright accompanied the Gowers Review. This was prepared by the British Screen Advisory Council.*

## DIGITAL RIGHTS MANAGEMENT

- **Make it easier for users to file notice of complaint procedures relating to Digital Rights Management (DRM) tools.** The InfoSoc Directive recognises that DRM tools may prevent legitimate copying and requires members to ensure that technical measures do not preclude a person from benefiting from copyright exceptions. There is provision within UK law at present allowing a person to issue a ‘notice of complaint’ to the Secretary of State who can then issue directions on how to ensure the permitted act can be performed. However, this process is “slow and cumbersome” and has never been used. The Review suggests providing an accessible web interface for this process on the UKPO website by 2008.

- **The Department of Trade and Industry should investigate the possibility of providing consumer guidance on DRM systems through a labelling convention.** The labelling should not impose unnecessary regulatory burdens. In the event that companies use DRM to create market power, damage users’ software or invade their privacy, it is recommended that the Office of Fair Trading undertakes investigations.

*Specific attention was given to the subject of DRM in the All Parliamentary Internet Group (APIG) report published in June 2006.*

## INCREASED USAGE OF INFORMATION CONTAINED IN PATENTS

- **The UKPO should publish and maintain an open standards web database containing all patents issued under licence of right.** One means of increasing the use of information contained in patents is through ‘licence of right’ patents. With these types of patents the patent proprietor pays only half the patent renewal fee. In exchange, a third party can apply for a licence as of right. Publicising which patents are available as licences of right would enable innovators to identify rapidly the patents that are relevant to them.
- **The UKPO should publish and maintain an open standards web database containing all expired patents.** After IP protection expires the ideas and their expressions fall into the public domain. Once in the public domain this knowledge can be used by follow-on innovators. The UKPO currently publishes details of expired patents, available as a list of patent numbers in the Patents and Designs Journal. As this format is rather inaccessible, the Review suggests publishing the information in an open standards database which

would be easily accessible. The inventions should be grouped by subject, with a brief description of the invention so that they can be easily identified.

**You can read the full report at:**

**[http://www.hm-treasury.gov.uk/media/583/91/pbr06\\_gowers\\_report\\_755.pdf](http://www.hm-treasury.gov.uk/media/583/91/pbr06_gowers_report_755.pdf)**

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