

| Title: The Copyright (Free Public Showing or Playing) (Amendment) Regulations 2016 PIR No: BEIS005(PIR)-22-IPO Original IA/RPC No: BISIPO004 Lead department or agency: Intellectual Property Office Other departments or agencies: Click here to enter text. Contact for enquiries: Section72.CallforViews@ipo.gov.uk | Post Implementation Review |
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| | Date: 09/02/2022 |
| | Type of regulation: Domestic |
| | Type of review: Non-statutory |
| | Date measure came into force: 16/06/2016 |
| | Recommendation: Keep |
| | RPC Opinion: Green |

1. What were the policy objectives of the measure?

These were to provide measures that:

1. Ensured UK copyright legislation in relation to film being shown in publicly accessible places that don't charge for admission was consistent with EU law,
2. Obligated pubs to pay the correct commercial licences to subscription-based sports channels, and
3. Provided greater clarity on the law in this area.

2. What evidence has informed the PIR?

This review has been informed primarily by stakeholder consultation. The Intellectual Property Office (IPO) published a call for views which lasted 10 weeks. It held a series of roundtable meetings with rights holders, rights holder representatives, licensing bodies and copyright users, attended by 9 organisations¹ in total. The IPO received 12 written submissions² from stakeholders, 10 of which were from rights holders or organisations representing rights holders, and has also considered evidence that arose through interactions with other government departments.

3. To what extent have the policy objectives been achieved?

No concerns were raised about the first objective regarding consistency with EU law, although this view was informed primarily by evidence from rights holders. For the second objective about pubs having the correct commercial licences in place, rights holders considered that the regulations remained relevant and allowed for clear licensing options to be provided for the benefit of users. On the third objective, rights holders said that the regulations added greater clarity to the law and had significantly enhanced the ability to enforce, and helped reduce copyright infringement. However, some copyright users said that the regulations had led to a higher level of licensing activity with the cost of licences not always clearly explained nor proportionate to the amount of content used.

Sign-off for Post Implementation Review: Chief Economist

This PIR represents a fair and proportionate assessment of the impact of the measure.

Signed: **Samuel Brand**

Date: 21/09/2021

¹ See Annex

² See Annex

4. What were the original assumptions?

The original impact assessment acknowledged that interpretation of the law might vary and could only be determined by the courts. As such, there were uncertainties around the scope of the provision and risks that its impact might be greater or more limited than predicted.

We assumed that the enforcement regime and licensing market for rights which were already exploitable would broadly remain unchanged i.e. that licensing practices would continue as they were, and the rights markets would not suddenly increase in scope. There was no evidence provided at consultation stage which pointed to what might happen in the future in this market so we assumed, as is usual, that the status quo would remain.

It was difficult to estimate the size of the various groups who might have been affected by the changes to section 72 of the Copyright, Designs and Patents Act 1988 (section 72), as it was not clear who was relying on section 72 as a defence unless they had been the subject of infringement proceedings. It was also difficult to estimate the number of commercial and non-commercial entities who relied on the exception to show film (including both film fixation and cinematographic aspects) and how much they were benefitting from being able to do so.

5. Were there any unintended consequences?

There has been an increase in licensing activity covering a broader range of premises which show television following the clarification of the law introduced under these regulations. Copyright users have cited some unintended consequences from the increase in licensing demands including televisions being removed from staff canteens, receptions, and other work environments. Some users have pointed to the adverse impact increased licensing activity has had on local authority budgets and the delivery of their services.

6. Has the evidence identified any opportunities for reducing the burden on business?

One stakeholder recommended more clarity on the requirement for licences and supervision of the role of licensors and/or collecting societies, observing that it wasn't easy for businesses to assess what the licences actually covered and how the cost of the licences is calculated.

Introduction

Policy background

What is section 72?

The Copyright, Designs and Patents Act 1988 (CDPA) provides copyright owners with a range of exclusive rights allowing them to control the uses of their works and to seek payment for these. Among these are rights to control the showing, playing and other communication of works to the public, which includes the showing of a film or broadcast to a public audience.

[Section 72 of the CDPA](#) sets out a limited number of exceptions to some of these rights. These apply to organisations which do not charge for admission, allowing them to show television broadcasts without needing permission from some of the copyright owners. If an organisation wishes to show broadcasts that contain other copyright elements, for example any original

literary, artistic, musical or dramatic works, as well as most commercially produced sound recordings, it still needs the permission of the copyright owners.

Previously, section 72 included an exception for films which meant that these organisations didn't need permission from owners of "film" copyright. A "film", as defined in copyright law, is any recording from which a moving image may be produced. This definition includes all audiovisual recordings, not only films made to be shown in cinemas.

Why was the section 72 exception introduced?

An exception of this type was first introduced by the Copyright Act 1956. It was intended to allow those showing or playing a television or radio in publicly accessible places to which entry is free, such as public houses, to do so without the need to seek multiple licences for all the rights in the broadcast, thus reducing the licensing burden on them.

Section 72 maintained a similar exception to that provided by the Copyright Act 1956 on similar policy grounds to avoid licensing burdens on businesses.

Policy objectives

The amendments made to section 72 in 2016 aimed to:

1. Ensure that UK legislation was consistent with EU Law
2. Ensure that pubs were required to pay the correct commercial licences to subscription-based sports channels, and
3. Provide greater clarity on the law in this area.

Policy rationale / Rationale for intervention

Why did the Government change the law in this area?

A legal action brought by the English Premier League highlighted a question about the scope of section 72. Its case was against pubs using unauthorised satellite decoder cards to show live Premier League football matches, and firms supplying these satellite decoder cards. The action gave rise to a series of judgments, including a reference to the [Court of Justice of the European Union \(CJEU\)](#). The exact meaning of the term "film" in the CDPA formed part of the courts' deliberations. This included whether the use of the term under section 72 was intended to cover both film fixations (protections afforded to the physical act of recording images) and audiovisual works (which includes a film as a work of authorship, such as a cinematographic work), with the courts holding that it covered both meanings.

The national courts found that the showing of certain audiovisual content, including the match footage itself, was permitted as it was protected only by film copyright, which fell within the exception provided by section 72(1) CDPA. This meant that rights holders in sport could only rely on enforcement of the copyright in their graphics and musical works when seeking to prevent the showing of live football matches without a commercial licence. They could not rely on their film copyright, which fell within the scope of section 72.

The court rulings highlighted the need to clarify section 72 and the Government launched a [public consultation](#). One issue raised during the initial consultation was the widespread use of masking technology (for example, where creative content is deliberately obscured to avoid infringement) by commercial premises to remove the graphics and similar content from sports broadcasts. This made it difficult for copyright owners to enforce the use of commercial

subscriptions, distorting the market between pubs which pay for commercial subscriptions, and those that use comparatively cheaper unauthorised systems.

Economic Rationale for Intervention

The section 72 exception allowed organisations which did not charge for admission to show specific aspects of copyright content, without seeking the permission of the rights holders. As these organisations were not required to purchase licences from the rights holders (or licensing bodies representing rights holders) to display such content, the rights holders may have experienced reduced revenues relative to having stronger intellectual property rights (IPRs) over their content.

Removing the reference to film from section 72 has meant that certain rights holders are now able to license the uses of their works. If they did, it could increase their revenues which could then improve existing incentives to produce content - this was the economic rationale for the intervention. However, there is a trade-off between providing IPRs to promote investment and creativity, and providing wide access to content.

Finally, there is a market failure argument to consider. Increasing IPRs for the affected content may decrease the possibility of a market failure. In other words, the likelihood that there is a suboptimal production of goods and services decreases (that is, potential to reduced quality of content, and content delivery/availability). The mitigation of market failures in the space of intellectual property comes about from providing rights which are strong enough to incentivise the production of content and the distribution of content. Furthermore, there may be additional benefits to the UK economy through promoting domestic industries that go on to be successful abroad (for example, sports leagues with international audiences).

Methodology/Review process

Level of Scrutiny

Since the change in law, it is unclear whether licensing activity has increased enough to result in the EANDCB ³threshold of £5 million being breached for this regulation. From the evidence gathered, it is still not clear whether the impact of this regulation is below the threshold. However, the IPO has still sought to produce a full PIR with scrutiny from the Regulatory Policy Committee (RPC). The reason for seeking RPC scrutiny without an EANDCB that breaches the threshold figure is provided below.

Firstly, this regulation has led to greater licensing demands following the change in law. However, it is important to note it has not been possible to count the number of businesses affected by these greater licensing demands. Any estimates on the number of affected businesses would be extremely speculative and potentially misleading.

Secondly, and in this case more importantly, this was a fairly contentious matter during the initial consultation to assess whether a change to this area of legislation was required. Simply based on this second factor alone, we followed RPC guidance that there should be a higher degree of scrutiny for contentious matters, irrespective of the level of monetised impact.

³ EANDCB stands for Equivalent Annual Net Direct Cost to Business. This is the Present Value of Net Costs to Businesses (PVNCB) divided by an annuity or discount rate.

There has been increased stakeholder interest in this area, though not to the degree we originally anticipated, but which we expect to be sustained, and possibly increase further if new licensing initiatives are rolled out in the future. In view of the above two factors, we have followed RPC guidance in seeking a higher degree of scrutiny for this PIR.

Level of Analysis on Scale of Costs on Businesses and Local Authorities

The IPO is not able to provide reasonable estimates on the scale of costs and benefits to businesses and local authorities. This is based on the lack of data and information on the three following variables.

Firstly, evidence gathered as part of the Call for Views suggests that there is a lack of transparency between licensing costs and what they actually cover i.e. the types of audiovisual works and whether these are communicated, shown or played in public. Evidence also suggests that the way licensing costs are calculated is not proportionate to the actual use of the audiovisual works. The IPO holds some information on what is being asked in terms of licensing costs, but it does not hold any data or information on what the final charges are as this is private commercial information.

Secondly, the IPO lacks information on whether the rates which businesses and local authorities are being charged vary across the country. We are aware that the costs of licences can be based on number of employees, number of rooms/buildings or square footage. This is dependent on the type of organisation being licensed. The IPO does not have access to data and information on this variation.

Thirdly, and most importantly, without any data or information on how *widespread* the requirement for licences is and the level of uptake by businesses, any estimates on the scale of costs on businesses and local authorities would be extremely speculative and potentially misleading. The IPO lacks sufficient data and information on the number of businesses and local authorities who are approached with licensing demands and what the uptake of these licences is.

The first two points are less of an issue than the third. The third and final points are sufficiently compromising to mean that the IPO is not able to provide useful or helpful estimates on the scale of costs and benefits involved, because any resulting estimates would be extremely speculative and potentially misleading.

Call for Views

The IPO held a call for views from 4 June to 13 August 2021. This included roundtable meetings with rights holders, rights holder representatives, licensing bodies and copyright users in which discussions were based around the questions set out in the call for views. The IPO also invited written evidence and received 12 responses. The original impact assessment for section 72 concluded that *'It has not been possible to quantify the number of premises that may be affected by this'*. The IPO has not had further evidence from this consultation to allow this calculation to be made.

Stakeholder responses

We sought views from a range of stakeholders, including rights holders, licensing bodies and copyright users (those organisations which may show television programmes on their premises).

The majority of responses to the consultation exercise (ten out of twelve) were received from rights holders, licensing bodies and rights holder representative organisations, such as trade bodies. All these groups thought the initial objectives of the original consultation had been met and the regulations remain appropriate and necessary even after the UK's departure from the EU. There was only one user representative group that responded to our call for views.

Rights holders told us that the regulations had enabled them to enforce their copyright more effectively, increasing revenue from their content. Additionally, they had seen a reduction in infringement levels in commercial premises which in turn had reduced the overall number of investigative visits and need for legal action.

Rights holders stated that the changes to section 72 had both simplified and clarified the law in this area which had led to a reduction in demands on the judicial system. They also reported:

- a reduction in the complexity of evidence gathering required to undertake effective enforcement action
- masking technology being rendered largely irrelevant as a method of avoiding enforcement action
- a simplification of enforcement action, with lower associated costs, and
- a substantial overall reduction of the number of commercial premises broadcasting unauthorised content.

Licensing bodies and rights holder representatives also supported the regulations and felt that the changes remain necessary.

Licensing bodies said that the regulations had enabled them to provide easily accessible licensing services for users. They have seen a greater consistency among licensing bodies in their licensing practices, making it easier to identify who requires a licence. This group also stated that the regulations had helped to reduce copyright infringement. They had seen costs to inspect licensing compliance decrease since the regulations came into force as fewer inspections to check on unauthorised access to television and broadcast services were needed.

Some licensing bodies told us they had introduced, or are planning to introduce new licensing schemes following the change in law, engaging regularly with the main trade associations to ensure licensing is fair and transparent. The majority of the new licensing structures apply to the use of televisions in bars and hotel rooms. As referred to in the original consultation and impact assessment, Video Performance Limited (VPL), which represents companies owning film copyright (both fixation and cinematographic aspects) in music videos, has indicated that it may begin to license the showing of broadcast music videos now that the regulations are in force. This could mean that for subscription music channels, premises would require a VPL licence, in addition to a TV licence (a TV licence is required to cover the use of any television receiving equipment such as TV set, digital box, PC, laptop or mobile phone to watch or record television programmes), a PPL licence (to cover performers and record companies for the use of their recorded music), and a PRS licence (to cover songwriters, composers and music publishers for the use of their musical compositions and lyrics).

Whilst the majority of respondents supported the regulations, concerns were also raised. We received two submissions from those representing **users** of audiovisual content, both commercial and non-commercial entities, and also gathered views through interactions with other government departments. Primarily the concerns related to the additional licensing fees organisations have been asked to pay following the 2016 change in law. Users said that this included requests for licences where it was not clear that the content was, or was likely to be, communicated, shown or played in public.

Furthermore, the licensing fees appear to be based on the number of employees which is not proportionate to the scale of the actual use of audiovisual works. This made licence fees relatively high – for example, one respondent stated that one licensing body was charging a “corporate rate” of £5.43 per employee and there had been requests for licence fees to be backdated to June 2016 when the regulations first came into force. This has led to organisations having to spend more time and money dealing with what they argued was sometimes excessive and unwarranted demands for licences and increased legal fees. Consequences included televisions being removed from staff canteens, receptions and all other work environments to eliminate these licensing costs.

Users of audiovisual content from non-commercial/community organisations also felt that the regulations have had an adverse impact on budgets and on the way in which some of their services are delivered. An example was provided where some local authorities have paid the additional licensing fees, but which has had a significant impact on the budgets for their services. Others have removed (or turned off) television sets which, in some cases, has had a negative effect on the experience of service users.

Supporting evidence

A right holder in sports told us that they had seen a **50%** decrease in the number of investigative visits that encounter masking technology systems during the months immediately after the regulations came into force. By 2019/20, just **0.1%** of investigative visits found masking technology systems in use in premises.

As enforcement cases became more straightforward, these right holders saw a **46%** reduction in the average legal costs of a case against an infringing premises. This is based on a comparison of cases brought in the period July 2013 – June 2016 and July 2016 – June 2020. Furthermore, following the change in law, they observed a 55% decrease in the proportion of investigative visits that found an infringing foreign broadcast at commercial premises, compared to before the legislative change was in place. This figure rises to 77% when comparing the period July 2013 – June 2016 with the period July 2016 – June 2020. The IPO is only able to refer to the relative costs quoted by right holders in sport, and not the change in absolute costs (which may be small or large).

Right holders in sport also stated that they had seen a reduction in the number of commercial premises using foreign decoder cards to show live sport. During the 2013/14 season, investigative visits found more than 2,000 venues screening unauthorised coverage of live football matches. By 2018/19 this had decreased by more than 80% to the low hundreds.

Licensing bodies anticipated that the enactment of the regulations would benefit rights holders; however, they did not formally set out estimates. Since the regulations came into force, some licensing bodies have been able to negotiate tariffs with trade associations and in some cases, this has resulted in an actual reduction in the licence fee.

One example provided was in relation to the licensing of gym operators. In 2016 gym operators paid over **£300** per year in licences to show audiovisual content. Through negotiations with the key trade association in the sector, one licensing body agreed a flexible licence payment schedule and flat fee of **£214** per year. The same licensing body argues that this change can be attributed to the change in section 72. The reduction in the tariff had been possible as a result of the clarity resulting from the change in law. This had resulted in greater levels of compliance, reducing the licensing body’s costs and allowing the savings to be passed on to the user.

Licensing bodies pointed out that the amount of revenue which audiovisual rights holders received across all forms of public performance of their works remained small. One licensing body stated that its entire UK revenue was just in excess of GBP 11.2 million for the year to 31 December 2019, pre-COVID, covering all of its licensing activity (and not only that to which section 72 relates).

Overall, the copyright users that responded agreed that the regulations are needed to protect the rights of rights holders. However, they identified the following additional costs:

- (i) Staff time to raise purchase orders and set up suppliers;
- (ii) Time engaged in demonstrating value for money by obtaining quotes to procure the licences; and
- (iii) Additional financial burden to cover the cost of licences

Local authorities that have decided to broadcast live TV have been quoted annual licence fees within the range of **£30,000** to **£35,000** plus VAT for a block of sites and individual fees per site range from **£300** to **£600** plus VAT.

Please note the below table, summarises our best estimates of non-monetised costs and benefits of removing the reference to film from Section 72.

Table 1: Summary Table of Costs and Benefits of Removing the reference to film from Section 72.

| | Costs | | Benefits | |
|--|--|---|---|--|
| | Licensors (e.g., licensing bodies, rights holders) | Rights holders (e.g., Sports Leagues and creators of TV programmes) | Businesses which partner with rights holders and other potential beneficiaries | Licensees and Potential Licensees (e.g., Pubs, Gyms, Local Authorities) |
| Removing the reference to film from Section 72 | <p>[Benefit] The direct Benefit here is an increase in the range of users that licensors can demand licences from.</p> <p>There is increased revenue from the ability to license the rights in a broader range of circumstances. As indicated in the remaining cells, this revenue can be split between licensors and rights holders according to the negotiations between such entities.</p> <p>[Benefit] A greater uptake of licences means that Licensors are likely to have lower enforcement costs, which can lead to an overall reduction in operating licences.</p> | <p>[Benefit] Licensors being able to generate additional revenue from their licensing, can increase the market value of rights holders copyrights.</p> <p>In anticipation of the greater generating revenue potential of the relevant licences, rights holders may determine they have greater negotiating power which is derived from the perceived increase in the market value of their copyrights.</p> <p>As a result, rights holders may be more able to negotiate better terms for themselves, when they are in negotiations to provide licensors with the ability to license their content.</p> <p>This is not a double counting of the benefit found under Licensors – this represents a likely benefit to rights holders if licensor revenue increases.</p> | <p>[Benefit] If rights holders are able to negotiate better prices from Licensors, these rights holders are able (and may be expected) to provide greater revenues to partner businesses, producers of TV programmes and film. They may also be expected to make greater investments into their partner businesses (e.g., investments in sports clubs, investments in TV shows).</p> <p>This is not a double counting of the benefit found under rights holders – this merely represents a likely benefit if rights holders benefit.</p> | <p>[Cost] The licences which Licensors provide are more reliably enforced, and Licensees who previously could show content at decreased or no cost, must now face increased costs (of licences).</p> <p>Additional administrative burden on users.</p> <p>In some cases, businesses may not pursue a licence, and may instead opt to not show content on their premises, leading to reduced utility to customers who would have consumed the content.</p> <p>[Benefit] If businesses (e.g., pubs) do not rely on decoder cards or masking technology, but instead purchase licences to show content without obstruction, viewing quality would improve. This may increase the appeal of such businesses to potential customers – potentially improving business outcomes.</p> <p>Businesses (e.g., pubs) that pay licences are not subject to higher costs than competitors who have avoided licences and secured content illegally.</p> |

Relationship between Licensors, Rights holders, and businesses with partner with Rights holders

To be clear, the direct effect of removing the reference to film from Section 72 is that **Licensors** can require licences for a greater range of users, and also the cost of enforcing such licences is reduced. This first-order effect primarily benefits licensors. Rights holders may not immediately see a benefit, and may only see significant benefits in subsequent negotiations with licensors.

Rights holders may determine that the market value of their content increased when licensors became able to license for a greater range of users, and when enforcement costs decreased. They may determine that with the market value of their content increasing, this increased negotiating power may be best used to negotiate better terms for themselves in subsequent negotiations.

Finally, **Businesses which partner with rights holders** may see increased investments and revenues if rights holding organisations are able to conclude negotiations with licensors in a way that increases their own revenue.

Outcomes on Creativity & Innovation, and Competition

Here, the IPO considers how the new licensing structures may potentially impact both: Creativity & Innovation, and also Competition.

Creativity & Innovation

The IPO is the UK public body responsible for promoting creativity and innovation through the Intellectual Property (IP) system. This PIR is primarily concerned with creativity (e.g., content production and distribution). One such way in which the IPO promotes content creation is through the proper enforcement of IP rights. If IP rights are properly enforced (e.g., licences are required for copyright content), then content creators can be properly remunerated. Providing remuneration for content creators provides incentives for creativity and innovation.

The unexpected impact that new licensing structures have had means that there is now stronger enforcement of IP rights. This stronger enforcement of IP rights means content producing and content distributing organisations are better remunerated, which promotes the interests of content creators. If the IPO does not properly defend the interests of content creators and content distributions – this will negatively impact creativity in the UK as there will be less incentive to create and distribute content. Lastly, the Call for Views noted no concerns on the impact of such regulations on creativity and innovation.

Competition

Research from the World Intellectual Property Organisation shows that the more frequent and stronger enforcement of the IP system diminishes the probability of anti-competitive practices⁴. Furthermore, an OECD Roundtable on IP and antitrust formed a consensus view that the enforcement of IP rights does not necessarily create or enhance market power⁵.

Since the introduction of this regulation in 2016, the IPO has received no such concerns from its stakeholders of anti-competitive practices which result from the introduction of this regulation. In the Call for Views for this PIR, the IPO also received no such concerns over anti-competitive practices. The Call for Views did show that creative sector groups, representing the view of copyright holders, have been very clear that showing works on TVs in areas accessible by the public, also referred to as secondary uses, is a legitimate use of their works which would be licensed.

Furthermore, it is the IPOs own thinking that there are no competition concerns arising as a result of the introduction of this regulation. There is less room for businesses with public premises (such as pubs) to exploit loopholes in Copyright law that allow pubs to show footage obtained from overseas broadcasters at very low costs. This results in fairer competition between such businesses, such that businesses now have to compete when using equivalent licences. Lastly, there is no evidence to show that this regulation has provided enough market power to any single market participant to justify competition concerns.

Issues and recommendations from stakeholders

A number of rights holders argued that they would like to see further changes to legislation to enhance licensing opportunities, including removing exceptions under [schedule 2, paragraph 18 CDPA](#), which relate to parallel exceptions covering performances in film. The Government explained that the focus of this Post Implementation Review is strictly limited to the impact

⁴ https://www.wipo.int/export/sites/www/ip-competition/en/studies/study_ip_competition_oliveira.pdf

⁵ <https://www.oecd.org/daf/competition/licensing-of-ip-rights-and-competition-law.htm>

resulting from the changes introduced by the regulations to section 72. Changes to other parts of the CDPA, albeit on similar exceptions, could only be considered separately, as part of the usual policy development process.

Conclusion, Next Steps, and Monitoring and Evaluation

The information gathered through this review pointed to a broad consensus amongst respondents, who were mostly comprised of rights holders and licensing bodies, that the original aims of these regulations remain relevant, are efficient and consequently many stakeholders supported their retention. The change has had the effect of both adding clarity to the law and removing an exception, but these have also stimulated licensing demands.

The evidence remains limited: in particular, information from users and their representatives was not forthcoming either in the working groups or by way of written evidence. There were also constraints in securing commercially sensitive data from rights holders and their representatives. However, the impact on users was significant enough for some of them to resort to removing television sets from their premises to avoid any risk of licensing requests. In addition, there is scope for rights holders and their representatives to add to overall licensing requirements, placing further financial and administrative demands on users. Finally, there appears to be a level of uncertainty around the legitimacy of some licensing demands, that is, what types of uses can be licensed and how licence fees are calculated. The IPO will provide updated guidance in this area.

Monitoring and Evaluation

The IPO has considered how to adopt a monitoring and evaluation approach that is proportionate. Proportionality has been considered in the context of two factors. The first factor is the higher-than-expected licensing activity. The second factor is the availability of data on such activity.

Higher-than-expected licensing activity

There has been an increase in licensing activity covering a broader range of premises which show television following the clarification of the law introduced under these regulations. Copyright users have cited some consequences from the increase in licensing demands such as televisions being removed from staff canteens, receptions, and other work environments.

As a result of copyright users citing such consequences, which reflects the higher-than-expected licensing activity, any further monitoring of the situation by the IPO should pay particular attention to the impacts on such copyright users (see below).

Limitations to Monitoring and Evaluation

The IPO will monitor and evaluate the relevant licensing activity insofar as it is able to do so, and at reasonable cost to the IPO itself. The first major limitation for monitoring the relevant activity is that the IPO does not hold administrative datasets on the licensing activity which is relevant to this PIR. This activity is undertaken by private commercial organisations and this data is not the type of data that the Government would hold as a matter of course. A further limiting factor is that when the IPO searched for any other governmental or non-governmental datasets which would allow monitoring of the situation – no such dataset was found.

The IPO has considered the idea of funding a survey in an attempt to estimate impacts on businesses (and non-business entities) which would be affected by this regulation. However, a

survey that was able to generate meaningful data would be disproportionately costly to deliver, and would likely be an inefficient way of collecting information compared to further engagement with relevant copyright-using stakeholder groups.

The IPO will therefore attempt to further monitor the relevant licensing activity through stakeholder engagement. For example, copyright holding and copyright using groups will hold varying degrees of data on their use of licences. The IPO is dependent on these groups in monitoring licensing activity, and will monitor the situation through engaging with the relevant stakeholders.

Historically, the IPO has not received all of the data on licensing activity that it would like to receive. This is because such data is held by the aforementioned groups (both commercial and non-commercial) who share such data at their discretion. These groups provided some data on licensing activity in the Call for Views on this PIR, but the data provided was limited. Furthermore, these groups may not provide further data when called upon in future. The IPO has limited levers in compelling organisations to provide such data.

IPO Commitments to Monitoring

The above factors have been taken into consideration when proposing a monitoring approach which is proportional.

The IPO will engage with relevant stakeholders and ask for further data that would support the IPO with an up-to-date view of such licensing activity.

As part of our stakeholder engagement, additional efforts will be made to collect data specially from copyright using groups, as these groups were less represented in the evidence gathering for this PIR than the copyright holding groups. This PIR and the further evidence collected from monitoring the situation will be used to update and improve the relevant IPO guidance ([link](#)).

Conclusion and next steps

The information gathered through this review pointed to a broad consensus amongst respondents, mostly rights holders and licensing bodies, that the original aims of these regulations remain relevant, are efficient and consequently many stakeholders supported their retention. The change has had the effect of both adding clarity to the law and removing an exception, but these have also stimulated licensing demands.

The evidence remains limited, in particular the difficulty in securing information from users and their representatives, either in the working groups or through written submissions as well as obtaining commercially sensitive data from rights holders and their representatives. However, the impact on users was significant enough for some of them to resort to removing television sets from their premises. In addition, there is scope for rights holders and their representatives to add to overall licensing requirements, placing further financial and administrative demands on users.

Addressing Concerns Raised by Copyright Users

Copyright users have highlighted an issue that the licensing system is not clear. In particular, it is not always clear how licensing bodies calculate the prices of licences and what uses these licences cover.

The IPO is motivated to provide the best guidance it can to copyright users on relevant licensing requirements. Currently, the key resource the IPO holds publicly to provide clarity and transparency is through the published guidance on changes to Section 72, which can be found here ([link](#)). In an effort to address the concerns of copyright users, the IPO will update and re-publish its guidance in this area.

As mentioned in the section on monitoring, the IPO will seek views from stakeholders on any changes to licensing activity and the impact of our revised guidance one year from the publication of the guidance.

Annex

Full list of stakeholders who provide evidence in response to the call for views

1. 560 Media Rights Limited
2. British Equity Collecting Society (BECS)
3. Motion Picture Licensing Company Ltd (MPLC)
4. British Copyright Council
5. British Film Institute
6. VPL (PPL)
7. Premier League
8. Local Government Association
9. Alliance for Intellectual Property
10. Sky
11. Anti-Counterfeiting Group
12. One individual response

Full list of stakeholders who attended call for views roundtable sessions in person

1. Alliance for IP
2. British Equity Collecting Society (BECS)
3. British Copyright Council (BCC)
4. Compact Media
5. Motion Picture Licensing Company (MPLC)
6. Premier League
7. Sky
8. UKHospitality
9. 5/16 Media Rights Limited