



Note of Meeting of Licensing Forum
10 February 2006
Admiralty Arch, London

Present:

Muriel Adamson	UKHO
Bob Ager	COI
Jean Alexander	BGS
Angela Bradley	FCO
Ken Dearman	UKHO
Andrew Eeles	OPSI (Secretary)
Margaret Fuller	FSC
Eva Ginalska	DFT
Antoinette Graves	OFT
Nicola Hunt	MoD
Janice Knight	Land Registry
Sue MacInnes	RoS
Dominic Murphy	Met Office (Speaker)
Marcia Jackson	OPSI (Chair)
Carol Jeanes	OFT
Adrian Nuttal	Environment Agency
Tim Padfield	National Archives
Liz Stocker	UKHO (Speaker)
Robin Stout	Patent Office (Speaker)
Carol Tullo	OPSI
Derrick Walker	MoD
Eileen Walsh	Land Registry
Sue Warrington	Treasury
Carol Watts	CEH
Helen Westhall	OPSI

1. Introductions

- The Chair welcomed everyone and set out the format for the meeting.
- The Chair let members know about the new Discussion Forum which will be hosted on the OPSI website. Access will be restricted to members. Members were advised that any contributions made to the Discussion Forum will be subject to the Freedom of Information regulations.
- A plea was made for future agenda items and for offers to host future meetings.

- **Protecting Intellectual Property: a summary of the issues facing Crown bodies**

Presentation by Liz Stocker, UK Hydrographic Office (UKHO)

- Liz said that she has been in the protection side for 6 months, having previously worked in licensing. Four important issues were identified: Legal, Technical, Procedural and Standards.
- Legal Issues. Liz stressed how important it is to be aware of the different approaches that apply to copyright protection in other countries. Some countries are far more stringent as to what is considered intellectual creativity and what is judged as originality. There are also differences in what actions can be instigated against Internet Service Providers in other countries. Liz stressed the importance of maintaining documentation about the originators of works and about IPR ownership, linking work done by employees in the course of their duties, their employment contracts, the Copyright Act, delegations from the Controller of HMSO and Letters Patent from the Queen. Differences in Competition law in other jurisdictions also need to be considered.
- Technical Issues. Liz outlined some of the issues that UKHO had to consider when an alleged infringer produced a digital product from paper based formats and denied that this constituted copying. Where third-party material appears in the UKHO's products, or the UKHO's material is used in a licensee's product, there is scope for joint action against infringers. Liz gave examples of some of the ways that IP ownership can be proved in mapping and charting products and how these forms of identification can be used to show how IPR has been infringed. Sometimes genuine errors in products can aid identification of infringements.
- Procedural Issues. Liz outlined the importance of retaining rights when contracting with other parties. It is also important to identify and resolve any conflicts that might arise from having shared IPR. Liz explained the role played by "expert witnesses" and that it was important to ensure their impartiality. A balance between risk and reward needs to be considered when taking action against infringers to ensure that resources are placed into cases in direct proportion to the damage caused by the infringement, whilst considering the possible long-term effect of a negative result. Liz explained the proactive and reactive strategies for identifying infringements of IPR. This was followed by examples of identifiable risks, these included delaying or failing to act, not keeping full records of licensing transactions and challenges on copyright and the need to have a licence.
- Standards. Liz explained that it was important to have a consistent licensing policy in place with the use of standard terms and conditions. When any changes are made to the terms and conditions they need to be rolled out to all existing licensees. It was also important to listen to all licensees in order to improve and develop solutions that benefit all.

3. Discussion

- A member asked how many staff are involved investigating infringements. Liz said that there was one other full time member of staff, but there had previously been a third member of staff.
- A member asked what process should be followed when contacting someone who states on their website that they are a supplier to a government department but have not obtained official clearance to do so. It was agreed that a threatening letter was appropriate in some circumstances. Another member advised that a cease and desist letter should be sent out when a Trade Mark had been infringed.
- A member said that it was possible to appoint private investigators to undertake research into the activities of those who are infringing IPR. UK Embassies can provide details of investigators for outside of the UK.
- A member pointed out that being seen to take action against infringers was important to ensure the reputation of the licensing organisation and support of its licensees.
- A member confirmed the importance of maintaining accurate records about its products especially when they contain works where copyright has been assigned to the Crown. Another member said that his department asks authors of commissioned work to provide their date of birth. This information will be used to assist the department when it undertakes reviews of its records and to find out when the period of copyright in the assigned work has expired.

4. Dealing with Intellectual Property Rights (IPR) Issues in a Trading Fund

Presentation by Dominic Murphy, the Met Office

- Dominic said that he has only been with the Met Office for three months and wanted to raise IPR issues that the Met Office were currently considering and to generate discussion on how they proposed to address them.
- The main issues are apportioning IPR in works produced jointly by consortiums and the licensing arrangements for software being used for co-development. Dominic explained that making any improvements to weather forecasting requires collaboration with researchers at Universities and with other National Met Services. To undertake the research the Met Office needs to make available its software modules.
- Dominic said that the Met Office was exploring the following options: licensing without restriction (Freeware), having joint IPR in the enhancements or licence back arrangements. Each option has benefits but also raised points of concern. Dominic gave examples of the wording that the Met Office was considering putting in their licences and asked for feedback on them from members.

5. Discussion

- The members agreed that the Met Office had addressed the main issues and that they were looking at developing practical solutions that avoiding assigning IPR.

Members said that the proposed options could be applied to different situations and circumstances. Contracts could be drafted that cover collaboration arrangements and the IPR developed under those collaborations.

- A member indicated that “version” and “quality” control also needed to be considered when licensing software.
- A member raised the Creative Commons approach to licensing IPR and said that there was also a Science Commons licence that might be applicable for software.
- A member pointed out the pitfalls of licensing universities and indicated that anyone considering licensing software for research purposed by universities should be aware of the judgments made in a number of high profile cases.

6. Where next for European Database Rights?

Presentation by Robin Stout, the Patent Office

- Robin told the members that the European Commission has launched an evaluation to find out how successful the EU Database Right has been following implementation in 2001. The evaluation will consider the policy reasons for introducing the database right, any legal developments, examine evidence of success and future policy options.
- Robin explained that the Database Right had been implemented to harmonise database protection across the EU and to stimulate the EU market in database creation which lagged well behind the USA, the major producer of databases.
- Robin set out the scope of protection under the Database Right. A “database” being any collection of individually accessible records, arranged systematically. Under Article 3 copyright in a database requires the work to be the author’s “own intellectual creation”. This right lasts for life of the author plus 70 years. Article 7 covers “sui generis” right. This relates to the “sweat of the brow” test and is intended to protect non-original databases where the creator has made a “substantial investment” in “obtaining, verifying or presentation” of the content of the database. This right lasts for 15 years.
- Robin explained that there have been various legal interpretations on the Database Right. An ECJ judgment had ruled that the “sui generis” right did not exist in a list of football fixtures. For that right to exist there has to be “substantial investment” in “obtaining, verifying or presentation” of the data not in the creation of the data for another purpose. Robin said that it has been difficult to determine what has been protected by the “sui generic” right.
- Robin said that there was little evidence about the success of the Database Right. The Gale Directory of Databases shows that there has been a decline of new EU databases since 2001 and an increase in the USA.
- Robin outlined the four options being considered by the Commission: withdraw of the whole Directive; withdraw of the sui generis right only; amend the sui generis right; keep status quo. Observations and evidence from stakeholders should be submitted to the Commission by 12 March 2006. Robin said that the Patent Office

is not going to make a submission on behalf of the UK Government as it wants to look at the evidence that is submitted.

7. Discussion

- A member stated that the Gales Directory covered commercial databases and would not necessarily include all databases produced by public sector organisations.
- A member referred to a judgment made by Justice Laddie in relation to substantial investment in the creation of a database. Another member said that his department made a considerable investment in ensuring that the content of its databases were accurate and up to date. It was crucial to their business that they retained the protection given by the Database Right.
- A member said that he was aware that the Commission was being lobbied by various sectors and that UK Government needed to ensure that it had an adequate safety net. Members exchanged views about the economic approach being adopted in relation to the creation of databases. It was stressed that the English language was the language for business and that this was shown by the UK being the main producer of databases in the EU. A member made the observation that many of the UK database produces parent company was USA based. US companies have also been taking over of well established UK database companies.
- A member said that he thought that it would be beneficial to members of the Licensing Forum if the Patent Office maintained a list of contacts of those who have an interest in the database right and other IPR related issues so that they are kept up to date on future developments and co-ordinate responses centrally. It was agreed that anyone wanting to be added to the contacts list should send their contacts details to OPPSI who will forward them to the Patent Office.

Andrew Eeles
Office of Public Sector Information
16 February 2006