



Note of Meeting of Licensing Forum

8 May 2006

Ministry of Defence, Bristol

Present:

Murial Adamson	UKHO
Jean Alexander	BGS
Daniel Caistor	OFT
Ken Dearman	UKHO
Anita Evans	HMRC
Margaret Fuller	Fire Service College
Ela Ginalska	DFT
Antoinette Graves	OFT (Speaking)
Nicola Hunt	MoD
Marcia Jackson	OPSI
Tony Jardine	OS
Brian Morgan	DTI
Dominic Murphy	Met Office
Boaz Nathanson	OFT
Adrian Nuttall	Environment Agency (Speaking)
Daphne Prail	Highways Agency
Steve Rowan	HM Treasury (Speaking)
Andrew Ryan	QCA
Yvonne Shivas	OFT (Speaking)
Nimisha Tailor	OFT
Derrick Walker	MoD (Speaking)
Sheila Walker	Home Office
Sue Warrington	HM Treasury
Carol Watts	CEH
Helen Westhall	OPSI

1. Introductions

- The Chair welcomed members to the Ministry of Defence and welcomed the first speaker.

2. Electronic Copyright and Related Licensing Issues within HMRC

Introduced by Anita Evans, HMRC

- HM Revenue and Customs (HMRC) was created in April 2005 when the Inland Revenue, HM Customs & Excise and the Valuation Office Agency merged. The speaker carried out a study into copyright as each former department had their own set of guidance. Most existing guidance focused on Crown copyright issues, but it was soon discovered that the main risk to the Department was from electronic copyright issues. There is often a perception that website information in the public domain is free and not copyrighted, but this is not the case even though copyright statements may be hidden. How Internet information is used, stored and disseminated was a high priority when considering copyright issues within HMRC.
- The speaker outlined the need to protect corporate integrity. By linking to a particular company, for example, this could appear as an official endorsement. Another issue is deep linking, where an organisation provides a link to a specific page. This circumvents the homepage banner advertisements and could result in loss of earnings for the rights holder.
- The speaker outlined some common assumptions surrounding copyright for educational purposes. The speaker described some issues faced in many workplaces, such as the need for licences to play music (e.g. the use of radios and “holding” music on telephones). She also gave an overview of licences, such as the CLA and NLA.
- a. The speaker warned about issues relating to secondary infringement. An organisation might be undertaking secondary infringement by providing a third party with the means to infringe copyright directly. (e.g. under PFI, estates and services are often managed by subcontractors). What third parties can and cannot do should therefore be explicit in the organisation’s copyright guidance. She also advised the group to consider contracts with academics and consultants carefully, as the copyright of their work should rest with the organisation.
- The speaker advised that you can be held personally responsible for any advice you give, so have your guidance checked by a lawyer. Copyright law is complex and ambiguous, so it is advisable to include notices to explain this.

Discussion

- A member asked whether it would be possible to share the HMRC electronic copyright Frequently Asked Questions with the Forum. The speaker agreed to this if members contact her directly, but stressed that the document should be used with caution.
- A member questioned whether NLA licences were required for use of newspaper cuttings. The speaker explained that the NLA has specific terms and conditions which need to be considered. (e.g. information can only be held for a short length of time).
- There was discussion about the use of information provided by a member of the Public. When dealing with public information, consideration needs to be given to confidentiality issues and about how best to store e.g. store with other case papers, rather than on a shared drive.
- A member raised the importance of understanding that education exemptions do not apply to videos recorded at home.
- The speaker explained that sections 45 & 46 of the Copyright, Designs and Patents Act 1988 and specific Acts of Parliament pertinent to specific departments (e.g. the Finance Act) might override usual copyright restrictions to enable departments to carry out their statutory duties.

3. Why Public Authorities Shouldn't Give Away their Information

Introduced by Adrian Nuttall, Environment Agency

- The speaker explained that the views were to stimulate debate, and not necessarily the views expressed by the Environment Agency.
- The speaker gave a brief background to the PSI Regulations, explaining that once information has been offered for re-use if the information is being used for a purpose other than the organisation's statutory reason for collecting the information (the organisation's public task).
- The speaker explained that during the development of the Directive there was strong lobbying to prohibit any charging for re-use of information, thus following the American model. There was a great deal of debate around this area, which resulted in a political compromise. This compromise discouraged but did not prohibit charging. The recommended accounting method decided upon is cost-based, together with a cap on charging. It is important to be transparent about how and what your organisation is charging for re-use of information. Your organisation must also ensure equality of treatment and

understand that the price is not set according to the dataset, it is set according to the use. The price for comparable re-use should be fair and consistent.

- The speaker then gave some background to the Inspire Directive, which is currently at the stage of seeking a common position. Inspire is a project regarding spatial data which is used as a 'reference' tool for the display of thematic information and licensing of such information. In simple terms this means displaying information on a map – usually electronically. It is standards based, and seeks to better inform the public through greater consistency. The initial discussions were around environmental and mapping information, but will move to agriculture and transport in the future. Inspire looks at five stages:
 - Discovery services (metadata)
 - View Services
 - Download Services
 - Transformation services
 - Services in which computer programmes use data
- Charging should be in relation to these, but metadata is always free. View Services is usually free, but there is scope for charging if necessary, e.g. trading funds.
- The speaker outlined some of the arguments for all re-use to be free of charge, such as Government information being a publicly funded national asset, information should be fully utilised this and this needs to be in the private sector, and that the US has more free re-use and more data business. He then rebutted the arguments, as trading funds are not funded by taxes, so although government is sometimes publicly funded, this is not always the case. Charging is not always unfair and it is a dangerous analogy to compare the US information industry with that of the EU. In addition, there are other factors to consider, such as language; not all of the US data companies are American, some are Canadian and Dutch.
- The speaker gave his opinion on why charging is necessary. If organisations are selling their information, they will invest time and money developing it, ensuring high quality data. For instance, Americans do not buy the public map data as it is of low quality. People often ask for more information than they need if it is at no cost, which would be a waste of public resource.

Discussion

- A member raised the point that it is not always clear what happens to the income from licensing if organisations are not trading funds. The speaker encouraged organisations to feed income back into data services as often organisations want the income in the general pot. If organisations obtain income from licensing, it makes it easier to justify data products when competing for funding.

- One argument is that public sector organisations can't run businesses, and this is because businesses charge what people are prepared to pay and what the market will bear.
- A member asked if anyone has looked at the consequences of giving away all information free of charge. The speaker indicated that the Cross Cutting Review of the Knowledge Economy and a study into the American model have looked into consequences. Organisations could disappear if information was given away free.

4. How the MoD determines what to charge

Derrick Walker, Ministry of Defence

- The speaker explained that most of their information that can be licensed at the MoD is film footage and photographs. The MoD charging policy came about following a request from a documentary maker asking for a price for 274 seconds of footage. The starting point was OPSI guidance, which is £12/sec plus £6/sec for repeat broadcasts. However, going on the assumption that the licence would run for 10 years, with the program being shown 8 times a year, this took the cost of the licence to £133,164.
- The MoD decided to look into how this could be altered to a more reasonable level. Working with a production company, they ascertained that the standard rate for footage was between £50/sec-£80/sec. They decided that for broadcast, a rate of £60/sec for worldwide clearance for 10 years would be levied, with unlimited use. This rate drops if the footage is not to be shown in the UK, or for use of less than 10 years. The prices are also less for DVD/video use or internal corporate use, although the rate for commercials is higher, at around £300/sec depending on the length of the licence.
- As regards to still photographs, the MoD started by following OPSI's guidance of the first one free, then £50 each. However, this was not covering costs and as it was not in its public task this could not be justified. They altered the charging system to be £50 for the first two uses, then £50 each thereafter. This just covered costs with a little extra as it costs MoD £35 to bill re-users. This has met resistance, particularly from charities. However it was justified as fair by MoD due to the cost of billing and complexities of introducing different pricing structures. The MoD have, however, introduced multi-use licences to allow unlimited use of a picture for 1 or 3 years, with a discount for bulk orders of >7 images. There is also a formula for determining royalties on books, which works out at 10% of the RRP relative to the proportion of Crown copyright material used. Higher charges are imposed for artistic merit, which is currently quite subjective and in the process of being reviewed to provide a greater definition.

Discussion

- A member asked whether photographers can assert moral rights. The speaker explained that you cannot assert moral rights in the Crown, the first owner is the employer.
- The speaker informed the group that the MoD takes approximately 1.5 million photographs every year. Only a small proportion of these have commercial value.
- A member asked what the starting point for charging was and the speaker explained that cost recovery didn't come into it. Licensing re-use is a by-product and the MoD does not want to slant the market or compete.
- The MoD has had a positive response from the UK but sometimes organisations from overseas think that it is expensive.
- A member asked whether prices have been adjusted once the MoD has a feel for demand. The speaker indicated that the MoD has made changes to the pricing structure. It has kept the top price the same, reduced the bottom price and worked out figures for prices in between.

Gowers Review of Intellectual Property

Steve Rowan, HM Treasury

- The review brings together a number of strands of work across government on Intellectual Property (IP) policy including the Labour Party Manifesto Commitment to review the IP Framework. The level of interest across government in IP continues to grow with a recognition of the impact of IP on innovation, productivity and the economy. There are various challenges facing users of the IP system. These include:
 - Technological changes, in particular piracy issues
 - Networked innovation is changing the structure of business practices
 - Software and business methods patents – what can be protected?
 - Changes in the scope of trademarks – sounds and colours can now be protected
- The review has completed its consultation phase; interested parties were able to submit evidence until 21 April 2006. There were around 500 responses, and the next stage is to now go through them and collate the evidence. The review team has also been looking at the international position as the UK is constrained by many international treaties and EU directives and regulations in this area.
- The review will be looking at both the operations, how IP is awarded, how it is used and how it is challenged or enforced. And the

instruments themselves, patents, trade marks, designs, copyright including issues around the exceptions to IP rights and orphan works. The review will also look at the issue of copyright term for sound recordings which is currently set at 50 years in the EU. Some have argued for an extension of this term to 95 years. The review is focussed on identifying problems with the current procedures, and identifying practical solutions to these problems.

- The report is due in Autumn 2006.

Discussion

- A member asked what evidence the team were expecting. They expected to receive information on a wide range of issues. Of relevant to the discussions today were the database directive, as well as patent trolling, where companies seek to block companies and seek high licence fees. It was not clear whether this was a problem or not with one person's patent troll being another technology company merely seeking a legitimate licence fee.
- Another member noted that copyright statements are often difficult to find. The team agreed that there are often difficulties in tracing copyright and who the author is. This was noted and was something that others had raised.

Update on CUIPI study

Antoinette Graves, Office of Fair Trading

- The speaker began with an introduction to the CUIPI study, which started in July 2005. It is a market study to look into the commercial use of public sector information. Past studies have started consumer/business education campaigns or changed regulations, however they are only recommendations. One of the key themes for the OFT is how government interacts with markets. The speaker outlined one of the main characteristics of this market – many bodies have a statutory obligation to collect information but are also monopoly providers of information.
- The study was looking at a range of issues including raw data versus value added data, how pricing affects competition, criteria on how bodies justify their activities and a review of the existing guidance. The team are carrying out original research such as surveys of PSI holders & businesses and are consulting widely with stakeholders.
- 400 surveys were sent out, with a 40% response rate. These responses showed an income of £395m from data sales and licensing. 87% of responses were from those with a delegation, 95% of respondents had a publication scheme and 19% had an IAR, although this rose to 58% of those who had a delegation. Only one PSI holder

had a definition of public task in the form of a single document, however most said they could distinguish between raw & value added. Among the responses there was very little evidence of internal transfers.

- The study also asked businesses how they received their information, and for their experiences of this. They had approximately 300 responses. Many businesses use information from a wide selection of organisations. One issue raised was that 1 in 5 VARs said they are competing with the PSI holder, and this rose to half with some bodies. Another area of concern was that despite 2 in 5 VARs having problems or issues trying to re-use information, very few actually complained. Of those who had, they were mainly unresolved.
- The speaker then outlined some international case studies. They have looked at the US, Australia and Sweden. The US is seen as an extreme example as much of the data is available at no cost or at marginal cost. Sweden has a strong history of FOI, and bodies similar to UK trading funds. However the team identified some competition problems.
- The speaker went more in-depth into their findings. The US had most PSI available at no cost or with a marginal cost for dissemination, in particular base data which doesn't cost much at all to make available. There was also more tax subsidy available for information. The lack of Crown copyright meant that people do not need to buy the right to re-use information. Most bodies follow the Federal line on policies.
- In Australia, there is a greater emphasis given to cost recovery, with some thoughts on competitive neutrality. The information is provided as a mix of free or cost recovery. In 1996 the Australian government stated that more information should be provided free. Since then charges have gone down but revenue has gone up.
- Finally the speaker talked about Sweden, which has free access to information, but several PSI holders are allowed to charge for much of their information. The PSI holders are very active in terms of Value Added Data. They didn't need to add new regulations to comply with the Directive as they were already. There have been some complaints regarding competition and that there is no level playing field.
- The case studies they used within the UK are the Environment Agency, Companies House, Met Office, Ordnance Survey, British Geological Survey, HM Courts Service, UK Hydrographic Office, and a small sample of Local Authorities and NHS bodies.
- Some of the factors they are considering are:
 - Benefits of the PSI holders involvement
 - Efficiency arguments

- What is the optimum pricing policy?
- How to ensure access to information and that licensing terms encourage innovation
- Treasury guidance
- Formulating a coordinated approach

Discussion

- A member raised that as different authorities have different views on what constitutes 'raw data' and it is not a statutory term, maybe 'public task data' should be used instead. The speaker replied that one of the arguments put forward by Ordnance Survey is that everything is public task, and there is a need to ensure access to data when it is first usable. There is also a difference of opinion on what raw data is.
- In addition, each authority is different, and that not all organisations have their public task defined. There shouldn't be an attempt to enforce a one-size-fits-all policy. Photos are an interesting case, and have been discussed greatly. If it's unrefined information, it should be at minimal cost, or if it is a final product it should be cost + reasonable return.

Helen Westhall
Office of Public Sector Information
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