

Licensing Forum, 21 September 2009
Environment Agency, Thames Barrier

Present:

Adrian Nuttall	Environment Agency – Chair
Miles Gabriel	Environment Agency – Speaker
Beth Brook	OPSI – Speaker
John Sheridan	OPSI – Speaker
Tony Dent	UKHO – Speaker
Matthew Pearce	OPSI – Co-ordinating
Gillian Dredge	British Geological Survey
Chris Luton	British Geological Survey
Carol Watts	Centre for Ecology and Hydrology
Stephen Keightly	Centre for Ecology and Hydrology
Mark Buckley	Companies House
William Pope	Driving Standards Agency
Will Spendlove	Environment Agency
Ian Marshall	Environment Agency
Margaret Fuller	Fire Service College
Stephen Bagley	Highways Agency
Sheila Walker	Home Office
Anita Evans	HMRC
Joanne Holley	Intellectual Property Office
Georgina Owen	Intellectual Property Office
Sushma Archarya	Land Registry
Camilla Lawrence	Met Police
Frances Law	MHRA
Michelle Gibsone	OGC
Tim King	OGC
Jo Ellis	OPSI
Marcia Jackson	OPSI
Susan MacInnes	Registers of Scotland
Laura Withey	The National Archives
Tim Padfield	The National Archives

1) **Introduction**

- Matthew Pearce explained that the discussion session scheduled for the afternoon was to be replaced with a slot on the Making Public Data Public / Data.gov.uk initiative. The slot would be delivered by John Sheridan, who forms part of the project team. This followed on from recent policy developments, and had been suggested in earlier emails. There was also an element of popular demand.

1) **Tony Dent – UK Hydrographic Office**
Taking a Copyright Infringement Through the Courts

- Tony briefly outlined the nature of the market for hydrographic charts in which the United Kingdom Hydrographic Office (UKHO) operates, particular characteristics included:
 - The globalised aspect of the market, given the nature of shipping and the remit of the UKHO to supply charts for any area the Royal Navy may need to operate.
 - The regulation in place – with vessels required to carry charts of national hydrographic agency standards.
- Tony then set out how in 2002 UKHO became concerned by an advertisement for ‘worldwide sea charts’ for personal computers in a yachting magazine.
- The fact that the advert’s price of 180 Euros was far lower than the around £4000 - £5000 market average drew particular attention to it.
- Also that, for historical reasons, the UKHO produced data covering a very large proportion of the world it was very unlikely that a company would have produced a product with such wide coverage without any UKHO data. UKHO had no record of a relationship with the company.
- UKHO downloaded a trial sample from the company NCT International, which was based in Malta.
- The sample proved suspicious enough to justify purchasing a full copy of the product – which would also serve to demonstrate that infringing material was being offered for sale.
- On closer inspection the UKHO judged that the product would infringe at least Crown copyright in the source material as an artistic work.
- However the chart was in a vector format, something not produced directly by UKHO, and it appeared NCT were not large enough to undertake the expensive digitisation necessary themselves – a search then began for a link to an official licensee’s product.
- UKHO located a match for the missing link, something which would later prove important in establishing an audit trail in legal proceedings.
- In June 2002 a ‘Cease and Desist’ letter was delivered to the company in Malta.
- NCT rebuffed the letter, claiming the material was licensed from Transmida SA of Guatemala, and that the products were not similar.
 - Transmida SA proved to be bogus.
- UKHO then took the serious decision to pursue infringement proceedings.
- UKHO began to prepare material to demonstrate the infringement in court, such as scaling up NCT’s vector product on acetate and overlaying it on the

official Admiralty charts, in order that comparisons between the two became obvious.

- Other evidence, which proved crucial, was the coincidence of errors, ten of which UKHO identified as evidence.
 - For example Liverpool is spelt correctly in the Admiralty chart, but misspelled 'Livepool' in the official licensee's product and similarly 'Livepool' in NCT's product.
- In May 2003 a court in Malta issued an injunction on NCT.
- This was followed in Jan 2004 by a hearing regarding damages.
- In the meantime the web site contact details had changed firstly to the bogus Guatemalan company Transmida, and then to a new company in Germany, Digisoft.
- The same individual appeared to be the registrant for all the companies and websites.
- The process of recruiting an expert witness was fraught and expensive.
- In total around 11 hearings were needed in the case.
- The court finally found in favour of UKHO on 23 September 2008 – 6 years after the infringement was spotted.
- The court awarded UKHO 60 thousand Euros, although the assets of NCT frozen were far less than this – and UKHO's costs were around £105k.
- Despite these costs UKHO considered it their duty to have pursued the case for several reasons, to protect their revenue, to protect official licensees, and the 'use it or lose it' nature of copyright in many jurisdictions.
- However, this was not the end, as in Malta there is an automatic right of appeal, which NCT have opted to pursue.
- The first appeal hearing is scheduled for 2010.
- UKHO are now pursuing the individual's German operations.
- German law involves a more difficult test to establish copyright – and UKHO feel the need to defend their rights in the jurisdiction in order to protect the value of their IPR.

There were a number of questions from the audience:

- Was it only UKHO material being infringed?
 - It was UKHO material in the main that was being infringed, although UKHO itself sourced data from other national authorities etc. so that data from other rights holders would also have been reproduced.
- Did UKHO attempt to argue that their source material would be protected by literary as well as artistic copyright?
 - At least in Germany advice from lawyers suggested it best to pursue infringement on basis of artistic work copyright.
- What if there was no visualisation of the source data?
 - UKHO rarely focuses on rights in survey data, as skill and expertise is required to transform into meaningful charts.

- Would future decisions on action against infringements be affected by the time & money spent on this one?
 - The current case would inform UKHO's thinking, but their overriding duty was to protect the value of their IPR and maintain the viability of official licensing schemes.
- How did UKHO deal with more minor infringements e.g. eBay?
 - An efficient scheme called VeRO was in place through eBay, enabling rights holders to have infringing items withdrawn from sale – with account cancellation for repeat offenders. UKHO also regularly monitored other listings, magazines, trade fairs etc.

2) Beth Brook – OPSI

Non-transactional licensing

- Beth relayed the key fact that as of 1 January 2010, OPSI would no longer be charging for Crown copyright it licensed directly.
 - Consequently organisations which licensed Crown copyright under a delegation of authority were not affected.
- A new licence would be brought into effect which would be more flexible than the previous.
 - The terms were up for consultation @ <http://perspectives.opsi.gov.uk>
 - The licence would not require application but would be a set of published terms and conditions
 - The licence would utilise the emerging RDFa standard and Creative Commons technical vocabulary so as to achieve machine as well as human readability.
- The move would imply some large practical considerations – closing down many thousands of licences and communications from other government departments.
- Beth outlined the several factors that had come together to inform the decision.
 - The historical role of HMSO, being founded in 1786, with Crown copyright jurisdiction formalised in letters patent in 1889 – through to the expansion as OPSI in 2005 into statutory regulation and the subsequent merger with TNA.
 - The chain of policy milestones beginning with The Future Management of Crown Copyright white paper in 1999 and continuing through most recently to the Power of Information Taskforce ('Taskforce') report and government response.
 - Recommendations in the Taskforce report suggested changes in Crown copyright licensing. The move away from charged, transactional licensing to free non-transactional licensing was a direct response to the recommendations.
 - OPSI had in preparation of this decision commissioned research into Crown copyright perceptions amongst the user/re-user community.

- Particularly interesting findings included that ‘Crown copyright’ was perceived as more liberal than ‘copyright’ alone and that it was seen as a badge of authenticity and reliability.
- The Taskforce work was a contributing factor in the appointment of Sir Tim Berners-Lee as information adviser to government on the opening up of public data.
 - International competition in the form of US and other national moves towards transparency of government information.
 - The decision would mark the latest stage of HMSO licensing – which was paper based until 2001 and the advent of the Core, now PSI, Click-Use Licence. This had been followed by the more complex, and fee based, Value Added Licence in 2004.
 - There would be an option for departments wishing to take on fee-based licensing to put forward a business case to OPSI, who would assess it in line with criteria published in draft on <http://perspectives.opsi.gov.uk>, and, if successful, issue a delegation of authority to the department who would then be brought into the IFTS scheme.
 - Delegate questions included:
 - Given the move away from application transactions – who will users turn to for advice on queries regarding coverage of licence?
 - As the free licence would be the default the onus would be on departments whose material was exempt to flag alternate arrangements on their products. Thus it was important to clarify with departments what the updated notices would be.
 - What will the response be to current licensee’s who may be concerned about the withdrawal of protection from the markets.
 - Question was first considered back in 2000 with the Cross Cutting Review of the Knowledge Economy’s split between core and value-added information, nevertheless it was accepted that the benefits outweighed the costs and that in certain circumstances businesses would have to adapt.
 - Also, to some extent market distortion could be considered in the context of an application for a delegation of authority.
 - Where will investment in developing information products come from if charges are minimised?
 - In many cases charges are ancillary to the collection/production of information products – and organisations such as trading funds were exempt from the marginal cost default.
 - We should question the assumption that it should be the public sector developing and adding value to information, where this work could be done by the private sector or third sectors and such work would be encouraged by more open data and licensing.

3) John Sheridan – OPSI Data.gov.uk / Making Public Data Public

- John explained that in terms of the technology lifecycle the web was newly mature, roughly comparable to the position of the Model T Ford in the history of the automobile.
- The new opportunity for a web of data to complement the current web of documents had recently opened many new possibilities for new types of information services and applications.
- This web of data, known as the semantic web, has been designed to be machine readable. Machine readable formats define the content of data, and services associated with it, in ways which enable automatic and intelligent processing by computers.
- It is now a strategic axiom of UK Government that PSI be published using Linked Data standards in order to form a part of the semantic web.
- The routine publishing of PSI in such a fashion by government departments is a key step in the plan backed by Sir Tim Berners-Lee to open up government data as part of the Making Public Data Public programme initiated by the Prime Minister.
- Publishing information in this format would achieve three goals, through wider, cheaper and more efficient access to & re-use of public information:
 - Providing a boost to the economy.
 - Increasing government transparency.
 - Enabling and adding impetus to public services reform.
- Achievement of these goals is particularly enabled by some of the characteristics of Linked Data:
 - Use of web standard for publishing information enables far greater like-for-like comparisons: boosting transparency and making development of new products and services more efficient – by orders of magnitude.
 - Linked Data architecture provides very significant benefits in terms of version control, up-to-dateness, and reduced duplication.
 - Linked Data enables users to establish relationships between disparate data far more quickly and easily than would otherwise be the case – as the relationships between data are formalised. This enables innovative combinations to be made with other sources and thus new intelligence obtained. An efficiency which also delivers in terms of public services reform & transparency.
 - Decentralised nature of a Linked Data web enables Departments & other public sector organisations to take ownership of their data publishing.
- Other countries, such as Sweden and Spain, were recognising the potential of PSI – in particular the Obama administration in the US had made information transparency in government one of its first policy priorities, launching data.gov as a conduit for public information.

- Data.gov.uk would function as a discovery mechanism for data published by UK government departments.
- It was exactly the Linked Data standards which would push the UK efforts beyond international competitors, as for instance the US data.gov model followed the old web of documents model – and therefore did not share the many benefits outlined above.
- Data.gov.uk is beginning to be populated; an initial example of a dataset is the London Gazette, which has been the Government’s newspaper of record since 1665.
- Increasing numbers of datasets were being added, with an initial developer launch at the end of September 2009, and departmental commitments to add to that kernel thereafter with milestones in October and December.
- This rapid development posed a challenge to traditional civil service methods, in that data was not expected to be immaculate prior to release, but that a system of quality flagging would be used to indicate the reliability of datasets.
- The technology was lightweight, aiming to require only the minimum changes necessary for Departments to make available existing datasets as Linked Data.
- The benefits extended into licensing, as licences could similarly be linked in as web addresses, and could in turn be processed and interpreted by machines in order to ascertain whether and what reproduction rights and responsibilities were attached to data.

- Questions from delegates included:
 - What benefits would the public see in using Linked Data formats if the data were available for free anyway?
 - The Linked Data format would effectively allow government information on the web to function as a giant database – and so computers programmed to make use of it more efficiently. It would help ordinary ‘consumers’ in so far as more information services would become available, but the primary audience for the format was application/service developers.
 - Where would metadata function in the system?
 - Given the nature of the Linked Data format, much metadata would be readily accessible, but a tool called VOID could be used to draw out the relationships between datasets effectively.
 - Would the system duplicate INSPIRE Directive metadata requirements?
 - No, metadata collected for INSPIRE could simply be represented among the Linked Data, and so organisations should not have to duplicate metadata collection work.
 - Who is responsible for taking forward the publishing of individual datasets?

- Publishing of data will become a core responsibility of departments, so to some extent it is at the discretion of Departments how they assign workload internally over the long run.
- Help will be available from the central project team in terms of supporting introduction and learning of the technology. Contacts were being established at different levels in Departments, typically with CIO and KIM roles but also with particular data producers/consumers, e.g. scientific officers.

4) **Miles Gabriel – Environment Agency Environment Agency Licensing Policy**

- Miles gave an outline of the licensing policy and practice in place at the Environment Agency (EA).
- Beginning with access Miles described how the EA assessed datasets on an attribute by attribute basis in order to assess whether it was fit to be released or required redaction in the case of personal information etc.
- The EA is also keen to make re-users aware of the quality of the dataset, helping to assess risk and weigh the data's significance appropriately.
- The EA particularly looks at datasets prior to release which could be used to adversely affect the environment, and such data would not then be made available.
- Building on the attribute level analysis prior to release the EA tries to implement an algorithmic approach to licensing decisions.
- Charges are thus based upon several factors – the main three factors being:
 - Whether the data is 'special' or 'non-special', for instance a high resolution GIS layer product might be classed as special, but a .pdf version non-special.
 - Whether the proposed use was internal or external.
 - Whether the re-use was commercial or non-commercial; with non-commercial licences costing around a third of commercial equivalents.
- Any charges for access would be based on a per hour fee of around £25, which would take account of the time needed to gather and make available the data.
- Given this detailed, flexible scheme the EA felt that it could deliver royalty quotes that were both fair and proportionate.
- Miles also outlined the makeup of the EA's information consumers, which could be seen as pyramid shaped, with basic access to EA information numbering in the millions, through local re-use of for particular projects e.g. flood risk assessments (many thousands of licensees), to large scale national re-use of EA data (around 35 licensees).