The National Union of Journalists (NUJ) is the voice for journalism and for journalists across the UK and Ireland. It was founded in 1907 and represents 38,000 people working at home and abroad in all sectors of the media, including staff, students and freelances – writers, reporters, editors, sub-editors, photographers, illustrators and people who work in public relations.

The NUJ’s interest
Of that membership, more than 7000 are freelance – from reporters and photographers to crossword compilers. They by default own copyright in their work and in general depend for a significant proportion of their income on equitable remuneration for re-uses of that work. Almost all of these are rights-holders, offering media that publish or broadcast their work the licence necessary for that purpose and, wherever possible, retaining the right to issue licences for second and subsequent uses, translations, and so on (although see below).

Their work may be “syndicated” by the original publisher or broadcaster to other publishers or broadcasters and they are entitled to payment in respect of reprography of their work wherever published. A significant proportion – as many as one in five – are also, or plan to be, book authors.1

The NUJ believes not only that independent, impartial journalism is necessary to the functioning of any democracy – how else will rational voters make their choices but on its basis? – but also that it is essential to the health of journalism that there is a vibrant sector of completely independent professional journalists – freelances. And for that to be possible, it must be possible to make a living as a dedicated full-time professional – not, as a commissioning editor on an otherwise respected national newspaper said to an NUJ member, to see “proper journalism” as a loss-leader promoting paying work in the corporate or public relations sector.

We are aware of, and regret, the frequent assertions that such considerations as the health of journalism and of democracy are outside the scope of the Hargreaves review and subsequent process.

We assert, however, that it is a necessary condition for the existence of a sustainable digital economy that there be professional creators – whether authors of text or images or performers. Note: in the following we frequently write “creators” to include authors and performers; and where for variety we write “author” that should not be taken to exclude performers. Broadcast, podcast and vidcast journalists may have performers’ rights as well as authors’ rights.

We shall comment only on the copyright or authors’ rights aspects of IP policy and policy-making.

Note: in the following we frequently write “creators” to include authors and performers; and where for variety we write “author” that should not be taken to exclude performers. Broadcast, podcast and vidcast journalists may have performers’ rights as well as authors’ rights.

1 Of the 1466 NUJ members currently registered at www.freelancedirectory.org 346 (24%) list book writing as a skill; and 150 of a sample of 674 members who have reported their activity to www.londonfreelance.org/linkup.php (22%) do likewise.
The questions

**1) What should the objective of IP policy be?**

The objectives of authors’ rights law are:

a) To ensure that individual authors and performers obtain fair reward for their work. This is now an important right for every citizen, given the technological possibilities for self-publication or self-broadcast, and for the “lifting” of that work for commercial purposes. It is also important to the health of society and of the economy that it be possible for some to make a professional living as authors or performers, so that sufficient numbers may dedicate their working lives to developing skills, knowledge and expertise. It is also important that those who finance large projects, such as films, can obtain their fair share of income.

b) To ensure that individual authors and performers have the right to be identified as creators of their works and to object to distorted uses contrary to their “honour or reputation”. These so-called “moral rights” are in fact necessary for economic reasons, in addition to their roots as fundamental rights of the individual: how else can an individual build a “brand” and a career except by being assured of being identified as the creator of works that are authentically theirs?

These rights are also necessary as a form of consumer protection: those who use works need an assurance that these works are what it says on the tins and that the tin is accurately labelled. (The creator can take no responsibility for the contents of the tin if the seal has been broken.)

For public policy reasons it is essential that creators – journalists more than any other – take responsibility for their work by being identified as the authors. And given that, as noted above, practically every citizen will soon have a personal interest in their authors’ rights, these rights are important to everyone. In our experience of being contacted for advice by those who are not (yet) working as journalists, it is appropriation of their work in a way they consider contrary to their honour or reputation that exercises them most. Those making a living from journalism are of course concerned about this as well as about failure to pay what is due them.

The way in which the copyright system in the UK is distinct from “authors’ rights” is illustrated by the opening of the Copyright, Designs and Patents Act 1988: “Copyright shall be a property right.”

The rights of identification and integrity are, as a consequence, weakly bolted onto the side of this.

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2 We use the phrase “authors’ rights” to refer to the full-blown system of rights of individual authors in force in all but a few European countries – droit d’auteur or Urheberrecht. We use it to include the neighbouring rights of performers as appropriate.

3 As noted, probably the majority of creators of original works, whether film performances or news reporting, are sole traders and their living depends directly on having rights (copyright) that they can license. In a technical sense, the ability to obtain a salary for such work is also founded on authors’ rights as much as the ability of Adam Smith’s pin-makers to obtain a wage is founded on rights in physical property.


5 An appalling translation of the French droit moral, with which we appear to be stuck.

6 For much more see the Creators’ Rights Manifesto at www.creatorsrights.org.uk/?section=Manifesto+for+creators

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These inalienable personal rights are, in contrast, the theoretical and practical foundation of the authors’ rights laws in force in the majority of European countries and in such significant countries as China and Japan.

UK copyright law is more effective in protecting the interests of publishers and broadcasters than of individual creators. It therefore also fails fully to fulfil its economic mission as set out above. Publishers, broadcasters and the like do have an interest in being able to finance the service they provide to creators and consumers alike, serving as intermediaries. The NUJ commends the approach in the address given by WIPO Director General Francis Gurry at Queensland University of Technology on 24 February 2011:

"...the central question facing the evolution of copyright policy is how to maintain a balance between availability of cultural works at affordable prices while assuring a dignified economic existence for creators and performers... Its purpose is... to extract some value from the cultural exchanges made possible by... technologies to return to creators and performers and the business associates engaged by them” [our emphasis]

Further, the legitimacy of authors’ rights law depends on users being assured that the actual, human creators of the works they pay for receive a fair share.7 Creators’ ability to obtain such a fair share is undermined by the unfair contracts imposed upon them by publishers and broadcasters saying, in effect: “sign this, sign away all your rights in your work or never darken our door again” As the NUJ said in its submission to the IPO consultation on copyright8:

There is no point in legislating ever so carefully for proper remuneration through extended collective licensing, or for exceptions to copyright bearing a right of remuneration, if publishers and broadcasters can then inform creators that they must sign over all such income, or never work in the industry again. Such offered contracts are commonplace and are documented for example in the regular British Photographic Council surveys.9 The NUJ insist that steps to level the playing field in negotiations between individual freelance journalists and large media corporations are urgently required.

At a minimum, an equitable share of income from new streams such as extended collective licensing must be an unwaivable right of the individual creator. Such an unwaivable right already exists in UK copyright law in the implementation10 of the EU Rental and Lending Directive11.

The uses envisaged for ECL – putting online scanned printed material held in libraries and archives, and making available of film and television archives – amount to lending, unless

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7 This is evidenced by attitude studies by the Authors’ Licensing and Collecting Society in 2005. More recently Consumer Focus carried out a survey of consumers aged 16 or older, numbering 1989, which found that 77% “expect that a fair share of the money they pay... goes to the artists who created the work” (personal communication, in press; survey conducted between 9 and 13 March).


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fees are charged or advertising included in which case they are unequivocally rental. These unfair contracts undermine the very purpose of copyright law, and therefore its legitimacy in the eyes of the public.

2) How well co-ordinated is the development of IP policy across Government? Is IP policy functioning effectively on a cross departmental basis? What changes to the machinery of government do you believe would deliver better IP policy outcomes?

In our experience, until recently policy-making has been entirely concentrated in the Intellectual Property Office within the Department for Business, Innovation and Skills (BIS) and previously the DTI. Officials in other departments have referred all questions to the IPO.

The 2006 Gowers Review of intellectual property was initiated by the Treasury. The IPO’s immediate response could be summarised as a gentle reminder to Gowers and his support team of the legal realities, in particular the constraints imposed by international agreements, that made the majority of Gowers’ recommendations prospects available only in the long term, if ever.

We say “until recently” because it appears that the present consultation process following the review of intellectual property led by Professor Ian Hargreaves, initiated by the present Prime Minister with, as we understand it, minimal consultation with the IPO, is driven by the Prime Minister’s office. This suggests IPO officials are bound to follow orders and pursue an agenda that sometimes contradicts long-term development of policy.

Members will be aware that the current process is widely referred to as “the Google Review”. This perception is not contradicted by the recommendations, which exclusively serve to make life easier for those who would organise the world’s (existing) information and sell advertisements alongside it.

There has therefore been what the British Copyright Council refers to as an “unjustified ideological shift” in favour of re-users of existing work – to the detriment of the creation of the new works that are essential to sustainable growth in the UK’s creative economy. We would be interested to hear, were it possible, the candid views of IPO officials on this shift in the locus of control and the direction of policy.

The question of how the machinery of government might be adjusted is a complex one to which we are giving further thought. We are aware that a drawback of calling for better co-ordination across Departmental responsibilities is that it is customary. Clearly, however, the concerns with which the Minister for Culture, Media and Sport is charged have been under-represented in copyright policy-making and this must be remedied.

Further, as the NUJ stated in our response to the IPO consultation on copyright: Like other interest groups, the NUJ is deeply concerned about the nature of the “evidence” provided with the consultation document. The few referenced “studies” appear to have serious flaws, or are simply mystifying...

11 92/100/EEC has been repealed and replaced by Directive 2006/115/EC, available at http://ec.europa.eu/internal_market/copyright/rental-right/rental-right_en.htm accessed 20/03/2012

12 British Copyright Council submission to the IPO consultation on copyright, p 2.

The policy of “evidence-based policymaking” – a phrase with which few could quibble as it stands – turns out to be a privatisation of impact assessment. Unless funds are made available to enable vitally interested but financially constrained parties such as the organisations representing individual creators to commission research from organisations such as the Boston Consulting Group, then we must request four years, that being the time to propose, fund and complete a doctorate thesis, given a following wind and the gods of the Economic and Social Research Council smiling upon one.

We do not believe that the economic case for exceptions has been convincingly made by government in this consultation. In particular government should not assume transfers of value from creators create economic growth, particularly where those transfers go offshore – as to US technology firms – or are merely captured in consumer surplus or lower costs for public or private sector institutions. As an industrial policy the Government, rather than picking winners, is choosing losers in the UK content sectors in the hope of a new, successful economy that exists only in theory. It should do so with great caution.

There are further very serious questions over the use and definition of “evidence” in the current process.

Its initial assessment, i.e. that if there is private copying exception there will be minimal or zero impact on copyright owners, is based not on data or evidence, but on a theoretical discussion paper by Hal Varian, the Chief Economist of Google).

Because of the assumptions underlying the consultation, i.e. an assertion that copyright is a problem, we believe the document has failed adequately to reflect the benefits of the current copyright regime. The consultation lacks an assessment of the benefits to the economy of copyright. As a consequence it often assumes [that any] change that weakens right is positive without assessing the costs of such change to copyright owners.

3) There have been numerous attempts to update the IP framework in the light of changes brought about by the digital environment. How successful have these been and what lessons can be learnt from these for policy developments?

The most effective changes have been routed through, or originated with, the European Commission. UK officials and ministers have of course played an important role in shaping these. We wonder, however, how much UK policy, and particularly UK politicians’ concerns about offending certain publishing interests, have acted to hold back the development of European policy. In particular, the Commission has been somehow deterred from seizing the central issue of the UK (and Ireland) remaining a “rights haven” within the EU – a zone in which creators’ work may be exploited with much reduced regard for their moral and economic rights – due to the failure to harmonise toward the mainstream authors’ rights model.

4) How effective is the Intellectual Property Office and what should its priorities be?

Its effectiveness has, as noted above, been largely in its contribution to EU policymaking. (We make no comment on its effectiveness in the administration of patents, trademark or designs, these being outside our field.)

5) UK IP policy sits within European and supranational agreements. How should the UK government co-ordinate its policy at an international level and what should it do to promote IP abroad to encourage economic growth? Do you have examples of good and poor practice in this area?

The UK government should move to adopt an authors’ rights perspective, joining the world mainstream and adopting the legal system that is fit for purpose in the digital age. We have no direct evidence of poor practice.

We note that in talks at the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organisation the UK was able to point to the arrangements in UK law for copying of works for educational purposes as a flexible model that could be adopted internationally – until the consultation on the Hargreaves review raised the question of the dismantling of those arrangements.

6) Protecting, and enforcement of, the IP framework often sits in very different departments to those that develop IP policy and those that have responsibility for the industries most affected. What impact does this have and how can it be improved?

Our answer, such as it is, is immanent in the above.

This submission has been prepared at very short notice. The National Union of Journalists continues to develop its response and would welcome the opportunity to give oral evidence to the All-Party Intellectual Property Group.

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30 March 2012

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The moral right of the author to be identified is asserted as required by the Copyright, Designs and Patents Act 1988 §78.

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