

Intellectual Property and London's Creative Industries

Notes from Round Table Discussion

25 March 2003

Introduction

The roundtable discussion was opened by Chair Michael Frye who outlined the purpose of the Mayor's Commission on the Creative Industries, and the work that it has already done on an industry of tremendous importance to London's economic and cultural well being. Michael described how Intellectual Property has been identified by the Commission as a fundamental 'cross-cutting issue', which impacted on all of London's CIs, and that this evening's event had been called to look at what role the Commission should play in taking the debate forward.

There were some 30-40 participants in the discussion, including commission members and representatives from the creative industries, the legal profession, arts organisations, academia and government. Michael introduced two guest speakers, who made some general comments before leading into a chaired discussion.

Guest Speakers

John Howkins, author and creative business consultant, argued that the continued success of London's creative economy will depend in large part on there being an appropriate, fair and user-friendly IP regime. John saw there being three essential ingredients to such a regime, namely:

- The law: the legal framework defining and governing IP rights
- Licensing: the system for transferring and using IP rights
- Financial Reporting: how IP is recorded and valued

For John, there were concerns that in many cases these constituents of the 'property contract' were failing to be fair, transparent and reasonable. In particular, John was concerned that IP restrictions are being extended through the actions of big business and their successful lobbying. The US practice of patenting software, genetic material and business models; the extension of the copyright period and growing incidences of individuals unwittingly infringing IP law were all testament to a growing privatisation of IP which was threatening individual creativity and commercial innovation.

In addition, John felt that it wasn't simply the law itself that needs looking at: there needs to be much greater public awareness as to the concept and issues relating to IP. The education system largely ignores it, lawyers are too expensive, while business support agencies do not cover IP in enough detail. John suggested that a champion, or 'IP Czar', was needed to raise awareness and promote discussion of the value of IP.

Jennifer Jenkins, Director for the Study of the Public Domain at Duke University, began by endorsing many of John's comments. For Jennifer, the key issue was how the regulatory system can enable creativity, and in this regard 'more law' isn't necessarily better. Advances

in telecommunications, IT and media technologies in recent years have meant that individuals can now much more easily infringe IP and partly explain why laws have got much stricter. However, any claim takes IP out of the public domain, and the cost of expanded IP restrictions may be a frustration of creativity. Before any further, potentially harmful, expansion of the regulatory system, the costs and dangers of IPR need to be examined. In particular, there is a need for the following:

- More research and better data, particularly around the relationship between IPR and innovation
- More open development of IP policy, through wider public debate and consultation
- Raise awareness and clarify existing rules for the public
- Reconcile IP with other bodies of law and rights – such as free speech

Discussion: Themes and Comments

- The manner in which the music industry has successfully agreed an industry-wide system for licensing dance music samples is encouraging, and suggests that we do not need to unpick the existing IP framework, if a solution can be found through licensing agreements.
- The length of time that copyright now applies (70 years after the death of the author) would seem to be too long, although the revenues that publishers make from their back catalogues is the means by which they can invest in new creative talent.
- Copyright is harmonised on a EU level, and IP legislation is drafted on the national and international level. The Commission should therefore be realistic as to what it can do with regards to IP regulation, and focus on more practical activities, such as education and business support around protecting and exploiting IP.
- There is currently a mismatch between IP legislation and financial reporting. This difference between what IP a company holds and what IP a company can actually report directly, and negatively, impacts on the asset value of a creative company.
- There is an urgent need for education, particularly among freelancers and small businesses, as to how they can value, defend and make the most of their IP.
- Creative individuals and enterprises tend to give away their IP far too easily and cheaply, with the result that potentially valuable IP is getting 'warehoused' by the large buyers, for instance broadcasters, and not being fully creatively and commercially exploited.
- Copyright is about protecting and rewarding an individual's creative work, and it needs to be seen as supporting creativity, rather than simply generating revenue for corporations.
- In practice, only large businesses can exercise their own copyright because litigation is so expensive. Individuals whose copyright is infringed find it much more difficult to protect their IP.

The Mayor's Commission on the Creative Industries

- The Open Source movement in software suggests new ways of creating products which are much less about the individual, or protecting a single party's IP, and more about collaboration and the free exchange of knowledge, ideas and creative products.
- Too often, IP is regarded as an esoteric legal subject instead of a means of creating wealth. We need to overcome the current disconnect between IP and creative activity – the 'language of copyright' should be more accessible and IP needs to be 're-branded' and made less intimidating to creative professionals.
- We need an IP regime that is much more tailored to the different CI sub-sectors. For instance, the copyright period may work well for print publishing, but not for software.
- The large increase in the number of freelancers and portfolio workers in recent years, particularly in the creative industries, has further stretched the IP regime. Commercial organisations find it more difficult to hold onto their rights, and come into increasing conflict with freelance professionals whose livelihoods depend on exploiting their IP as widely as possible.
- The Internet is a very effective medium for making information about IP widely and cheaply available, and more should be done by public agencies to use this.
- Don't reinvent the wheel – there is already a lot out there in terms of expertise and support around IP, and it is a case of getting the most out of these, making connections and marketing rather than inventing new structures. For instance, the patent office's website is excellent and gets a lot of use.
- As the economic development agency for one of the world's great creative industries centres, there is much that the LDA can do to influence and shape the IP debate, and to take a lead on education, public awareness and research around IP.

For more information about the Commission's activities, please get in touch with Paul Owens, paul@creativelondon.org.uk or 020 7468 2334