

14 June 2016

Response from the BIPP – Panorama & Neighbouring Rights

The British Institute of Professional Photography (BIPP) represents over 3,000 individual photographers in the UK, the majority of whom are freelance. Under UK law they are the first owners of copyright and authors' rights in their work.

These observations are presented as a text document as the consultation format does not encourage the type of response that the BIPP, as a representative body, can make. Also, there is a lack of clarity in the consultation that makes it difficult to respond although we have completed it, for the record, to the best of our ability. However, we do wish to make our views known so are responding as follows:

1. Possible Panorama exception

Concerns over the arguments

We are concerned about a Europe-wide implementation of this exception and the lack of any evidence to show otherwise would suggest that the existing provision for member states to implement is perfectly acceptable. In many ways, this appears to be just another attempt to undermine copyright.

There has been an exception to copyright in the UK for certain works of art that are publicly displayed, for some time (CDPA S62) which works very well once the 3-step test is applied, especially in assuring that no commercial use can be made. It also does not prevent copies of a work to be taken down on a breach of moral rights, such as in the recent incident concerning misuse of images of Anthony Gormley's 'Angel of the North' statue. We would suggest therefore that the success in practice is reflected by the lack of any case law regarding this exception, which also seems to work well in other member states that adopt a similar exception. Where no exception does exist within European states, licenses are issued for commercial use and infringement is dealt with accordingly.

The impact of social media platforms

The consultation seems to be concerned over a perceived issue that members of the public will be at risk of being pursued for infringement for the use of such works in private images posted on social media despite no evidence to suggest that this in fact happening.

However, it is the opinion of the BIPP that online social media platforms do not do enough to determine whether material that is uploaded to their platforms infringes copyright and do not make adequate effort to ensure that moral rights are not breached when displaying said material. Many platforms exacerbate the problem by stripping metadata, creating more 'orphan works'.

Despite these platforms benefitting from vast advertising revenues from displaying this content, creators and rights holders receive no share of any of this revenue. Additionally, terms and conditions are applied on uploading said content, that permits the platform to use and re-use the content *for any purpose in perpetuity* removing all rights from the creators and disallowing them to benefit from use of their own work in the future. This is grossly unfair and it is the opinion of the BIPP that these are the issues that should be being addressed. A panorama exception will not change this.

The BIPP would like to draw attention to the recent decision (Bildkonst Upphovsrätt i Sverige) in which the Swedish Supreme Court were happy to accept that the exception allowed the general public to take photographs and selfies in front of public artworks and post them on their Facebook page but that use in Wikimedia 's database, which had significant commercial value, was not covered by the exception.

The BIPP asks what a panorama exception would do to change the UK position, given that a permitted act already exists under CDPA S62 and there is no relevant case law.

2. Neighbouring Rights

We concur with the response made by the NUJ, that any neighbouring right for newspaper (or other) publishers, would very likely have no impact on those publishers, nor on consumers. It would have no direct financial impact on authors. It could, however, have a strong negative indirect impact on authors.

With the ability to hide behind safe harbour, the major online platforms have been allowed to dominate the landscape by re-purposing and exploiting content, which has affected more traditional publishers. Whilst we understand the pressures being faced by publishers, which are actually very similar to those being faced by creators, it is the BIPP's belief that rather than attempt a quick fix by creating a new exception, that instead the issues with online platforms should be addressed.

The issue, then, is: how can online platforms pay something toward creators' works on which their businesses are founded? Since we understand that the only real pressure for a neighbouring right is coming from newspaper publishers, we refer you to the submission by the National Union of Journalists (of the UK and Ireland).

Referring back to our earlier points regarding social media platforms and internet service companies, the BIPP appreciates Commissioner Andrus Ansip's recent acknowledgement at the Copyright Summit that "if you are organising someone else's content, you have to clear rights, and authors have to be remunerated: and we are not prepared to accept excuses."

The BIPP believes, along with numerous other organisations representing creators, that a solution is needed, as these companies base their business model on unauthorised and uncompensated use of others' creative works. We are in agreement with the Creative Rights Alliance (CRA) of whom we are members, that such a solution will be based on collective management and will feature a guarantee written into EU law of a fair share - at least 50 per cent - going to individual creators.

The BIPP agrees that any such solution will require a parallel solution to the issue of the unfair contracts that are imposed on creators, who are frequently presented with contracts on a "take-it-or-leave-it" basis. Among the publishers' goals in imposing these contracts is to collect all income from secondary uses of the work, leaving the creator with no financial recognition of the continuing value of their work after first publication.

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