

**Response to All-Party Parliamentary Intellectual  
Property Group Inquiry: Has Gowers Helped or  
Hindered Enforcement of IP Rights?**

**UK Film Council  
October 2008**

## 1. Executive Summary

- 1.1 The UK Film Council has taken a close interest in the progress of the Gowers Review. It broadly welcomed the Gowers Review both as regards the measures designed to enhance access to IP and those designed to prevent or discourage copyright theft and infringement.<sup>1</sup>
- 1.2 However, since the UK Government is in the process of consulting on many of the recommendations contained in Gowers, and many others are yet to be taken up for consideration by the European Commission, it is too early to judge the overall impact of Gowers upon the intellectual property framework.
- 1.3 However, the UK Film Council does wish to see the introduction of sanctions which act as an effective deterrent to organised commercial theft online, as well the introduction of a comprehensive package of national legislative reforms designed to curb the illegal trading of films at street markets.

## 2. About the UK Film Council

- 2.1 The UK Film Council is the Government-backed lead agency for film in the UK. Our goal is to help make the UK a global hub for film in the digital age, with the world's most imaginative, diverse and vibrant film culture, underpinned by a flourishing, competitive film industry.

## 3. Introduction

- 3.1 The UK Film Council welcomes the opportunity to make a brief response to this consultation.
- 3.2 We note the general questions posed by the All-Party Group:
  - *The relevance of the original review and report two years on;*
    - *Whether the changes made to the IP regime have been the right ones, and were these successful;*
    - *Whether there were any issues not covered by Gowers that should have been / or where change was needed but not recommended;*
    - *Whether the digital developments of the past two years have resulted in changed focus and priorities;*
    - *Whether Gowers's recommendations have improved choice and protection for consumers?*

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<sup>1</sup> <http://www.ukfilmcouncil.org.uk/search?articleid=7&x=0&y=0&keyword=Gowers>  
Ofcom's Annual Plan 2005/06 – UKFC response to Ofcom consultation

- 3.3 The UK Film Council believes that the Gowers Review remains relevant two years on. However, few recommendations have been implemented to date.
- 3.4 Many recommendations, such as those on the additional copyright exceptions, and those on the matching penalties for online and physical copyright infringement are still being consulted upon by Government. Others, such as Recommendation 13 on Orphan Works is awaiting the outcome of deliberations within the European Commission as noted on the UK Intellectual Property Office website.<sup>2</sup>
- 3.5 While Gowers's recommendations have improved protection for rights holders, it is not apparent that they have yet improved choice for consumers. Also we do not believe that it was the intention to improve protection for consumers. It is more important that consumers understanding and awareness of the value of intellectual property is enhanced than that they are "protected."
- 3.6 There needs to be an appropriate balance between protection and enhance such that is innovation is encouraged, and not chilled.
- 3.7 We do not believe that there were significant gaps in the recommendations that Gowers put forward. The recommendations that were made remain fit for purpose in a digital age and we do not see any immediate need for additional regulation. However, we do believe there will be a need for such regulation at a national level if the European Commission fails to act in certain areas, notably that of Orphan Works.

#### 4. Responses to specific questions:

*a. Is an increase required in sentence terms for online infringement;*

The UK Film Council would like to see it legally possible to increase sentence terms for organised criminals engaged in commercial online copyright infringement. Be it those who release camcorded versions online or those aggregating unauthorised film file links for profit, a strong message needs to be conveyed from the authorities on the seriousness of these IP infringements.

*b. Do markets and occasional sales need to be better regulated;*

The Government needs to introduce a comprehensive package of national legislative reforms designed to curb illegal trading of films at street markets and occasional sales as this is the single most popular source of counterfeit DVD in the UK (26% according to IPSOS research).

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<sup>2</sup> <http://www.ipo.gov.uk/policy/policy-issues/policy-issues-gowers/policy-issues-gowers-flexibility.htm>

*c. Does camcording in cinemas need to be made a criminal offence;*

Yes. We believe that legislation should be brought forward to make camcording a criminal offence. FACT report a 54 per cent year on year increase in illegal recordings sourced to the UK in 2008. The establishment of a clear offence of attempting to record a film in a cinema would sweep away the confusion that surrounds current legislation.

*d. Do ISPs need to cooperate more fully in dealing with illegal file sharing;*

Yes. We very much welcome the Memorandum of Understanding (MOU) brokered by the Government between the ISPs and rightsholders which is designed to help curb illegal online file-sharing in relation to both film and music. We also welcome proposals to provide a legislative back-stop should this MOU not prove sufficiently effective.<sup>3</sup>

*e. What can be done to address the problem of the sale of counterfeit goods via e-auction sites;*

We believe that the Federation Against Copyright Theft is doing a good job in this area and deserves widespread support for its work.

*f. Are measures intended to tackle unfair commercial practices such as copycat packaging working effectively?*

We have no comment on this area as it is not directly relevant to film and the moving image.

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<sup>3</sup> <http://www.berr.gov.uk/files/file47139.pdf>