



The PMA submission to The Gowers Review
of Intellectual Property

Whether you're a fan of Pride and Prejudice, Shaun of the Dead, The Office, the Royal Court, the National Theatre, Eastenders, Footballers Wives, Shameless, Bleak House or The Archers, PMA members are literary or theatrical agents for the vast majority of the talent involved.

Personal Managers' Association Limited

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What is the PMA ?

The PMA (Personal Managers' Association) was established more than 50 years ago and is the leading trade association of literary and theatrical agencies. Our members manage the careers not just of the stars but of almost all the UK's dramatists and screenwriters, actors and directors integral to film, television, theatre and radio, for all their work in the UK and abroad.

The PMA is involved in collective bargaining negotiations across the industry including the BBC Writers' Television and Radio Agreements (for which we are co-signatories). We have strong productive relationships with, amongst others, Equity (the Actors' Union), the Writers' Guild of Great Britain, the Society of Authors, the Directors' Guild, PACT (The Producers Alliance for Cinema and Television), the ALCS (Authors Licensing and Collecting Society) and the Theatre Manager's Association.

Our members work daily on behalf of their clients in pursuit and negotiation of contracts in the creative industries. We are at the coalface of the current opportunities and of the threats facing those who earn their livelihood from the creation of copyrightable material or performances.

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The proliferation of digital TV channels, the rapid approach of convergence and the greater choice of how and when programmes are delivered (e.g. Streaming, downloading and Video on Demand) to viewers means that the old business models that distinguish between terrestrial and digital, peak-time and off-peak broadcasts, are increasingly unsuited to the evolving broadcast industry.

Writers' and actors' fees have traditionally been predicated on keeping upfront payments to a minimum level while rewarding them through paying repeat fees and a share of residual income from ongoing exploitation. Digitisation and mobile phone technology are leading to considerable pressure from independent production companies and broadcasters to grant greater rights for lesser fees. However, any change towards larger upfront payments to take account of the loss of income would have serious impact on television budgets at a time when they are already under pressure in very competitive markets

UK TV makes a considerable contribution to the nation's creative economy and to its culture and there is an urgent need for evidence based study of how to strike the right balance between a healthy and supported creative community that is fairly rewarded and the legitimate needs of producers, broadcasters and consumers. In order to establish how creators should be rewarded for new uses, such study must include the impact on earnings in the context of shifting viewing patterns. An inadequately rewarded creative community cannot produce a valuable creative economy.

The changes in technology allow greater and fairer access for the next generation whose dream it is to become creative professionals *not* hobbyists. To encourage greater access and to nurture the talent that can contribute to the country's culture and economy without business models in place that can sustain them and reward them fairly is to grow the plant then forget to water it.

In the way that the Communications Act 2003 enshrined many of the rights and working practices between the independent production companies and the BBC, the PMA believes that there is justification for looking at 'fair dealing' and equitable rights/profit sharing with creators.

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The PMA staunchly supports the BBC as a major employer of creative talent and as a producer and commissioner of much of the country's most cutting-edge, prestigious and exportable drama and comedy.

There is a danger however that without thorough study of potential new business models the demands of public access as regards, for example, the BBC's archive, will trample too heavily on either artistic integrity or the rights of creators to be rewarded for their work and their consequent ability to produce new work.

The broadcasters and most particularly the BBC should be leaders in educating the public about how viewers and listeners benefit, creatively and commercially, from their adherence to copyright. Raising public awareness should be integral to every new venture undertaken by the broadcasters.

There will be further radical changes within the next few years and Digital Rights Management will become much more sophisticated and potentially much more useful than it is at the moment. Yet the existing business models for TV fees for actors and writers are not based on measuring how many people are watching and there are serious cultural and educational benefits to many programmes which attract fewer viewers or which are allowed to build an audience gradually, perhaps as a prelude to lucrative overseas sales.

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How IP is licensed and exchanged

a) How easy is it to negotiate licenses to use others' IP for commercial or non-profit purposes ?

The negotiation of licenses has become exponentially more complex as means of dissemination have increased. For example, across both TV and Film there is discussion as to whether Video on Demand is a broadcasting right or the equivalent of a DVD sale (historically rewarded completely differently); how does simultaneous internet streaming impact terrestrial repeat patterns; what are the potential revenues from use of copyright material on mobiles ? All interested parties want to minimize piracy, which is rife and damages all parties, but it is far too early to be able to arrive at long-term rights solutions for untested markets.

It is the PMA view that the ease of negotiability should be commensurate with the rights involved. Just as the creators and stars of premium programming (e.g. Fawlty Towers) should be entitled to negotiate a market price for its use, so the creators of Till Death Us Do Part should be entitled to refuse its use in a BNP promotion. To value artistic excellence must also mean to value the creators' right to decide what is an appropriate context for their work.

Use of clips on mobile telephones is fraught with difficulty because the rights sought are often unreasonably wide given the newness of the market or, for example, the insufficiency of information about which advertisers might be associated with particular clips.

The PMA is keen to collaborate closely with all parties to try and ensure commercially and artistically equitable ways forward.

What, for example, is the effect on the income of writers and artists if it becomes standard practice for Coronation Street to become available by download?

The PMA believes that the successful creation of new business models must be evidence based and we would be extremely willing to assist and would welcome any such research that the government or its appointees might undertake.

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Copyright – licensing of public performances

a) Have you encountered problems with the system of licensing and paying royalties to collecting societies for public performance of music and/or sound recordings ?

The Equity Collecting Society contracts direct with record companies for Artists' contributions to the recordings of shows. They also take an upper commission of 18% and payment is made only 6-monthly. There is no way in which agents can track or trace monies due to their clients. The Equity Collecting Society and other collecting societies give no direct information or payments to the agent for, for example, West End Recordings. The collecting societies therefore sit on large sums gaining interest. It is also common for Equity and/or collecting societies to make deals with employers, without any consultation with individual artists or their representative bodies.

b) Could the system be clarified or simplified and if so how do you see this working ?

Yes. Performers' rights must be based on their original contracts. There needs to be far greater dissemination of information by collecting societies in order that payments can be verified as accurate (often they are not). The consequence of Equity Collecting Society rules is that Artists breach their contracts with agents. The Right of Assignment must be given to the agent to collect information on artists' behalf.

Current term of protection on sound recordings and performers' rights

If the collection society problems could be addressed, the PMA would be greatly in favour of extending the current term of protection.

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Copyright exceptions –fair use/fair dealing

The PMA believes there may well be grounds for widening the current fair use exceptions, particularly for private and educational purposes. How such use should be compensated must be part of an evidence based study of how it impacts current revenue to creators. DRM may contribute to the answer. The importance of matching fair use with copyright awareness cannot be overstated.

The BBC's Creative Archive pilot is an example of the complexity of the issues. The pilot uses relatively rights 'poor' raw material and invites users to 'Rip It' 'Mix It' 'Use It'. The BBC collaborated closely with the PMA and other significant organizations representing rights holders, resulting in vastly more copyright information on the site than was originally planned by the BBC. Whether the site goes far enough in paving the way for public understanding of rights rich versus rights poor or the differences between one lot of archive material and another, is moot.

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Conclusion

The PMA, on behalf of its members and their clients:

- believes that copyright education should be a priority, beginning with the school curriculum.
- wishes to work positively in examining a revised concept of fair use.
- wants to protect the future health of the creative industries by ensuring that quality is maintained.
- wants to ensure that income levels from new methods of programme dissemination are fair and reasonable.
- is committed to working towards new business models based on thorough information including the interrelated effect of new means of programme dissemination.
- believes that all parties – creative, commercial, educational and consumer - benefit from the nurturing and sustenance of a strong creative community.

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