



All-Party Parliamentary Group for Intellectual Property
Notes from the meeting between the APPG for IP and Intellectual Property Office (IPO) to discuss
the Government's proposals for text and data mining
Tuesday 25 October, 5pm-6pm
Room M, Portcullis House (Physical meeting)

Meeting chair:

- Rt Hon Sir John Whittingdale OBE MP, Chair of the APPG for IP

Guest speakers:

- Adam Williams, Interim CEO, Intellectual Property Office
- Chris Mills, Director of Rights Policy and Enforcement, Intellectual Property Office
- Margaret Haig, Head of Copyright Operations, Intellectual Property Office

Parliamentary attendees

- Rt Hon Sir John Whittingdale OBE MP (Con, Maldon)
- Ruth Jones MP (Lab, Newport West)
- Lord Clement-Jones (Lib Dem)
- Earl of Devon (CB)
- Giles Watling MP (Con, Clacton), Chair, Writers APPG
- Parliamentary Assistant to Jeff Smith MP (Lab, Manchester Withington), Shadow Minister for Sport, Tourism, Heritage and Music

Attendees:

- Dan Guthrie, Director General, Alliance for Intellectual Property
- Francesca Thorogood, Policy and Public Affairs Executive, Alliance for Intellectual Property
- Adam Thomas, Director, Luther Pendragon, Secretariat for the APPG
- Ben McCarthy, Consultant, Luther Pendragon, Secretariat for the APPG
- 25 representatives from the creative industries attended virtually.

Notes

TDM Exception proposals

Opening remarks by the IPO representatives

- The IPO had briefed the (now previous) IP Minister Dean Russell MP, and IP was an issue he took an interest in and has professional experience of. Included in this briefing was a discussion on the TDM proposals.
- The Government had originally proposed a new exception to encourage AI innovation in the UK.
- The IPO stated that the broadest option (option 4) had been chosen to create the best opportunities for AI to flourish in the UK, but given the latest feedback from the creative industries, it was now reconsidering this.

Communication with stakeholders

- The IPO has met with stakeholders to explore the creative industries' concerns and encouraged them to provide further evidence on how the proposals would affect their sectors.
- The IPO is currently working through the responses to that further engagement to understand where the balance best lies in developing an updated policy.
- In response to the concerns of the creative industries, the (now previous) Minister had asked the IPO to explore further safeguards for rights holders, to explore ways of constraining the exception and to consider streamlining the licensing process so that there are fewer barriers to securing a licence.
- It was also acknowledged that the (now previous) Minister had [confirmed to the APPG Chair](#) on the floor of the House that he would be meeting with stakeholders to discuss the options further.

Evidence

- The IPO acknowledged that what had been proposed was an unpopular policy, however they had felt that the creative industries had not provided sufficient data and evidence of the harm that would be caused if the policy was implemented.
- The IPO explained they could have received more evidence for the argument against the proposals in the consultation. Whilst the philosophical objection was clear, they felt that there was a lack of empirical evidence. In comparison, the AI arguments for the exception provided empirical evidence of the benefits to innovation.
- The IPO also said that it had considered international evidence, particularly the experience of Singapore which had adopted similar policies to those originally proposed and that they had not identified evidence that it had led to a detrimental outcome for IP rightsholders.

Inclusion of Government data

- In terms of opening up government data for TDM purposes, the IPO set out that this work was being led by the DCMS through the Data Strategy and that there were initiatives to open more government data for research purposes.
- Enabling innovation is a key element of the IPO's duties and as part of its own transformation programme, the IPO was looking at how it could make its own data more widely available.

Compliance with the Berne Convention's Three-Step Test

- On the issue of whether the proposals complied with the [Berne Convention's Three-Step Test](#), the IPO said it was considering the legal advice that had been provided by stakeholders and had commissioned its own legal opinion.
- They confirmed that compliance with the Three-Step Test was a key test for whether the proposals worked and that once more detailed proposals for implementation had been drawn up, there would be further legal testing.
- The IPO also confirmed that BEIS and DCMS were working closely together on the proposals and that the Departments were getting the most thorough legal advice possible to ensure that the preferred option would be compliant with the Three-Step Test.

Enforcement considerations

- The IPO also discussed the need to fully consider enforcement issues and the need for this to be done properly as there were many scenarios – where there are no paywalls or firewalls – where data was being mined illegally already.
- The IPO suggested that its new proposal would consider these enforcement issues. They also confirmed that they had met with the News Media Association and Newspaper Licensing Authority to discuss this in the context of the impact on newspapers and media outlets.

International transfers of data

- The IPO stated there has been no full economic study into the potential impact of the transfer of data to the UK and whether this might be negatively impacted by the proposals. The IPO said that Ministers were keen to get the policy right before any legislation is introduced.

Implementation and development of updated proposals

- The IPO said that it was now working up a new proposal including a plan for how it would be implemented. It would require primary legislation, but at present there is no specific legislation in the pipeline and therefore the IPO felt that it had the necessary time to get the proposals right before moving ahead to implementation.
- The IPO confirmed that the proposals were part of the Government's growth agenda but underscored again that given there was no current legislation that could be used as a vehicle for implementation, they had the necessary time to get the policy right.

Retained EU Law (REUL) Bill

The IPO began the discussion by making a number of points about the Bill and what it was seeking to do:

- There is a considerable amount of IP law which would be impacted by REUL, c. 44 piece of legislation.
- The IPO has started the process of identifying the IP laws affected, considering what impact the Bill will have and what court precedents exist that might impact the legislation.
- Over the next month, the IPO said that it would be working with external legal advisers to collate all of this information, with the expectation that Ministers will ask for advice in the New Year about how to proceed.
- They then expected the first secondary legislation to be laid from May 2023.
- They confirmed that their initial scoping exercises had shown that much of the IP legislation in force was secondary legislation amending UK primary legislation. Therefore, the IP law would still be retained even if the secondary legislation was abolished by the REUL Bill. This would speed up the task of review.
- BEIS have told the IPO that stability in the IP framework is the priority and that certainty for businesses and rightsholders must be maintained.

Scope

- In terms of scope the IPO acknowledged that there may be areas that could be reformed through the REUL Bill process, but again underscored that their bigger priority was to ensure nothing was missed in the process that was then accidentally abolished by the Bill's 2023 deadline.

Communications with stakeholders

- The IPO will shortly begin a process of fortnightly briefing sessions for stakeholders as a way of helping to identify all the affected pieces of legislation.

Planned action

- In order to meet the Government's deadline, certain issues would be deprioritised including the implementation of the [Beijing Treaty on Audiovisual Performances](#) and a delay to proceeding with the work on the [Designs Framework](#).
- The IPO also confirmed the recent statements made by the then Business Secretary Jacob Rees-Mogg that the Bill would not affect legislation that pertained to the UK's 'international obligations'. The IPO confirmed that this would include commitments made in Free Trade Agreements (subsequently Ministers also confirmed that this includes the Northern Ireland Protocol and the UK-EU TCA, with Dean Russell MP stating in Parliament "*some retained EU law in the scope of the sunset is required to continue to operate our international obligations, including the trade and co-operation agreement, the withdrawal agreement and the Northern Ireland protocol.*" Click [here](#) for full Hansard reference)
- The IPO is currently creating a grid of all the affected IP laws. They acknowledged that the powers in the Bill for Ministers are wide ranging, allowing Ministers considerable scope to change, amend and alter retained EU laws.

Impact on exhaustion regime

- The IPO confirmed that the UK's Exhaustion Regime is solely in secondary legislation and so would have to be addressed through the REUL Bill process next summer.
- Former IP Minister George Freeman MP had kept the status quo believing stability was important.
- The IPO said that discussion over the Exhaustion was a priority in their discussions with the new Minister.
- The IPO confirmed that the REUL Bill process offered a number of options:
 - Maintain the status quo by using the Bill's delay clauses, which allows certain laws to be retained beyond the end of 2023 and until 2026;
 - Re-legislate, but decide to maintain the same system; or
 - Change to an alternative exhaustion regime.
- Despite the discussion on international obligations related to TDM, the IPO felt that trade negotiations were not a route to try and secure the status quo for exhaustion, as FTAs typically gave the signatory countries total flexibility on managing their exhaustion regimes.

Cross-departmental working

- The IPO acknowledged that there would need to be considerable cross departmental working in relation to REUL– recognising that legislation such as the E-Commerce Directive, cut across the work of multiple departments.
- The IPO said that the Brexit Opportunities Unit was managing this process and if stakeholders did have examples of cross cutting legislation that they wanted to raise, they should contact the relevant departments and the Brexit Opps Unit.
- They stated that the critical issue was not to miss legislation that could then accidentally be abolished at the end of 2023.

IPO digital transformation consultation

- The IPO pointed attendees to its forthcoming digital transformation consultation, which it expects to launch in November 2022.
- This would look at potential legislative changes required for operational functions, to streamline processes and to make changes to its fee structure.

The meeting concluded at 6pm.