Our copyright licensing system is not fit for purpose

So says Government adviser Ian Hargreaves, who has radical ideas for tying down property in a service economy. Ann-Marie Corvin untangles a complex debate

In a country where manufacturing is becoming less and less common, intellectual property is apparently king – so how can Britain’s creative and technology firms protect and exploit their IP assets? An RTS Thames Valley Centre event sought to ferret out the implications of the Hargreaves Review – a Government initiative to overhaul copyright legislation to make Britain a more hospitable place for innovation in the digital age.

The “radical” and “controversial” review will create winners and losers: while new-media companies have generally embraced Hargreaves’ proposals, Britain’s commercial archive libraries could face an uncertain future.

“Beyond the Hargreaves Review – the future of intellectual property” was chaired by Jane Devlin, an independent IP advisor. She was joined by: entrepreneur and technologist MC Patel; patents lawyer Lucy Kilshaw; and Ofcom’s director of spectrum policy, Gregory Bensberg.

Devlin set the tone by plucking out some key stats from the review, which demonstrate the UK’s growing economic reliance on the currency of ideas: in 2008 UK firms invested £137bn in intangible, or knowledge, assets, compared with £104bn on fixed assets.

Even so, Kilshaw pointed out that many innovative companies – especially smaller ones – find their progress blocked by patent thickets and archaic copyright laws on orphan works. To deal with the latter problem, Hargreaves has proposed an automated Digital Copyright Exchange.

This exchange (which is currently being scoped for feasibility by former Ofcom deputy chair Richard Hooper) would allow organisations, such as the BBC and British Film Institute, to show archive material that previously they would have been unable to use due to uncertainty over its ownership.

Hargreaves suggests the exchange should be run by an independent commercial entity rather than a government agency. As a “one-stop shop”, it would enable rights owners large and small to register both their works and their terms for licensing them. It would also offer an automated process for others to buy such licences.

“There are several questions around this proposal,” noted Kilshaw. “Would you have to put your works on there? Would there be major disadvantages if you chose not to? It’s been mooted – if this idea takes off – that if your work is not on the exchange and you try to sue for breach of copyright you will get a reduced measure of damages.”

Kilshaw predicted that if the exchange goes ahead (and there is huge Government momentum behind it doing so), then there would be “a commercial pressure” placed on IP owners to join.

Her fellow panelists, however, feared the exchange could prove to be nothing more than a white elephant – either because competitors get together to create a cartel-like platform, or because no one wants to join.

MC Patel, the chief executive of audio-visual technology company Emotion Systems, thought the latter. “The exchange could be a very small squib,” he said. “I don’t know who is going to step up to the plate and say they are interested – the majority of industry will be worried about competitiveness.”

There was a measure of agreement on the panel that companies traditionally charged with protecting copyright, such as the PRS, should be encouraged to share their expertise. And also that Cambridge-based ARM Holdings offers suitable inspiration for the project.

ARM, the UK’s latest silicon darling, supplies chips to the likes of Microsoft and Apple, yet it is not a chip manufacturer: it makes its living by creating, buying and licensing IP and then charging a royalty on every chip produced by
its suppliers. One of ARM’s partner managers, Peter Mulley, was present in the audience.

Another significant Hargreaves proposal is that the UK should take advantage of EU-sanctioned exceptions to copyright to relax the rules on home copying and recording (which, under Hargreaves’ plans, would finally become legal) and on the licensing of archived material.

Hargreaves argues that current laws make it impossible for those carrying out medical or scientific research to access large archives of papers or to use automated readers to search for the terms they are interested in.

But help for researchers could come at the expense of other interests, particularly the UK’s small but thriving commercial archive sector.

Speaking from the audience, Sue Malden, chair of archive association Focal, warned that the proposals would “totally destroy the archive industry.”

She added: “If rights owners are lucky, they will be able to license footage once and then have no control over the secondary licensing of it. Large archives will leave the country and many smaller companies will go to the wall.”

Malden argued that, faced with lower revenues, her peers would be less inclined to invest in the digitising, preserving and metadata tagging of analogue archives.

“This will limit access to educational and heritage material, as well as having a knock-on effect on the post-production and technology suppliers that currently provide these services,” she said.

In contrast, technology and software companies have generally welcomed the Hargreaves Review, said Patel. But many of them fear that Hargreaves has failed to address the pace of change.

Ultimately, technology companies would be wiser to adopt a pragmatic, market-driven approach, suggested Patel: “For us, it’s not like exploiting a novel – the chances are, if you haven’t exploited your IP already, then there’s nothing to protect anymore. If you really want to exploit your value quickly, then take whatever path is practical.”

He pointed out that registered patents often do not provide their owners with a licence to print money: “There are 2,000 to 3,000 LCD-related patents – but I don’t know anyone who is currently making money out of them.”

Patel worried that current strategies for protecting intellectual assets are defensive rather than proactive: “The question we should be asking ourselves is not ‘how do I protect it?’ but ‘how do I get value out of it in a manner that recognises that people will copy it?’

This approach, he argued, is crucial in a global market that might or might not recognise EU sanctions and digital exchanges. “If you want to build a business with a billion people, then you have to come up with a business model that suits them. There are different rules. We have to look and be innovative and assess how we are going to do business in those countries,” Patel said.

To conclude, the panellists were asked to give their thoughts on whether Hargreaves’ proposals (first published last May and now nearing the end of their consultation period) would pass into law.

For her part, Devlin said that she would be “amazed” if 100% of his proposals went through.

Kilshaw was more optimistic, particularly around the exceptions to copyright: “There has been some big momentum behind this – I’ve been impressed by the speed with which it is all happening and there seems to be a big commitment from the Government to see it through.”

Beyond the Hargreaves Review – the future of intellectual property was an RTS Thames Valley Centre event held on 22 February.

How to protect your IP

- Keep schtum: Protection starts with confidentiality, said expert patents lawyer Lucy Kilshaw of CMS Cameron McKenna LLP: “Don’t blow it on day one by losing that – if you do that, you might severely prejudice your rights to apply for patents and registered designs.” Technologist and innovator MC Patel added: “If you can keep quiet about what’s clever about your product and still do business, then go for it.”

- Good Record Keeping: “This is essential for non-registered rights,” said Kilshaw. Also, make note of who is going to own it and what they will do with it.

- Patents help you against litigation: “It’s good to have patents – although you end up doing it as a defensive measure rather than an offensive measure,” said Patel. A bigger company might say to us: “You are violating one of our patents.” To which we could turn around and say: “We have [a process] that you’ve violated, too – and we have the patent to prove it.”