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15 October 2002

Mr Simon Burns
MP for West Chelmsford
House Of Commons
London
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Dear Mr. Burns,

Re: Implementation of the European Copyright Directive

As a constituent, I am writing to you to request your urgent attention to the matter of the UK's implementation of the European Copyright Directive (European Community Directive 2001/29/EC).

As you may be aware, the European Copyright Directive (which I will hereafter refer to as the 'EUCD') aims to harmonise across the EC certain rights related to copyright, and update copyright laws to recognise the changes which digital technology is bringing to society. These aims themselves are reasonable but the particular embodiment of these changes within the EUCD is short-sighted, ill-conceived, imbalanced and creates a significant number of potentially serious restrictions on normal everyday life which will affect all your constituents (and indeed our society at large) adversely.

Unfortunately these issues did not come to my attention in time for me to express my views to my MEP prior to the EUCD being enacted, so it is now vital that you, and other representatives, take decisive action to ensure that the UK's implementation of the Directive is conducted in a way which does not place onerous and unfair restrictions on citizens and businesses. The Patent Office is currently consulting on this matter, with an uncomfortably close deadline of 31 October for responses, so I hope that you will appreciate the urgency of this. Their intention is to implement the changes by means of a *negative* Statutory Instrument, prior to 22 December of this year.

Without detailed explanations beyond the scope of this letter, it is difficult to fully express the genuinely horrific implications of the Directive. All I can ask is that you take this issue extremely seriously, because although the general public are not, by and large, aware of it, the effects on them are onerous if action is not taken and this unprecedented assault on the balance of law is allowed to pass. I strongly encourage you to carefully review the Articles in the Directive, especially Article 6, but here I will attempt as best I can to summarise the key issues and, most importantly, explain how some seemingly simple clauses very easily translate into major restrictions of rights.

The basic premises of the EUCD can be summarised as follows:

- Content production industries (music, film, TV, writing etc.) play an increasingly important role in our modern society. This is almost universally acknowledged. The EUCD in its current form came about because certain large content producers (with equally large resources for representing their interests to MEPs and relevant bodies) feel that current copyright laws do not sufficiently protect their interests.
- Digital information and media are playing an increasing role in society. Consumers are relying more and more on digital media, from CDs and DVDs to portable digital music devices, electronic books and digital television. As an electronic engineer by qualification, and currently a professional working in the IT/Internet sector, I believe I am well-placed to appreciate the huge benefits which digital technology and media can bring to everyone. However, this same technology also offers content producers a unique opportunity to control content in ways which have no analogy (or which would be offensive to our sensibilities) in the analogue world. The EUCD, if implemented in UK law, opens the door for this.

Unfortunately, the EUCD is a highly imbalanced Directive, disproportionately favourable towards content producers, which indirectly gives said producers very much a 'carte blanche' to create their own copyright pseudo-laws which supercede the rights currently assigned by law (primarily within the Copyright, Designs and Patents Act 1988, as amended) and overrule many established laws. These problems occur mainly as a result of Article 6 which, summarily:

- allows a content producer to use technological means to unilaterally enforce any terms they wish in relation to accessing that content, without regard to how reasonable or not they are, or whether they are consistent with the rights provided under copyright or other laws and
- prevents consumers taking (or even *describe* to someone else how to take – contravening free speech rights) any measure to defeat the technological protection referenced above.

Content producers, therefore, can act as "judge, jury and executioner" with little or no recourse for consumers. Therefore, the EUCD gives content producers the right to destroy virtually all expected consumer rights, including rights of 'first sale' and commonly-recognised fair use. Furthermore, it gives the green light for content producers to create artificial monopolies and unfair terms of use, and then enforce them with the law. There is an excellent critique which covers problems in a number of areas available on the Internet at <http://www.eurorights.org/eudmca/WhyTheEUCDIsBad.html>, of which I have attached a copy with the permission of the author, but in summary further problems include:

- Fair rights to backup/archive digital media
- Fair rights to resell purchased content
- The ability of libraries/archives to maintain public resources
- Creation of artificial monopolies (in practice, content producers restrict content in such a way that it is only possible to reproduce it using a specific piece of software or hardware, which will consequently create even greater potential for monopolies than already exists)
- Accessibility (for disabled people, for example - the EUCD flies in the face of improving disability discrimination provisions)

The UK Patent Office has published a proposal containing amendments to the 1988 Copyright, Designs and Patents Act (as amended). Sadly, this singularly fails to even implement the EUCD in the most reasonable way given the limitations set out in the EUCD, and in any case would result in wholly unfair and unsuitable legislation. In particular, the Patent Office suggests that where technological protection measures (e.g. DVD region locks) are employed which prevent acts otherwise permitted under law, it is appropriate for an end user to have to undergo the ludicrously bureaucratic and entirely unnecessary route of having to make a submission to the Secretary of State simply to exercise their lawful rights! This would represent a sickening exercise in red tape (something, I am sure you will agree, symptomatic of the current Government) whilst simultaneously denying end-users (typically consumers) their rights for months on end if not indefinitely.

STAND (<http://www.stand.org.uk/>) summarised the UK Patent Office's proposals in colloquial terms as follows:

1. *“Media corporations can put any restriction they like on how you access their intellectual property.*
2. *If you break that restriction, they can sue you. If you tell anyone else how to break it, you can go to jail.*
3. *If you want to break it because of the rights that belong to you under copyright law, you should write to the Secretary of State personally and ask permission.*
4. *Once she's said yes, you may freely use that ink marker to fix that crippled CD so that they can finally play on your home computer.*
5. *But don't tell anyone else how you did it (see 3. above, re: jail).”*

My basic belief is that in all matters of law, the duty to society stands above all, and if this is upheld, the EUCD should categorically not be implemented in UK law unless and until it has undergone substantial modification to restore a sense of balance. I therefore ask you to oppose by all means possible the Statutory Instrument which will attempt to implement it.

Unfortunately, failure to implement the EUCD by 22 December of this year would create liabilities as part of the UK's membership of the European Community under the Treaty of Rome. As above, I feel that the needs of the citizens of this country should stand foremost, but in the event that a statutory instrument is to be implemented, I

would ask your assistance in ensuring that the voice of common sense is heard, and that consumers and other users of copyright-protected material are afforded reasonable rights, and not made subject to civil or even criminal penalties for acts conducted merely to grant them lawful, legitimate and fair access to copyright-protected material. Some of the crucial safeguards are outlined in section 4 of my public submission to the UK Patent Office on this matter, of which I have attached a copy.

In summary, the EUCD, and the UK Patent Office's proposed implementation of it, is severely offensive to all sensibilities other than those of a very small number of large content producers. Activities which would be wholly unthinkable and unworkable (for example, a book having a statement on the first page, enforceable by law, which says "You may only read this book once. You may not lend it to your friends. You may not resell it.") will be legitimised in the digital world. The threat of a "digital dark age" is real. Meanwhile, whilst giving content producers extremely strong rights, the Patent Office's proposed safeguards for end-users are derisively weak and derogatory by comparison.

I sincerely hope you will appreciate the severity and urgency of this situation, and your assistance in ensuring that your constituents (as well as all citizens of this country) are not made subject to such unfair conditions is appreciated.

Such is the gravity of this situation, and the difficulty in communicating it adequately in a letter, I would also be very pleased to arrange a personal meeting with you to discuss these matters, should you feel you are able to find a convenient time to do so.

Yours sincerely,

Tim Jackson BEng (Hons.)