

# Promoting innovation and rewarding creativity

A balanced intellectual property  
framework for the digital age

Regulation is always a balancing act between the competing interests of producers and consumers. Britain's great success in financial services, for example, is in part due to defining a system that offers as much freedom as possible to market players, while providing sufficient protection for consumers. Ensuring we have a similarly balanced system for the use of information is equally important in a knowledge economy.

It concerns a variety of issues including how people consume music and film, how libraries operate, how pharmaceutical or IT companies behave and how corporations can be stopped from restricting access to material they are not using but which might be used by others for the wider good of society.

Because of the complexity of the law in this area, it helps to start from first principles, an exercise the RSA began last year with the creation of an international commission of lawyers, economists and academics and the drafting, by them, of the *Adelphi Charter on Intellectual Property, Creativity and Innovation*.

The RSA approaches this issue (as it does with all of its enquiries) with an open mind and a commitment to hard evidence taking priority over vested interests.

# Promoting innovation and rewarding creativity

A balanced intellectual property  
framework for the digital age

## Contents

- 4 The RSA Adelphi Charter
- 6 Promoting innovation and rewarding creativity *Matthew Taylor*
- 8 For a public interest intellectual property system *Lynne Brindley*
- 10 An IP Charter *James Boyle*
- 12 The need for a centre for intellectual property *Derek Wyatt*
- 14 You've already paid for your information once.  
You should not have to pay for it again *Charles Arthur*
- 16 Delivering value through maintained data *Vanessa Lawrence*
- 18 Copyright and the digital age *Rufus Pollock*

## The RSA Adelphi Charter on creativity, innovation and intellectual property

Humanity's capacity to generate new ideas and knowledge is its greatest asset. It is the source of art, science, innovation and economic development. Without it, individuals and societies stagnate.

This creative imagination requires access to the ideas, learning and culture of others, past and present.

Human rights call on us to ensure that everyone can create, access, use and share information and knowledge, enabling individuals, communities and societies to achieve their full potential.

Creativity and investment should be recognised and rewarded. The purpose of intellectual property law (such as copyright and patents) should be, now as it was in the past, to ensure both the sharing of knowledge and the rewarding of innovation.

The expansion in the law's breadth, scope and term over the last 30 years has resulted in an intellectual property regime which is radically out of line with modern technological, economic and social trends. This threatens the chain of creativity and innovation on which we and future generations depend.

We call upon governments and the international community to adopt these principles:

- 1 Laws regulating intellectual property must serve as means of achieving creative, social and economic ends and not as ends in themselves.
- 2 These laws and regulations must serve, and never overturn, the basic human rights to health, education, employment and cultural life.

- 3 The public interest requires a balance between the public domain and private rights. It also requires a balance between the free competition that is essential for economic vitality and the monopoly rights granted by intellectual property laws.
  - 4 Intellectual property protection must not be extended to abstract ideas, facts or data.
  - 5 Patents must not be extended over mathematical models, scientific theories, computer code, methods for teaching, business processes, methods of medical diagnosis, therapy or surgery.
  - 6 Copyright and patents must be limited in time and their terms must not extend beyond what is proportionate and necessary.
  - 7 Government must facilitate a wide range of policies to stimulate access and innovation, including non-proprietary models such as open source software licensing and open access to scientific literature.
  - 8 Intellectual property laws must take account of developing countries' social and economic circumstances.
- In making decisions about intellectual property law, governments should adhere to these rules:
- There must be an automatic presumption against creating new areas of intellectual property protection, extending existing privileges or extending the duration of rights.
  - The burden of proof in such cases must lie on the advocates of change.
  - Change must be allowed only if a rigorous analysis clearly demonstrates that it will promote people's basic rights and economic well-being.
  - Throughout, there should be wide public consultation and a comprehensive, objective and transparent assessment of public benefits and detriments.

## Promoting innovation and rewarding creativity

A balanced intellectual property framework for the digital age

Matthew Taylor, Chief Executive of the RSA



Regulation is always a balancing act between the competing interests of producers and consumers. Britain's great success in financial services, for example, is in part due to defining a system that offers as much freedom as possible to market players, while providing sufficient protection for consumers. Ensuring we have a similarly balanced system for the use of information is equally important in a knowledge economy.

It concerns a variety of issues including how people consume music and film, how libraries operate, how pharmaceutical or copyright companies behave and how corporations can be stopped from restricting access to material they are not using but which might be used by others for the wider good of society.

Because of the complexity of the law in this area, it helps to start from first principles, an exercise the RSA began last year with the creation of an international commission of lawyers, economists and academics and the drafting, by them, of the *Adelphi Charter on Intellectual Property, Creativity and Innovation*.

The RSA approaches this issue (as it does with all of its enquiries) with an open mind and a commitment to hard evidence taking priority over vested interests, kneejerk reactions and received wisdoms. The *Adelphi Charter* embodied the RSA's history as a crucible of creative and innovative ideas, and an

understanding that knowledge is a good in itself, irrespective of the use to which it is put.

First, and as we explained to the Government-appointed Gowers review, the purpose of IP law should be, now as it was in the past, to ensure both the sharing of knowledge and the rewarding of innovation. In this balance, lies the public interest. But the expansion in the laws' scope and term over the last 30 years has resulted in a regime that is out of line with modern technological, economic and social trends. The core of our argument is that any further changes to the law should be subjected to a rigorous public interest test – will they promote creativity and innovation or will they just extend the tolerated monopolies that are at the heart of the IP system?

In making recommendations to Gowers, the RSA focused on a number of issues, all reflected in this pamphlet. As a forum for debate, we are proud to have contributions from those who believe IP law is now working against the public interest, as well as from those who believe such laws are the foundations on which the knowledge economy is built and need to be defended and extended where possible.

The one thing most stakeholders in this debate can agree on is that Gowers is not the end of the matter. It provides a framework for future policy discussion rather than a clear set of rules the Government is likely or able to implement tomorrow. The record companies will still lobby hard for the music copyright term to be extended. The pharmaceutical companies will still defend their right to turn a substantial profit after years of research and development. And the RSA will continue to bring a sceptical mind to the table and to provide a forum for those debates to be played out.

## For a public interest intellectual property system

Lynne Brindley, Chief Executive of the British Library



As YouTube, MySpace and social networking sites mature and cross-fertilise, it seems inevitable that the already creaking framework of IP law will come under greater strain. If it ever really was the case, affordable technology strips bare an IP structure based around such formal concepts as ‘author,’ ‘performer’ or ‘composer’. Everyone is a creator now, and this creates a unique set of problems for our IP system, which has long sought to strike an appropriate balance between the rights of creators to be recognised and rewarded for their work, and the public interest in ensuring access to information and ideas.

The British Library’s recently-launched *IP Manifesto*, offers a novel perspective. We believe IP law as it currently stands needs to be updated to put not only our economy, but our education system, society and culture on a sure footing for the digital age – a truly public interest intellectual property system.

We believe clarification of the legislative framework is required to ensure limitations and exceptions do not fall by the wayside. A concerning example of the erosion to limitations and exceptions has resulted from the migration of research publications from print to digital. Contract, rather than copyright law is what governs access to information in the digital environment. Of thirty licences recently offered to the Library, twenty-eight were found to be more restrictive than current copyright law permits.

DRM (Digital Rights Management) technologies have similarly restrictive potential. DRMs are given close to total legal protection within the UK, with no practical processes allowing circumvention in the interests of disabled access, long-term preservation, or where the DRM prevents ‘fair dealing’ use. The recommendations of The Gowers Review go some way to addressing these points, but do not practically address the issue that copyright, and the limitations and exceptions designed to foster education, creativity and equality in our society are being allowed to be eroded through licensing schemes.

The World Intellectual Property Organisation (WIPO) is clear that limitations and exceptions that have traditionally applied in the analogue environment are equally relevant to its digital successor. However, UK law is silent on the matter, allowing a de facto restriction of access through contract to ideas and information that just happens to be held in digital formats.

Limitations and exceptions exist in international treaties, and in domestic law as a limit on the monopoly of copyright, in order that the needs of the public and wider society are met – such as preserving material for future generations, allowing equal access to the visually impaired or nurturing our education system. We are seeing the undermining of copyright by private interest through contract, and believe that such a process may blight not only our educational and cultural interests but also the economic prospects of the UK in the future.

## An IP Charter

James Boyle, Professor of Law, Duke Law School



Over the last few decades, in every field of law and area of technology, intellectual property rights have been expanded. Rights are longer. American copyright has gone from its Jeffersonian length of 14 years to the life of the author plus 70 years. They are also wider. Europe has created a database right that covers unoriginal compilations of facts. And they are backed by more severe penalties.

What evidence has supported this wave of expansion? Which comparative studies of economic effects? Not every country has taken the same dosage of ‘rights steroids’ after all. The USA’s database industry has flourished without a database right. Indeed on most measures, it has outperformed the European database industry. The same is true of the so called ‘broadcaster’s right,’ of marginally shorter copyright terms and so on.

When this kind of data is released about the efficacy of a drug, it is pulled from the market. Heads roll at the agencies responsible. In intellectual property policy, data consists of anecdotes, just-so stories, and celebrity testimony. The next statistical economist that the World Intellectual Property Organisation hires to run comparative studies on different levels of protection will be its first. Intellectual property policy is an evidence-free zone. We have forgotten the fundamental truth that Jefferson and Macaulay understood so well. Property rights are only half of the system. Just as important is the realm of material that is not owned, the public domain, the raw material from which the next invention, novel or song will spring.

This debate has been an uneven one over the past few years. The impressive *Report of the UK Commission on Intellectual Property Rights*, which the government seems to have forgotten already, marked a momentary departure from faith-based policy. There have been isolated victories, defensive levees raised here and there against the rising tide of monopoly rents.

What has been missing is a positive statement of what good intellectual property policy is. But perhaps things are changing a little. The *Adelphi Charter* was an attempt to lay out those principles, central among them being the ideas that policy should be evidence-based and that it should respect the balance between property and the public domain, not eliminate the latter to maximise the former.

James Boyle is William Neal Reynolds Professor of Law and co-founder of the Center for the Study of the Public Domain at Duke Law School, and a Board Member of Creative Commons.

A version of this article appeared in *The Guardian* in October 2005.

## The need for a centre for intellectual property

Derek Wyatt, MP



Today, India and China (and within a decade Russia and Brazil) threaten the very hegemony of the economies of the EU. A fundamental change is upon us – these two countries are producing quality goods at a lower unit cost than we will ever be able to muster.

If, therefore we are to keep our economic edge, we have to add “value” or put it another way, create “knowledge”. If we are to be a smarter nation, then we have to be performing on this particular dance floor first. To do this, we need to re-think our current higher education pattern. Why? We are not producing enough patents for commercial exploitation. Patents are the life-blood of an added-value economy.

Andrew Gower’s (the former Editor of the *FT*) *Review of Intellectual Property* was timely. We’ve had a seriously under-performing Patent Office and over the past few years digital rights management and copyright have been seriously undermined by the arrival of a more professional and possibly more threatening internet business model.

Gowers, if anything, underplays the role the internet is having on DRM and copyright and thus his conclusion that all we have to do in essence is to beef up the Patent Office is wide of the mark. What we need is an Ofcom equivalent for Intellectual Property.

Gowers also keeps away from the thorny issue of copyright. Music companies, and according to a full page advertisement in the *FT*, musicians and song writers, want at least a level playing field – that is 70 years rather than the current 50. If they could, they’d like the same as authors, 70 years after death, which seems extreme to me.

The whole essence of the internet has been to turn much of this more traditional thinking on its head such that I would support a lowering of the length of copyright. Indeed, I’d like to see the economic case made for bringing together patent law with copyright law.

But now what? What after Gowers? Which secretary of state will be bold and commit to a new centre for intellectual property? Don’t hold your breath.

Derek Wyatt is the Labour Member of Parliament for Sittingbourne and Sheppey and Chairman of the All-Party Parliamentary Internet Group.

## You've already paid for your information once. You should not have to pay for it again

Charles Arthur, Editor, Technology section of *The Guardian* newspaper



Government agencies collect staggering amounts of impersonal data: about the changing geography of the United Kingdom, about postcodes, about the tides, rivers, rainfall, traffic flow... the sheer volume is stunning. And what's also heartening is that it's done without regard for 'market' value; if it matters to the country, it must be done. But government often isn't best positioned to make the best use of the data that it collects (with taxpayers' money, or with a fiat lent by taxpayers).

Yet, in an attempt to reduce public spending, the Treasury insists that much of this data must be sold back to us if we want to use it. That's a nonsense to begin with; imagine if you gave someone a computer, and then got a bill from them every time you asked for a web address. But it's made even more absurd because the rise of the internet and cheap computing has blown the doors off the idea of protected 'silos' of data. Spread data, and they become more useful.

Thus, in March 2006, *The Guardian's Technology* supplement began its *Free Our Data* campaign, with the aim of getting the Government to change its policy, so anyone can access all the impersonal data that is collated at the cost of dissemination. That will raise public spending; but we think that the increased tax revenues from private companies building on the back of the data will exceed that. The net effect: a more efficient economy.

The problem with the mindset that treats data as physical property, to be jealously guarded, is that far more opportunities are lost through the lack of access to the data than are gained financially from selling them. If company A has a copy of the dataset of the map of Britain, and company B has an identical one, the two can coordinate and create a new service. If they do, that generates taxable revenue and employment in both companies. The more companies have that dataset, the more services can be created. By contrast, if only one company has the dataset – because it is treated (wrongly) as a scarce good – it limits the services that can be created.

Scarcity does not drive the use of intellectual property; abundance does. Raising prices does not drive its use; lowering it does. And there's no lower price than free – nor a more attractive one for those who want to use it.

The *Free Our Data* campaign blog is at:  
[www.freeourdata.org/blog](http://www.freeourdata.org/blog)

## Delivering value through maintained data

Vanessa Lawrence, Director-General & Chief Executive of Ordnance Survey



The *Daily Mail* recently described Ordnance Survey as ‘that rarest of creatures, a publicly-owned national treasure that doesn’t cost us a bean’.

The journalist was observing that Ordnance Survey’s national geographic database, one of the most detailed and complete of any country in the world, is supported without direct taxation. It contains more than half a billion features including houses, roads, rivers, woodlands – even pillar boxes.

Ordnance Survey has always covered some element of costs through charges ever since it published its first map in 1801. From the 1970s onwards, the proportion increased steadily until the point of 100 per cent cost recovery when the organisation became a Trading Fund in the late 1990s.

The principle that the user of Crown Copyright geographic information should pay for it offers a sustainable platform of investment in high-quality, integrated data, based squarely on customer need.

The issues of maintenance and fitness-for-purpose are absolutely vital. It cost Ordnance Survey more than £100m last year to keep our data current and consistent, with up to 5,000 changes going into our database every working day to an average accuracy across the whole country of 60 cm.

When you think of how essential good geographic information is for the nation you can begin to appreciate the

need for a sustainable funding model. For instance, such data helps the emergency ambulance crew locating a remote farmhouse, the healthcare manager targeting resources to improve cancer recovery rates, and the utility contractor repairing a pipe network through precision drilling.

All these essential activities depend on having the best available and most accurate geographic information, which requires sustainable investment. They are prime examples of the importance of the need for Crown Copyright on material and the rationale for charging for it and protecting it.

A key element in Ordnance Survey’s delivery is to empower others to innovate in applications areas, confident of the national consistency and currency of the data they use. Ordnance Survey has more than 500 commercial partners, most of whom have joined our partner network in the past five years. Our data is now more widely used than ever before. Not only do we deliver authoritative and trusted mapping on different media, we are enabling its commercial potential to be realised by others. We actively encourage the widespread licensing of our information so that it can deliver value for all users.

We believe that our status as a Trading Fund offers significant benefits for our customers and the nation as it ensures a focus on value and provides a sound investment base going forward.

## Copyright and the digital age

Rufus Pollock, Coordinator, Creative Archive Campaign



Today most types of material subject to copyright are available in digital form. As a result, the distribution, production and re-production costs of copyrightable material have dropped, and continue to drop, very rapidly.

'Entry' into most copyright 'industries' has grown easier, as a direct consequence of this fall in the costs of participation. For example, today the creator of a new song or novel may instantly distribute their work to anyone with an internet connection. In the past, production on such a scale and with such global distribution, if it was possible at all, could only have been achieved by going through a major publisher or label.

Looked at simply, these changes in entry costs imply alterations in the structure of the industries affected: as entry costs fall there should be a large, and rapid, increase in the number and diversity of those making and distributing copyrightable work (a democratisation of creativity). The rents (profits) of existing intermediaries (publishers, record labels) and 'star' creators will drop, with a reallocation of that surplus to other producers/creators and consumers – the lion's share going to this second group.

However, there are reasons to be wary of this straightforward reading of the changes implied by the arrival of the 'Digital Age'. As human beings, we have a limited amount of time and attention. Whilst the cost of making and then conveying a work

to consumers may have dropped radically, the cost of 'discovery' – that is, of the work being found and subsequently read, listened to, or watched – may not have declined at all, in fact, it may have risen.

Advertising is one way for producers of creative works to address this issue of limited attention. But advertising is not free. In fact, it is another entry cost but one which, unlike those mentioned previously, shows no evidence of declining in the digital environment.

If this is so, then the simple story is flawed. Unless there is a change in how we pick what to read, what to listen to, and what to watch, the actual change in overall 'entry costs', and the concomitant changes in the structure of copyright industries, is likely to be very limited.

Rufus Pollock is coordinator of the Creative Archive Campaign, director of the Open Knowledge Foundation Network, and director of Foundation for a Free Information Structure (FFII-UK).

The views expressed in this publication are not necessarily those of the RSA or its Trustees.

*RSA Programme Team:*

*Paul Crake Programme Director*

*Jonathan Carr-West Programme Development Manager*

ISBN 978 0 901469 59 5

Copyright © 2006 RSA

# RSA

The Royal Society for the encouragement  
of Arts, Manufactures & Commerce (RSA)  
8 John Adam Street  
London WC2N 6EZ

[www.theRSA.org](http://www.theRSA.org)

The RSA is registered in England and Wales  
as a Charity, number 212424

# RSA

The Royal Society for the encouragement  
of Arts, Manufactures & Commerce (RSA)  
8 John Adam Street  
London WC2N 6EZ

[www.theRSA.org](http://www.theRSA.org)