

Impact case study (REF3b)

Institution: Bournemouth University
Unit of Assessment: UOA19
Title of case study: Shaping intellectual property legislation through evidence-based research.
1. Summary of the impact (indicative maximum 100 words)

The Centre for Intellectual Property and Policy Management (CIPPM) is a multi-disciplinary research hub at Bournemouth University (BU). Its ethos is to bring evidence-based, academic rigor to the regulation of intellectual property. Consequently, the research has become an increasingly important resource to those involved in the legislative process. This case study illustrates CIPPM's evidence-based, policy-shaping research through two specific examples from 2013: 1) providing the evidence base for the proposed copyright exception for parody and 2) providing the evidence base for an open standards policy in Government IT procurement.

2. Underpinning research (indicative maximum 500 words)
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Evidence-based research for use in policy making is at the heart of CIPPM's ethos. Recent research that has informed and influenced policy includes CIPPM's studies on orphan works, copyright exception for parody, open standards, authors' earnings and copyright term extension. To enhance the impact of its research, CIPPM holds annual symposia where the views of policy makers, social scientists and lawyers are presented and discussed. In 2012, BU won funding for an ESRC Festival of Social Science event: What Constitutes Evidence for Copyright Policy? The Symposium was held at BU on 8 November 2012 and explored the use of evidence in copyright policy making, challenging the concept from a social science perspective (R1). It was organised by Towse (BU 2012 to present) and Kretschmer (BU 1999–Dec 2012).

This case study illustrates CIPPM's evidence-based, policy-shaping research through two specific examples: advising the Government on the economic impact of a copyright exception for parody and helping the UK Cabinet to formulate a policy on open standards.

Economic effect of parody

In December 2011, Erickson (2010–Sept 2013), Kretschmer and Mendis (2011 to present) won a research bid from the Intellectual Property Office (IPO) to support the Government consultation on the Hargreaves Review of Intellectual Property (G1). The purpose of the research was to assess the economic impact that commercial rights holders would experience if their work could be freely parodied under copyright law.

The commissioned research was the first large-scale empirical study of the economic effects of parody carried out in the UK. The BU team undertook a comparative study of commercial music, videos and amateur parodies on YouTube, selected for its status as the leading online video platform. The researchers sampled 8,299 pieces of user-generated content related to top-100 charting music singles in the UK for the year 2011 to determine whether economic effects were caused by the presence of parody (P1).

P2 examines the legal treatment of parodies in seven jurisdictions that have implemented a copyright exception. Researchers identified possible regulatory options for benefiting from a parody exception to copyright infringement, and distilled the (economic and non-economic) rationales developed by legislators and courts. P3 brings together the legal analysis and the empirical data. Each of the policy options identified in P2 is examined for its likely impact on the empirical sample gathered in P1.

The study yielded the following findings:

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- Parody and remix are significant online consumer activities: on average there are 24 user-generated parodies available for each original commercial music video, and parodies in this study had 655 million viewers.
- There is no evidence for economic harm to rights holders through either substitution or reputational damage: the presence of parody content is correlated with larger audiences for original music videos.
- New creative input by parodists is considerable: most added original new video recordings and, in 78% of all cases, the parodist appeared on camera.
- There exists a small but growing market for this type of online parody: parody videos in the study generated up to £2 million in revenue through advertising, a portion of which was shared with creators and rights holders. Advertising revenue as a whole was cited as worth £10s of millions.

On the basis of this evidence, the research team recommended that the IPO and the Government move ahead with a planned copyright exception for parody, on the grounds that it would offer small but measurable economic benefits to both rights holders and parodists.

Open standards

The UK Cabinet Office commissioned and funded two reports by CIPPM to enable an evidence-based policy on open standards in Government IT procurement. The reports included an independent review of the legal and economic issues related to open standards (P4) and an analysis of the consultation responses (P6).

The review of evidence was led by Weston (BU 2002 to present), alongside Kretschmer and Piesse (BU 2010 to present). It examined the economic and legal aspects of introducing an open standards policy for Government IT, including an appraisal of costs and benefits, showing there are abundant examples of open standards policy being adopted with significant benefits and few negative risks (P4).

Following publication, Favale (BU 2013 to present) led on the analysis of responses to the consultation process (P6). To ensure rigour in the interpretation of the evidence, CIPPM used a social science approach, combining grounded theory for identifying patterns of argument and quantifying these by type of respondent. The research produced statistical data on the responses and qualitative data on the arguments and themes emerging. Analysis showed most did not support the need to implement intellectual property rights on open standards (P6).

3. References to the research (indicative maximum of six references)**Publications**

- P1.** Erickson, K. (2013) *Evaluating the impact of parody on the exploitation of copyright works: An empirical study of music video content on YouTube*. London: Intellectual Property Office UK. <http://www.ipo.gov.uk/ipresearch-parody-report1-150313.pdf>
- P2.** Mendis, D. and Kretschmer, M. (2013) *The treatment of parodies under copyright law in seven jurisdictions: A comparative review of the underlying principles*. London: Intellectual Property Office UK. <http://www.ipo.gov.uk/ipresearch-parody-report2-150313.pdf>
- P3.** Erickson, K., Mendis, D. and Kretschmer, M. (2013) *Copyright and the economic effects of parody: An empirical study of the YouTube platform and assessment of regulatory options*. London: Intellectual Property Office UK. <http://www.ipo.gov.uk/ipresearch-parody-report3-150313.pdf>
- P4.** Weston, S. and Kretschmer, M. (2012) *Open standards in Government IT: A review of the evidence*. UK Cabinet Office/Bournemouth University. <http://www.cippm.org.uk/pdfs/cippm-open-standards-final-draft-10-september-2012.pdf>
- P5.** Weston, S. (2012) Software interfaces – stuck in the middle: The relationship between the law and software interfaces in regulating and encouraging interoperability. *IIC International Review of Intellectual Property and Competition Law* 43(4): 427–450.
- P6.** CIPPM. (2012) *An analysis of the public consultation on open standards: Open opportunities*. London: HM Government.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78890/Response-Analysis.pdf

Supporting Grants

G1. Intellectual Property Office UK. (2011) *Government consultation on Hargreaves review of intellectual property: Work package 4, parody, caricature and pastiche* (£16,650). Researchers: Erickson, Kretschmer and Mendis.

G2. UK Cabinet Office. (2012) *Provision of an impact assessment of the proposed open standards in Government IT policy* (£8,960). Researches: Weston and Kretschmer.

G3. UK Cabinet Office. (2012) *Provision of a methodology and analysis for the UK Government open standards consultation* (£5,000). Researchers: Favale.

G4. AHRC. (2013) *Evolution in music publishing: Economic strategies, business models and copyright* (£145,000). Researchers: Towse and Borghi.

G5. The Intellectual Property Office. (2013) *The provision of research for 3D printing and intellectual property: Where are we now?* (£60,630). Researchers: Mendis, Secchi, Reeves (Econolyst Ltd) and Merlus (Econolyst Ltd).

4. Details of the impact (indicative maximum 750 words)

CIPPM's research brings evidence-based academic rigor to the regulation of intellectual property, making it an increasingly important resource to those involved in the legislative process.

Economic effect of parody

The most direct and immediate impact of the parody research was to shape the language of the new legislation to create a copyright exception for parody, based on the empirical evidence. Being the first rigorous academic study of this subject in the UK, the findings of the research were instrumental to the policy process.

The BU research team recommended that UK policy adopt the widest possible exception permitted under EU provisions. Such a copyright exception would allow both commercial and non-commercial parody, and would adopt a wide definition of parody to include a range of different forms of expression.

The BU research was heavily cited by the Government in its legislative impact assessment in 2013. The IPO wrote: "The research carried out by Bournemouth University found that there is no demonstrable harm to the popularity (and by inference reputation) of original works arising from spoof or parody videos...An evaluation of potential substitution and dilution effects found that in neither case was there compelling evidence that the parody is damaging to the original in terms of the copyright owner's ability to attract and monetise an audience for their original copyright work on the online platform" (R2).

In December 2012, Business Secretary Vince Cable announced the Government plans to reform the copyright regime in the UK, introduced in the Enterprise and Regulatory Reform Bill. On 31 July 2013, the Government published a draft of their proposed changes to the law, including the exemption from IP copyright on the grounds of parody (R3).

The proposed exception for parody will have significant impacts on a range of beneficiaries: UK media businesses, advertisers, technology providers, fans and consumers. The new law will grant the ability for anyone to create parodies of existing work without requiring permission from rights holders. While the research clearly shows that there are minimal economic downsides for rights holders, the potential benefits in terms of freedom of expression, economic growth and the upskilling of young people are considerable.

Open standards

The report was included on the Cabinet Office website when the open standards principles were launched on 1 November 2012 (R4). Since then, all Government bodies had to comply with open

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standards principles for software interoperability and data and document formats in Government IT (R5).

The Government repeatedly cited the CIPPM research in its explanation of the new policy, first explaining the role the research played in assisting and informing the legislative process: “The Centre for Intellectual Property Policy and Management (CIPPM) at the University of Bournemouth was commissioned to undertake the analysis of the evidence submitted. The Cabinet Office has published this as an independent report. The methodology for the analysis is also provided” (R4).

Specific elements of the CIPPM study that informed the decision are as follows:

- The Government reported that the CIPPM study did not suggest the implementation of IP rights in this field was clearly beneficial (R4).
- When assessing the value of patent protection of software standards within the policy, the Government considered important issues (such as patent trolls and patent thickets) flagged by the CIPPM studies (R4).
- As for the alignment with European policies, the Government stated that its policy was based on the legal and economic evidences of the research produced by CIPPM (R4).

Members of staff at the Cabinet Office acknowledged that the innovative approach taken by CIPPM in the analysis of the public consultation helped the policy process by providing scientific and reliable indicators of the impact that the policy would have on stakeholders (R6).

In his blog post, ‘A Question of (Open) Standards’, technology writer Glyn Moody said of the draft review: “As far as I know, it’s the first rigorous, in-depth look at this whole area, and it makes for fascinating reading.” Moody also highlighted several specific points that he considered worth emphasising (R7).

In addition to the impact on policy makers, beneficiaries of the open standards work include central government departments, their agencies, non-departmental public bodies, non-governmental organisations, professionals, and small, medium and large enterprises. Additionally, members of the public will benefit from the research when they interface with governmental bodies.

To summarise, CIPPM’s body of research has advanced the role of transparent, evidence-based policy in the regulation of intellectual property. With academic rigor at its heart, this research has become an increasingly important resource to those involved in the legislative process.

5. Sources to corroborate the impact (indicative maximum of 10 references)

R1. What constitutes evidence for copyright policy? <http://www.copyrightevidence.org/create/esrc-evidence-symposium/media/PDF/esrc-evidence-proceedings.pdf>

R2. IPO consultation report <http://www.ipso.gov.uk/consult-ia-bis1057.pdf>

R3. IPO announcement, 31 July 2013. <http://www.ipso.gov.uk/techreview-parody.pdf>

R4. Open standards consultation documents, November 2012.

<http://www.cabinetoffice.gov.uk/resource-library/open-standards-consultation-documents>

R5. Open standards consultation press release, November 2012.

<http://www.cabinetoffice.gov.uk/news/government-bodies-must-comply-open-standards-principles>

R6. Linda Humphries, Assistant Director, ICT Futures, Cabinet Office, at the ESRC Social Science Festival ‘What constitutes evidence for copyright policy?’, 8 November 2012.

<http://www.copyrightevidence.org/create/esrc-evidence-symposium/>

R7. Moody, G. (2012) *A Question of (Open) Standards*, 6 September 2012.

<http://blogs.computerworlduk.com/open-enterprise/2012/09/a-question-of-open-standards/index.htm>

The following contacts can corroborate the impact of the parody study:

R8. Chief Economist, Intellectual Property Office. Contact details available.

R9. Executive Director, Open Rights Group UK. Contact details available. Letter referencing the BU study available online <https://www.openrightsgroup.org/ourwork/letters/letter-to-lord-younger-on-copyright-reform-and-parody>