

Rt Hon Jeremy Hunt MP  
Secretary of State  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
LONDON  
SW1Y 5DH

30 June 2011

Dear Jeremy

**Communications Review for the Digital Age: open letter response from the British Library**

1. The British Library welcomes the Government's review of the regulatory regime for the UK communications sector and shares its ambition to establish UK communications as amongst the most dynamic and successful in the world. In our response below we have identified three major areas for the British Library where we believe that change to the regulatory framework would make a positive impact to the communications sector in the digital age.

**Background**

2. The British Library was established by statute in 1972 as the national library of the United Kingdom. It is one of the world's greatest research libraries – it benefits from legal deposit and is the main custodian of the nation's written cultural heritage. The Library's incomparable collections have developed over 250 years; they cover three millennia of recorded knowledge, represent every known written language, every aspect of human thought and a considerable sound, music and recordings archive.
3. The British Library plays a vital function in the life of the nation as a cultural heritage resource by managing, preserving, and ensuring access in perpetuity to the UK's national published archive and the national repository of sound. The Library is an integral component of both the national research infrastructure and the UK science base and it plays a correspondingly significant role in ensuring the research excellence of the UK. The Library contains a vast array of inspirational material and expertise that support the creative industries and, through the services of our Business and Intellectual Property Centre, we support entrepreneurs and SMEs in developing, protecting and exploiting their ideas. We operate at the fulcrum of the creative economy and recognise that

the ongoing digital revolution in production and distribution technologies is causing fundamental shifts across industry business models and consumer patterns, and is raising broader questions about the traditional balance of rights in Intellectual Property (IP), between the rights holder and the public good.

4. We recently published our *2020 Vision* in which by 2020 the British Library will be a leading hub in the global information network, advancing knowledge through our collections, expertise and partnerships, for the benefit of the economy and society and the enrichment of cultural life.
5. The British Library holds the nation's memory - which increasingly includes the nation's digital memory. The acquisition of digital content, ensuring its sustainability, long-term preservation and access for researchers is a critical public service that acts as a springboard for research and education, for new forms of creativity and for knowledge creation. Without such effort and investment, future researchers and citizens will find a black hole in the knowledge base of the 21<sup>st</sup> Century, and without such guaranteed long term commitment to preservation our content, creative and communications industries will be inhibited in their global market success.

#### **Key issues for the British Library**

6. To develop this role further, we would like to focus on three key issues, which are most relevant to Q10. *Are there disproportionate regulatory barriers to investment in content? If so, what are they and how can increased investment in UK content production be encouraged?* These issues are:
  - Implementation of the *Hargreaves Review on Digital Opportunity: A Review of Intellectual Property and Growth* to create the right environment for the content industry to thrive.
  - Enactment of regulations for non-print publications under the Legal Deposit Libraries Act 2003 to foster growth and innovation.
  - Development of new partnerships to provide digital content and access for all.

#### **Hargreaves Review**

7. A strong and successful cultural, educational and research sector forms a key part of the UK's plan for growth in the digital age. In recognising that the IP incentives for the entertainment industry are not the same as those needed for education and research, the Hargreaves Review has the potential to strengthen, over the long-term, innovation within the UK's research and development sector to drive economic growth.

8. The Hargreaves Review recommends the following points, which are supported by the British Library:

- The introduction of format-neutral "permitted acts" or "exceptions" for research copying, format shifting, archiving as well as text and data mining. On the latter point, there is too much digital information for scientists and other researchers to manage and analyse without computers. By ensuring that computers can lawfully extract facts and data contained within a book, journal or database, scientific discovery and the innovation cycle can be greatly speeded up, with concomitant life-changing benefits.
- Private contract law, not copyright law, regulates most digital information. We are therefore particularly pleased that Professor Hargreaves has recommended that private law should no longer be able to "trump" the permitted acts provided by statute. Unless this recommendation is enacted in the UK, the interests of the education and research sector, and Hargreaves' own recommendations themselves, will continue to be overridden by contracts. (Recommendation 5)
- There should be a strong UK engagement on IP at an international level. The UK education and research sector has much to gain from this - from a unified EU patent system, through to ensuring that the interests of research and technology are reflected adequately in the increasingly outdated EU Copyright Directive (2001/29/EC). (Recommendations 2 and 5)
- A well-regulated copyright licensing regime should be established. We strongly support proposals to establish a Digital Copyright Exchange, to introduce in law minimum standards of practice for collecting societies and to rectify the current paralysing market failure by finding legal solutions for mass digitisation. Given the global demand for English language material and the open letter's ambition to establish UK communications as the best in the world, the introduction of extended collective licensing in the UK and a solution for orphan works will provide many economic, cultural and educational benefits for creators, citizens, and researchers, as well as private sector companies. (Recommendations 3, 4 and 5)
- We need a strong Intellectual Property Office with the appropriate legal powers. This should mean that the UK can respond more quickly to technological change than in the past. It will also ensure that the appropriate IP regime is in place to support all forms of innovation and that balanced public policy formation, based on evidence, can become a reality. As the report itself makes abundantly clear, IP policy formation in this country has previously been too susceptible to "lobbysomics". This has damaged creativity and innovation, and is something that we must seek to avoid going forward. (Recommendation 10)

9. We call on Ministers to adopt fully these recommendations from the Hargreaves Review in its forthcoming response and to implement those recommendations as soon as practicable.

### **Non-Print Legal Deposit**

10. The British Library is working hard with publishers and the other UK legal deposit libraries to make a reality of the national archive of electronic publications envisaged by the Legal Deposit Libraries Act 2003.
11. We have responded to the Government's consultation on the Legal Deposit of Non-Print Works (September 2010), which would extend legal deposit libraries' statutory responsibilities from UK printed publications to UK digital outputs. We welcome the suggestion in the Guidance to the consultation that the management of non-print legal deposit should take place within a shared governance framework. In our view this should be representative of the interests of a range of publishers, rights holders and the Legal Deposit Libraries. We also agree there should be an independent process for the resolution of disputes.
12. We support the spirit and, in most cases, the letter of the present draft Regulations. The Library has been preparing with the other Legal Deposit Libraries for this legislation and its implementation for many years. When enacted, the Regulations will secure an immensely important investment in the United Kingdom's digital future: a statutory basis for the nation's digital archive which will be held in perpetuity.
13. In welcoming the draft Regulations, we note the critical importance of ensuring the Regulations are enacted as soon as practicable in the public interest. We note that it is now some 8 years since the primary legislation on legal deposit became law. Source material collected under legal deposit leads to new commercial publications and ventures. Researchers in the UK will be on a similar footing to international peers. The Library conducted an international survey in 2009 of 34 countries - 82% had passed and implemented non-print legal deposit legislation or would do by 2010. Britain is therefore lagging behind, which affects the quality of UK research and therefore our economic competitiveness.
14. We call on Ministers to enact the non-print legal deposit regulations as soon as possible.

## Digital Content

15. The British Library welcomes the open letter's commitment to ensuring that the UK is well placed to lead the world in generating new and innovative content, which is valued by its citizens and accessible to all.

### *Partnerships*

16. We have worked with a number of partners in recent years to digitise legacy content and develop innovative business models to provide wider access to content held by the British Library. This in line with our 2020 Vision to increase access through digitisation for anyone who wants to do research. Examples of these partnerships are our work with:

- Google to digitise 250,000 public domain 18<sup>th</sup> Century and 19<sup>th</sup> Century books which will be made available free of charge via Google Book Search and the British Library's website.
- Brightsolid to digitise 40 million pages of the national newspaper collection, providing free, searchable access in British Library, HE and FE reading rooms and a fee-based consumer website.
- software media company BiblioLabs on an app to make 65,000 books, digitised by Microsoft, available to Apple iPad users. These books will also be available on an academic platform, Historic Books, free of charge to UK higher and further education through our partnership with JISC.

### *Audio Visual Strategy*

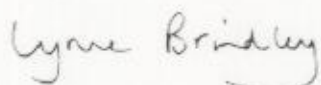
17. The Library's audio visual strategy is creating the right environment for the content industry to thrive and maximises the public value of our collection. We appointed our first moving image curator in 2007 and have since signed Memoranda of Understanding with the BBC and BFI. Over the medium-term we aim to create an innovative approach to universal availability of our audio visual collections and to develop a viable approach to the management (including rights management), storage and distribution of assets. There are three key areas where we would welcome Government support:

- We are working closely with a consortium, UK Sound and Vision Collections, involving BFI, BBC, Imperial War Museum, Bradford Media Museum, and the national libraries of Scotland and Wales to champion public value and benefit in these collections across the sector. One emerging project is a shared off-air television access service created by the BBC and BFI through the 'Redux' initiative. This initiative has the potential to become the national television archive and we would welcome Government support in taking it forward.

- 'Digital public space' is an idea that the Library is actively pursuing with the BBC, BFI and other public sector partners. This would be a new "layer" of the internet in which public sector institutions would make publicly owned content available, free, for non-commercial public use. We believe it would stimulate the creative economy, drive digital archiving and maximise public value.
- We would like support from the radio industry to maintain a national radio archive. This would complement the existing provision for a national television archive enshrined in the 1990 Broadcasting Act provision for access to selective archived radio. This could be readily built upon our BFI and BBC Memoranda of Understanding model.

18. The British Library looks forward to taking a full part in the development of a Green Paper to enhance the potential of the digital age for the UK and hopes that the issues we have raised in this response to the Secretary of State's open letter on the Communications Review will be given serious consideration.

Yours sincerely

A handwritten signature in cursive script that reads "Lynne Brindley".

Dame Lynne Brindley, DBE  
Chief Executive