



# FOCAL INTERNATIONAL

## **FOCAL International's ongoing efforts to prevent Hargreaves' fall-out threatening the archive industry**

Hubert Best charts 18 months of meetings, lobbying and submissions

Back in May 2011 Prof. Hargreaves opened his *Digital Opportunity ... An Independent Report* with the words, "This does not mean ... that we must put our hugely important creative industries at risk."

FOCAL International – along with other creative industries – has spent the intervening year and a half and a great deal of money trying to prevent the resulting policies from putting the UK's commercial footage archive industry at risk – indeed, in the case of archives of older content, from causing them to disappear altogether – as they contained some potentially very damaging consequences for the industry. FOCAL International submitted detailed responses to both of Hargreaves' "calls for evidence."

The copyright clauses in the Government's Enterprise and Regulatory Reform Bill (ERR Bill), the first legislative result of 'Hargreaves', contained provisions which threatened the audiovisual archive industry – or rather, which would have enabled Government ministers to make Orders which threatened the industry, including new exceptions to copyright and ejecting pre-1989 film footage into the public domain. Wide and unclear proposals about Extended Collective Licensing (ECL) – giving an organisation permission to license rights which it does not hold, and Orphan Works were also threatening.

FOCAL International wrote to, met and provided MPs and peers with briefing material which was extensively used in debates in the Commons and Lords. We also were occupied with meetings and providing detailed submissions to the many Intellectual Property Office (IPO) consultations on individual exceptions to copyright, ECL and Orphan Works, as well as to the All Party Parliamentary IP Group, Parliament's Delegated Powers and Regulatory Reform Committee, Constitutional Committee and Joint Human Rights Committee and the Department of Culture, Media and Sport.

FOCAL International was also co-signatory, with other international media organisations, to a "letter before claim" prior to judicial review – a proceeding which it has so far not been necessary to launch. FOCAL International members have corresponded, and FOCAL International and individual members have corresponded with and on several occasions met the ministers responsible, Vince Cable and Viscount Younger. FOCAL International met with the IPO specifically to obtain the change excluding the proposed provision about older footage.

### **Safeguards accepted**

The story about copyright exceptions is not yet over. The latest 'round' was the IPO's publication of draft changes to the law, to which of course FOCAL International responded. The next round – publication of revised proposals by the IPO – is expected in the New Year, to which of course FOCAL International will respond.

FOCAL International's efforts on the ECL and Orphan Works front have been fruitful – though these are also not yet finished. What FOCAL International viewed as the essential safeguards for right holders, given the Government's determined policy to permit licensing of exclusive rights by unlicensed others (ECL), after initially seeming to fall on deaf ears, were accepted by the Government minister in Parliament as well as by the IPO – whose meetings and consultations to work out the details of ECL and Orphan Works are continuing, as is FOCAL International's participation. Amanda Huntley has joined the IPO's working group on Orphan Works rights clearance and pricing.

The copyright proposals over the last 18 months have taken many turns, so it would be foolhardy to predict the outcome of the unresolved issues. At this point we can say that:

1. FOCAL International has achieved commercially important results and safeguards for footage archives.
2. We hope we are on the way to further results.
3. Currently, ECL and Orphan Works proposals give grounds for less concern than proposed copyright exceptions – especially the much enlarged and unclear "quotation" exception, which unless changed will have the potential to harm the industry significantly. So FOCAL International awaits publication and, as always, will respond and act promptly.

FOCAL International is always pleased to answer any questions about this complicated saga.

Hubert Best  
[hubert.best@gmail.com](mailto:hubert.best@gmail.com)