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CISAC - International Confederation of Societies of Authors and Composers

Derzhkino - Ukrainian State Film Agency

EU - European Union

CCI - Cultural and creative industries in Ukraine

Ministry of Economy - Ministry of Economy of Ukraine

Ministry of Culture and Information Policy of Ukraine

CMO - collective management organisation

WTO - World Trade Organisation

UACRR - The Ukrainian Agency of Copyright and Related Rights

TRIPS Agreement - Trade Related Aspects of Intellectual Property Rights Agreement

UCF - Ukrainian Cultural Foundation

UNIP - Ukrainian National Office of Intellectual Property and Innovation
Introduction
Background and Context
In October 2022, Counterculture Partnership LLP (‘Counterculture’) was appointed by the British Council for a second year to support the design and delivery of their Wider Europe Creative Economy Policy Grants Scheme (Central Asia, South Caucasus, Turkey, Ukraine and the Western Balkans). In 2021, the British Council launched a new three-year Creative Economy programme for the region focusing on policy development, enterprise and cultural leadership. The programme includes a policy strand, bringing together policy stakeholders in Wider Europe with UK consultants and organisations to collaborate on creative economy policy development in the countries, share the UK’s experience, and to develop new partnerships with a view to longer-term collaboration with the UK.

The programme is being delivered by the British Council’s Creative Economy Unit which works with more than 30 countries a year to connect ideas and experience from the UK with partner nations to co-create programmes that develop policy, improve infrastructure, empower local creative talent and increase greater international understanding.

In 2021, a Counterculture team together with the Centre for Economic Recovery and supported by the Ministry of Culture and Information Policy of Ukraine and the British Council, undertook research into the main policy issues of the Ukraine's education system in the field of creative industries, studying the UK's relevant best practice and drafting recommendations for the Ukrainian government. Following Russia’s full-scale invasion of Ukraine, the focus changed slightly and the recommendations were structured as a policy brief that outlines the main measures to be taken by the public authorities, development partners and universities to help creative industries education to recover and develop after the war in the short-, mid- and long-term.
Ukraine has been facing extreme challenges over the last two years since the full-scale Russian invasion. The creative and cultural industries (CCIs) were identified as a key sector for the economy before the invasion, and all the more so for the country’s recovery and future growth.

Creative industry business models are fundamentally based on the generation and exploitation of intellectual property (IP) and particularly copyright. Hence, the effective protection and monetisation of creative IP is critical to developing the sector.

This project aims to identify practical steps and recommendations to help enable creative businesses and individual creators to:
(a) Effectively protect their intellectual property rights in creative works
(b) Identify and pursue opportunities to monetize those rights

The focus of this project has been on copyright and primarily on the music and audio-visual sectors due to the specific challenges and opportunities arising from the growth of digital communication and distribution channels, which continue to transform business models and consumer expectations in these sectors, as well as for the wider CCIs. Hence, the conclusions should help inform the understanding development of measures for a number of CCI sectors.
THE REPORT IS STRUCTURES AS FOLLOWS:

(a) Contextual overview of current copyright framework in Ukraine focused on regulations, registration and enforcement.
(b) Key findings outlining the experiences, perceptions, issues and priorities in Ukraine
(c) Two example case studies on relevant UK experience/organisations
(d) Recommendations, including suggested practical actions for both industry and government,

METHODODOLOGY

The project involved a combination of
● Desk research: a detailed review of existing reports, research and data to inform understanding of the current Ukrainian copyright framework and its impact.
● Focus groups: 2 sessions with representatives from the music and audio-visual sectors.
● Targeted interviews: with a selection of focus group participants to gather further insight and explore specific issues
● UK case studies: looking at UK industry bodies’ experience in tackling copyright issues, including Get it Right from a Genuine Site and PRS for Music.

This project was carried out by UK-based consultancy Counterculture Partnership LLP, in partnership with, Ukrainian Ministry of Culture and Information Policy of Ukraine, the British Council and the Ukrainian Cultural Foundation (UCF).

The content of this document represents the views of the authors and does not reflect the official position of the MBIP and UCF.
Overview of current framework
1.1 Regulations and Law

Ukrainian legislation aims to protect the moral and economic rights of authors, performers, and producers of creative works according to international standards. In addition to creative sector-specific laws (including laws on Advertising, Architectural Activities, Cinematography, Distribution of Copies of Audiovisual Works and Phonograms, Publishing and Television and Radio) that protect rights holders, there are also general laws on copyright and related rights. Ukraine is also a signatory on international treaties and conventions as well as bilateral agreements. Relevant to the creative industries, Ukraine has joined:

Most notably, the **Berne Convention for the Protection of Literary and Artistic Works**, originally adopted in 1886, which established the basic principles of copyright for creators as well as minimum standards for duration of protection (generally 50 years after the author’s death, although many countries including Ukraine have extended this to 70 years) and principles for “free use” exceptions. The Convention established two categories of rights:

- Economic rights – guaranteeing control over work and remuneration for its use through selling or licensing.
- Moral rights – typically protecting rights to claim authorship (right of attribution) and to refuse a modification of your work (right of integrity).

The **Universal Copyright Convention** - outlined the use of the copyright symbol ‘©’

**Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations** – focusing on digital reproductions (tape, broadcasting etc.).

The **World Trade Organisation Agreement (WTO) on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** – outlining minimum standards for protection and enforcement that each member

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1 National Studies on Assessing the Economic Contribution of the Copyright-Based Industries
2 Copyright in the EU: How to get copyright protection — Your Europe (europa.eu)
3 The Universal Copyright Convention | The UNESCO Courier
4 Summary of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961) (wipo.int)
government must give to the Intellectual Property (IP) of nationals of other WTO members.5

The World Intellectual Property Organisation Copyright Treaty – under the Berne Convention, deals with IP in the digital environment as well as the right of distribution, rental, and communication to the public.6

The World Intellectual Property Organisation Performances and Phonograms Treaty – provides additional protections within the digital environment including reproduction, distribution, rental and communication to the public.7

1.2 Legislative Developments

Ukraine has seen several legislative acts regulating the field of copyright dating back to the 1830s, when property rights were first recognised, initially for writers and authors and developed later in the 19th Century. The first detailed Law on Copyright was adopted in 1911. Further developments, including changes to durations of rights and remuneration levels, saw author’s rights reduced and, partly as a result, Ukraine was not committed to the Berne Convention.8

Following independence in 1991, Ukraine took steps to develop a modern copyright system in line with international standards and best practice, and became a signatory to the Berne Convention in 1995. The core legislative acts adopted in the following decade concerned the protection of rights, rates of remuneration, registration, unions and distribution (detailed below).9

5 WTO | Understanding the WTO — Intellectual property: protection and enforcement
6 Summary of the WIPO Copyright Treaty (WCT) (1996)
7 Summary of the WIPO Performances and Phonograms Treaty (WPPT) (1996). A notable iteration of this is the US Digital Millennium Copyright Act: The Digital Millennium Copyright Act | U.S. Copyright Office
8 *3236-Creative_Ind_Series3-doc2_separe:3133-Copyright-Ind-vierge (wipo.int)
9 Note, this list is not exhaustive and other legislation may exist
1992 — established the State Agency of Ukraine for Copyright and Related Rights as a government body responsible for developing copyright policy in Ukraine.

1993/4 — The Law on Copyright and Related Rights (amended multiple times) has been the underpinning law on the protection of personal non-property and property rights for authors of science, literature and art and their legal successors connected with the creation and use of the works, including related rights.

1994 — Decree on Minimal Rates of Authors’ Remuneration for the Use of Literary and Artistic Works, as a fixed amount, percentage of income from use, or otherwise. Set by the Cabinet Ministers of Ukraine.

1995 — Decree on the State Registration of Author’s Rights to Scientific, Literary and Artistic Works including increasing state agency staff (capacity), and fixed fees for registration and storage of materials.

1996 — The Ukrainian Constitution outlines: the right to literary, artistic, scientific, and technical creativity; intellectual property protection; and the protection of an author’s moral and economic rights.

1997 — Law on Professional Creative Worker and Creative Unions (amended 2011) including social protection for creative workers (payment, pension, insurance), and how to create and register a union, its relationship with the state and rights as an organisation and for its members.


In 2000, the Ministry of Education and Science became responsible for IP policy and activity (more recently transferred to the Ministry of Economy) and the State Department of Intellectual Property was created to oversee:

- the development of proposed amendments to legislation;
- ensuring and monitoring the effectiveness of legislation and international treaties;
- the operations of collective management societies;
- curbing infringement of intellectual property;
- cooperation between State law enforcement and judicial bodies.

Led by this new Department, a series of legislative changes occurred, including:

Amendments to the Law on Copyright and Related Rights to ensure compliance with the standards of the TRIPS Agreement, which is a requirement for joining the World Trade Organisation. This included amendments to Civil and Economic Codes and Criminal Codes.

The Law on Distribution of Copies of Audiovisual Works and Phonograms, adopted in 2000 and amended in 2003 to establish and monitor stamping on audiovisual works and phonograms with identifying information to protect the rights of owners, the distributors, as well as consumers and expose pirated copies.

A Ukrainian-American Joint Actions Program on Fighting Piracy followed to prevent illegal production, export or import of laser-readable discs. The Law on State Regulation of Management Subjects Activities Related to Production, Export and Import of Discs for Laser-Reading Systems was adopted in 2002.¹⁰

In 2017, Verkhovna Rada adopted the Law of Ukraine on State Support of Cinematography which sets out parameters of providing funds for the national film industry. The law specified that government subsidies would be 80% for feature films and 50% for a film series, and that there would be other forms of financial support and incentives. There were also amendments to cover infringements of film copyright on digital platforms or through the use of digital tools.¹¹
Ukraine has made further efforts to update its legislation, in particular to align its framework more closely with that of the EU, as provided for under the EU-Ukraine Association Agreement, which was signed in 2014 and came into force in 2017. In 2017 a procedure began to establish the High Court of Intellectual Property and in 2018 a new law came into force **On Effective Management of Property Rights of Copyright and (or) Related Rights Holders.** In 2020 a law was passed to create the **Ukrainian Institute of Intellectual Property.**

In November 2022, the responsibility for IP matters moved the newly created **Ukrainian National Office for Intellectual Property and Innovations (UANIPIO).** The Ukraine Intellectual Property Institute ceased all related activities.

The new law **On Copyright and Related Rights** came into force on 1 January 2023. It introduces the most significant updates to copyright legislation since 1993 and is designed to align with EU legislation and promote best practice. New definitions increase the range of works that can receive legal protection. It addresses some opaque issues in the previous law, including defining completeness of the work and limiting the scope for transfer of rights to fair remuneration belonging to creators. It also covers new moral rights to name or dedicate the work, protection for AI generated works, licences for the general public, resale royalty rights, and it clearly defines copyright infringement.

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12 [https://soundbuzz.com.ua/images/re-search/Study%20of%20the%20Music%20Market%20of%20Ukraine%202020.pdf](https://soundbuzz.com.ua/images/re-search/Study%20of%20the%20Music%20Market%20of%20Ukraine%202020.pdf)


14 Lexology
Key Features of current Copyright law

There is no mandatory registration of copyright. In line with the Berne Convention, copyright protection is automatically for all and any creative or scientific works.

An author’s rights are protected within their lifetime and for 70 years after their death.

Originality is protected. This means the author’s intellectual activities and innovations during the creative process that characterise the work are protected.

Infringement is defined as the import, distribution, alteration, remuneration or granting of access to the work without the right owner’s consent. Infringed rights owners can seek a fixed-amount compensation of between EUR 134 and EUR 13,400 without providing complete evidence of damages.

Royalty rates vary depending on the work and its use. Resale royalty rates range from 6% to 0.25%. This is applicable when they are sold either by professional traders or privately.15

Thus, over the past decades, Ukraine’s legislative framework for copyright has been regularly updated. Recent legislation has aimed to clarify key definitions and substantially reformed the institutional structures, in order to improve the operation of the system and bring it more closely into line with international norms. More recently, changes have been driven by the need to achieve alignment with the EU copyright framework under the EU-Ukraine Association Agreement which entered into force in September 2017.

Overall, this has led to a series of major changes to move away from the legacy Soviet system to a modernised, more open, transparent and equitable framework which aligns with recognised international standards. That has also brought some significant challenges in changing historic patterns of behaviour and building understanding of different ways of working.
1.3 Registration and Enforcement

Registration
Under international law, copyright is automatic: there is no requirement to apply or pay for protection of a copyright work, and no need to register a work in order to benefit from ownership of the rights. Nevertheless, many countries - including Ukraine and the USA, operate central copyright registers enabling rights owners to register their works on a voluntary basis.

In principle, there are advantages to registering copyright: for example, it provides a relatively straightforward way of proving copyright ownership and it makes it easier for those who wish to make use of copyright material (for example in sampling music recordings in new musical works) to identify, and therefore pay/credit, the rights holders.

The responsibility for managing registration has recently passed from the Ukrainian Intellectual Institute (UIPI) to the new UANIPIO (aka The Office of Intellectual Property) following the legislative changes outlined above. The overall responsibility for the process, at governmental level, sits with the Ministry of Economy. The new organisation includes among its priorities “Promoting the development of creative industries as a component of the IP sphere”.

The legal framework for copyright registration was set out in a Government Decree in 2001 (amended/updated several times since then). Applicants are required to submit a range of supporting material, including a copy of the work in a prescribed format plus documentation to establish ownership (and/or contracts for transfer of rights), plus centrally determined fees for the application and for registration. Fees are comparatively low – for example preparation and certification of state registration can be of the order of UH260-535 (c.UK$7-15). The authority

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16 Decree of the Cabinet of Ministers of Ukraine of December 27 2001 “On state registration of copyright and contracts relating to the author’s right to a work” https://zakon.rada.gov.ua/laws/show/1756-2001-%D0%BF#-Text
is expected to make a decision within one month and, if registration is granted, will add the work to the central copyright register.¹⁷

Collection and Monetisation

In general, permission to use copyright material is obtained via a licensing agreement with the owner. This can be negotiated directly with the rights owners of individual works. However, the process is often managed by a specialist licensing body with authorisation to agree licenses on behalf of the rights owner. Collective Management Organisations (CMOs) are a particularly important part of the IP landscape: they negotiate fees and grant rights on behalf of multiple licence holders and distribute receipts to rights owners in the form of royalties. In many countries, CMOs tend to be not-for-profit companies, often controlled and/or owned by their members. Well-functioning CMOs are important for the efficiency and effectiveness of the monetisation system. They are able for example, to negotiate blanket licences for venues or radio stations to play recorded music, avoiding the need for every track to be individually licensed for performance.

The Ukrainian legislation underpinning the arrangements for collection and distribution of royalty fees was substantially reformed in 2018, partly in recognition that there was a lack of effective regulation of CMOs, with limited oversight and limited scope to change the list of officially recognised organisations. The 2018 reforms brought in a much more detailed regulatory framework, including providing for the establishment of a new regulator. The legislation itself includes detailed requirements which CMOs have to meet in order to join the official register covering areas such as:

¹⁷ see also Ukraine response to WIPO questionnaire, 2010 (check up to date): https://www.wipo.int/copyright/en/registration/replies_survey_copyright_registration.html
Constitution — CMOs must be not-for-profit and founded by rights holders.

Criteria — CMOs must meet a range of specific standards, including on transparency and equality of treatment.

Governance — detailed provisions for boards, supervisory bodies and general assembly of members requiring that members are involved in decision-making.

The new legislation also set out processes which the regulator must follow in accepting registrations of CMOs, and in “accrediting” the lead CMO in each “sphere” of operation. Accreditation continued the policy that there should be just one CMO for each area of copyright, but introduced requirements for a more transparent decision-making process, including open competition and rights of appeal. The 2018 legislation established powers for the designated state IP policy body to accredit and regulate Collective Management Organisations. It sets out the “basic principles” that registered CMOs must comply with, including that they must be non-profit, founded by rights holders and work in their best interests, and they must meet prescribed standards of transparency, accountability and efficiency. It also states that rights holders have the right to choose – and withdraw from - the CMO they want to work with. The law also sets out detailed governance requirements for CMOs.

Bodies subsequently accredited include the Ukrainian League of Copyright and Related Rights, founded in 2011 and accredited in 2019 act as CMO for music recordings and public performances. The Ministry of Economy website, provides details of 7 sub-sectoral accreditations made under the new legislation between 2019 and 2022 although these were shared by a total of 4 organisations.

There is, however, little information readily available on the process leading to these accreditations. In addition, the level of information published so far by these collection bodies
varies widely:
it’s not clear in all cases how far these organisations meet the statutory criteria around ownership and transparency. Also there are 19 CMOs included in the official Register of Collective Management Organisations,\(^\text{19}\) (increased from 17 in 2020) so there is a large number of operational CMOs not accredited.

We understand that this is due to the new accreditation process being put on hold due to the war, and the introduction of a temporary measure allowing existing registered organisations to continue operating in relation to their existing catalogue.

Accreditation systems for CMOs can raise sensitivities, for example around the independence of accredited organisations. Not all countries have formal accreditation processes for CMOs. The UK, for example, sets clear criteria that organisations must meet in order to operate as CMOs, but beyond that does not set controls over the numbers of CMOs (see PRS for Music case study below). The strengthening of regulation of CMOs in Ukraine, and the introduction of the formal accreditation system, no doubt reflects the difficult history of collection arrangements, which were widely seen as ineffective and, at worst, prone to corruption. But there may be a case, when implementation resumes, for reviewing the transparency of the system, to ensure maximum confidence in the decisions made.

Indeed there has been some controversy over CMO accreditation in Ukraine, although as outlined above, there has also been progress. UACRR (The Ukrainian Agency of Copyright and Related Rights) has established itself as a new CMO founded by and working for creators of music, literature and drama. It claims to be the only truly independent CMO and alleges that other bodies were insufficiently independent and did not meet key elements of the new criteria (see UACRR website and Independent Music Publishers International Forum letter to the President, Nov 2021\(^\text{20}\)). It has an open governance structure, with a growing number of domestic members, and has developed a range of international agreements to represent artists from other countries in Ukraine. UACRR has also joined CISAC, the main international network of collecting societies in the creative industries. However, it has not so far been

\(^{19}\) "Data from Ministry of Economy in a Letter from ME to UCF #3921-07/15178-07, 06.04.2023

accredited in Ukraine.

The accreditation process is currently run by the Ministry of Economy. Given the distinctiveness of copyright frameworks compared to those governing other forms of IP, and the distinctive characteristics of the creative industries, there is a question about whether the Ministry of Culture should have a specific role in relation to accreditation of copyright-based CMOs.

In 2021 the government passed legislation which effectively paused the accreditation process and status of CMOs to “unblock the activities of CMOs” and prevent ceasing of royalty payments under martial law. This meant that all registered CMOs were temporarily able to continue (or resume) issuing licences and collecting fees on behalf of their clients, to ensure that these functions could continue to be carried out, as far as possible.

According to the European Business Association, the Ukraine government decided that there would be new competitions for CMO accreditation in copyright protection. Legislation abolished the Accreditation Commission of Collective Management Organisations and provided for a new Accreditation Commission.

**Enforcement**

The primary route for enforcement of rights in Ukraine is through the civil courts. Rights holders are responsible for pursuing actions for infringement, on a range of potential grounds, including piracy, plagiarism and circumvention of technical protections. Potential remedies range from prohibition of the infringement to award of financial damages. Statutory damages can vary widely, but since 2018 courts have been expected to calculate damages based on the licence fee that the infringer would have paid to obtain the rights legitimately (in line with the EU Association Agreement). We understand from the State Court Service in Ukraine that in 2018, just over 300 civil and commercial disputes relating to copyright were brought before the courts.

There is no requirement to go through a pre-trial procedure in Ukraine, but the law does provide for a complainants’ lawyers to issue take-down notices to infringers, particularly in relation to unlawful use of copyright

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21 There will be new competitions for the CMO accreditation
22 Ukraine: updated Statutory Damages for Copyright Infringement
works online. However, enforcing rights online can be challenging due to both the volume of content being posted and difficulties in identifying the infringer, particularly as hosts are often reluctant to disclose information on the owner of specific online services and sites.\(^{23}\)

There is currently no fast-track process (e.g. for small claims) although it is possible to get interim relief, in the form of preliminary injunctions.\(^{24}\)

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23 [https://ipstyle.ua/copyright-infringement-dispute-resolution-in-ukraine/](https://ipstyle.ua/copyright-infringement-dispute-resolution-in-ukraine/)
24 see also [https://uk.practicallaw.thomsonreuters.com/3-620-5046?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a540450](https://uk.practicallaw.thomsonreuters.com/3-620-5046?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a540450)
Experience in Ukraine
2.1 Approach

The consultation phase sought to understand and explore creative industries practitioners’ experience and perceptions of copyright in Ukraine, with a view to

(a) Understanding the role of copyright within the CCIs in Ukraine
(b) Identifying key issues and gaps for development
(c) Identify priorities and models to transform copyright and intellectual property frameworks and mechanisms in Ukraine
(d) Identify actions for government and industry

Online Focus Groups

Counterculture held 2 two-hour online focus groups in February 2023 for music and audio-visual sectors respectively. 26 participants were originally identified and sourced by UCF, with 16 attending the sessions. Participants represented the following key groups:

- Creators (directors, screenwriters, musicians, composers etc.)
- Production companies and organisations
- Collective management organisations
- Distribution platforms (for film and music)
- Lawyers

With support from partners, Counterculture identified three key areas of discussion: awareness, protection and monetisation. The questions were open-ended but sought to encompass a more detailed set of sub-questions without being too rigid, allowing for new topics to emerge. Questions were drawn from the experience of the UK as well as the findings from the desk research.
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<th>Question</th>
<th>Sub-Questions</th>
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<tr>
<td><strong>1. Awareness</strong>&lt;br&gt;How far are Intellectual Property rights an active consideration for you when you are developing or releasing creative work and how easy is it to access the information and advice you need?</td>
<td>• Do people register newly created copyright material?&lt;br&gt;• How far is piracy and infringement a concern?&lt;br&gt;• What steps, if any, are taken to protect works?&lt;br&gt;• How do people access information about copyright laws and regulation?&lt;br&gt;• Where do people go for support/advice?</td>
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<td><strong>2. Protection</strong>&lt;br&gt;In your experience, how easy is it for creators and other rights holders to protect their intellectual property rights and how effective are the mechanisms for enforcing rights, tackling infringement and ensuring due reward to creators and investors in IP?</td>
<td>• What are the experiences of securing copyright for creative work?&lt;br&gt;• How effective are (voluntary) arrangements for registering copyright?&lt;br&gt;• How big an issue is copyright infringement and what forms does it take?&lt;br&gt;• Where are biggest problems (e.g., infringing content on mainstream platforms; illegal pirate sites; peer-to-peer)?&lt;br&gt;• What are the experiences of copyright infringement and steps taken to tackle it?&lt;br&gt;• How effective are the laws and enforcement bodies in Ukraine?&lt;br&gt;• How easy is it to remove infringed content?&lt;br&gt;• What are the experiences and perceptions of whether people are reliably and fairly compensated for use of works with rights, and what the main barriers for this?&lt;br&gt;• How effective are the mechanisms for collecting and paying royalties (CMOs)?&lt;br&gt;• What are the gaps/weaknesses in the knowledge, support, enforcement in Ukraine?</td>
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<tr>
<td><strong>3. Monetisation</strong>&lt;br&gt;Based on your experience, what do you see as the biggest opportunities for you/your organisation to grow income from your IP rights; what are the key barriers to doing so?</td>
<td>• What are the key opportunities (and barriers) to increase earnings from rights (e.g., digital platforms, new audiences)?&lt;br&gt;• What are the perceptions of the respective roles within the value chain (e.g., record labels, streaming platforms) to maximise value for all?&lt;br&gt;• What action could industry or government take to help monetise creations and content more effectively?&lt;br&gt;• What are the approaches to IP/rights in other countries or organisations that Ukraine can learn from?</td>
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Interviews
Following the focus groups, Counterculture identified 5 participants for 1:1 interviews to explore in more depth certain issues that emerged from the discussion and gain insight about actual experiences and perception of parts of the system. These concerned striking rights deals (including with commercial and public investors), registration processes, interaction with CMOs and pursuing infringements. Interviews were also conducted with the UNIPI and the Deputy Minister of Culture and Information Policy.

2.2 Key findings

Intellectual Property Framework
As described above, much of the legal framework is now derived from the key international treaties on copyright, of which Ukraine is a signatory. In principle, Ukrainian legislation follows many of the same principles as elsewhere. Many of the people we spoke to identified perceived gaps in the current legislation and/or put forward ideas to improve it. We also heard a number of views on elements of the current framework which were still claimed to be out of line with the EU or wider international position, for example around the interactions of different elements of rights ascribed to actors along the value chain.

However, there was a range of views on this: some argued that the core problems are not to do with the legislation itself, but the fact that many creators lack a full understanding of how the system works, and do not know how to define and manage their rights. For example, it was clear from our discussions that many stakeholders were confused by the statutory definitions around different forms of rights and their interrelationships and, in some cases, felt them to be overly restrictive. As a minimum, this underlines the importance of raising awareness and offering opportunities for creators and others dealing with IP to undertake training in management and valuation of copyright IP.

In relation to some of the concerns about legislation, including the structures for, and transparency of, collective management of licensing...
and royalties, our analysis suggests that the legislative provisions themselves are generally clear, but that the implementation of the legislation is inconsistent and, in some areas, incomplete. This needs to be completed – and seen to be so – in order to build a solid basis for an effective, transparent and practical IP system in which rights owners and users of copyright works can have confidence. This incompleteness is underlined in a report by Soundbuzz in 2020 on the Ukrainian music industry (supported by the UCF) which noted that, while legislation had been passed to improve the framework (as required by the EU Association Agreement) this has yet to feed through into practice on the ground.

It may well be that the war has been a major factor in the apparently slow progress of implementation of the most recent legislative reforms on collection management. We understand that key functions of the IP system have been suspended following the implementation of martial law. In particular, according to information received from the Ministry of Economy, there remain 19 CMOs in the official register, but the accreditation process – and the accreditation status of existing CMOs – has been suspended. It is recommended that the relevant authorities should ensure they have a detailed plan in place for resumption of action to implement in full and promote the latest reforms, so that they can be ready to make swift progress as soon as wider circumstances allow.

It was suggested that the lack of an accessible, comprehensive database of copyright owners was a contributory factor in the lack of payments to creators. In common with other countries, registration of copyright products in Ukraine is not compulsory. Nevertheless, it has potentially significant advantages for creators, by making the ownership of rights in compositions easily traceable by users, and by providing clear evidence of authorship to potential funders (eg. for film screenplays) or to the courts, if the need arises. According to the Soundbuzz study of Ukraine’s music market, there had been significant increases in levels of registration of music works since 2017, including a 70% increase between 2017 and 2019 alone. This is a helpful development, and a trend worth encouraging through continued promotion of advantages of registration.

26 Ibid.
In principle, if an artist opts to join a collective organisation, it shouldn’t be necessary for a user of their work to trace ownership via the central register. However, we understand that many artists do not affiliate to CMOs and therefore need to deal directly with events organisers and other users. We were told, anecdotally, that in many cases this results in authors licensing their works for free. This would seem to underline the need for focused guidance and support to creators, so they can make informed business decisions in seeking to monetise their works.

According to the Soundbuzz study, copyright registration of musical works was increasing significantly up to 2020, suggesting a positive trend and increasing awareness. However, the same study reported that nearly 40% of songwriters and performers had experienced unauthorised use and only 16% had been able to remedy this.

The rights framework in relation to audiovisual content tends to be more complicated because there are more stages of development involved and more individuals. It was suggested that legal definitions were not clear enough, and that this left potential loopholes which could be exploited. For example originators of new format ideas or screenplays could be deprived of rights income when their ideas were used to develop a slightly different product with no acknowledgement of the connection. The 2022 legislation introduced a range of new definitions which clarified and extended the coverage of copyright protections – including a clearer definition of “originality” which should help to underpin the authorship of works, by linking it to the creative activity behind it. The clearer the legal definitions are, the better. Although, it is likely that, under any scenario, the precise boundaries of authorship and originality etc. will be tested and refined through the courts.

Focus group participants claimed that experiences of negotiating production deals with private sector partners is comparatively straightforward, because it was a straightforward commercial negotiation. In contrast, dealing with public funders was perceived to be often more difficult and time-consuming, and it was particularly difficult to receive royalties on works subsidised by the public purse. It is not uncommon for requirements around public funding to be relatively demanding, due
in part to the importance of transparency, accountability and value-for-money in the use of taxpayers’ money. Nevertheless, it may be helpful for the terms and conditions used by key public funders, and the associated processes to be reviewed, in order to explore the scope for simplification without compromising those basic requirements.

**Awareness and Advice**

Lack of awareness was a key theme raised by the focus group participants. The structures for protection of intellectual property in Ukraine are perceived as ‘lacking transparency’ and ‘complicated’ and, as such, leading to informal and ineffective practices. Participants spoke of a complex environment with frequent changes to copyright law and infrastructure and few affordable lawyers with expertise in this area. The current experience of managing copyright is through word-of-mouth advice, oral commitments and inconsistent methods. This has resulted in a lack of understanding of ways to use, calculate and pay royalties. The lack of awareness runs throughout the ecosystem with participants citing issues during ideation, production, publishing and distribution and an overall lack of unity and shared understanding within the industry. Goodwill within the sector is recognised and many copyright infringements are considered to be the result of a lack of knowledge rather than malicious intent or gaps in legislation.

Several issues were mentioned as obstacles for building better awareness: these included language barriers for existing guidance in English, geographical barriers to services only available in major cities, and the lack of specialist lawyers. The relative newness of this opportunity is another challenge. For example, it is only since 2017, as Ukraine continued its transition to a market economy, that producers were able to retain the rights to their work and create capital for their catalogue. The industry is still navigating the implications of this change.

Participants were knowledgeable about EU and USA practices in rights purchasing and remuneration and there is appetite to strengthen the domestic sector to ensure Ukraine can be globally competitive and doesn’t lose creative talent or work to other countries. Companies
recognise that without a clear system and more consistent awareness of it, there is a financial and reputational risk to the future development of the Ukrainian creative industries. Yet, there is belief that the essential structures are in place, and that copyright operations and commitments simply need to be clarified and communicated. Clear guidance from the government on the processes for making deals and registering, reporting and updating copyright licences, in simple, accessible language, would help creators and consumers engage with and effectively use the system.

Participants called for more education so that those involved at every stage of the value chain better understand their role in upholding fair and transparent copyright law. An education programme might have several strands to it. Firstly, using formal education to integrate teaching on copyright and intellectual property into courses at music and film schools and other arts education providers, as well as on courses for those who work in jobs related to intellectual property. In doing so, young people, as the future leaders of the creative industries, will be aware of the issues at the beginning of their careers and better understand their rights as creators of content. There is also a feeling that artists need to reappraise their roles as not only creators but as businesses. Incorporating copyright legislation and practices into their education would encourage them to take a more enterprising approach to monetising their work. The World Intellectual Property Organisation (WIPO) provides materials for students on the basics of IP but it is only available in English and therefore currently inaccessible for those who don’t have these language skills.  

Secondly, education needs to involve the entire value chain to help promote the opportunities and understand the financial benefits of correct copyright practice. More support and resources are needed across every part of the industry. This will encourage shared practices throughout the sector to protect IP and enable copyright owners to manage theirs and others’ work without needing external help from lawyers. Participants suggested an education programme might include:  

- Guidelines on copyright entitlements, practices and processes, eligibiliti-
Interviews
Following the focus groups, Counterculture identified 5 participants for 1:1 interviews to explore in more depth certain issues that emerged from the discussion and gain insight about actual experiences and perception of parts of the system. These concerned striking rights deals (including with commercial and public investors), registration processes, interaction with CMOs and pursuing infringements. Interviews were also conducted with the UNIPI and the Deputy Minister of Culture and Information Policy.

2.2 Key findings

Intellectual Property Framework

As described above, much of the legal framework is now derived from the key international treaties on copyright, of which Ukraine is a signatory. In principle, Ukrainian legislation follows many of the same principles as elsewhere. Many of the people we spoke to identified perceived gaps in the current legislation and/or put forward ideas to improve it. We also heard a number of views on elements of the current framework which were still claimed to be out of line with the EU or wider international position, for example around the interactions of different elements of rights ascribed to actors along the value chain.

However, there was a range of views on this: some argued that the core problems are not to do with the legislation itself, but the fact that many creators lack a full understanding of how the system works, and do not know how to define and manage their rights. For example, it was clear from our discussions that many stakeholders were confused by the statutory definitions around different forms of rights and their interrelationships and, in some cases, felt them to be overly restrictive. As a minimum, this underlines the importance of raising awareness and offering opportunities for creators and others dealing with IP to undertake training in management and valuation of copyright IP.

In relation to some of the concerns about legislation, including the structures for, and transparency of, collective management of licensing, part to the importance of transparency, accountability and value-for-money in the use of taxpayers’ money. Nevertheless, it may be helpful for the terms and conditions used by key public funders, and the associated processes to be reviewed, in order to explore the scope for simplification without compromising those basic requirements.

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Case Study from UK: British Library Business & IP Centre Network

In 2012 The British Library launched the **BIPC National Network**, supported by the UK Intellectual Property Office, working with local authorities and library service providers across England and Scotland to roll out the service nationally. Capitalising on the existing physical library infrastructure and resources, they have a proven track record of supporting local economies, as highlighted in 2019 when an independent economic evaluation showed that the BIPC Network was creating £6.95 of public value for every £1 invested.

Business & IP Centres are now delivered by library authorities in Birmingham, Bristol, Cambridgeshire & Peterborough, Cumbria, Devon, Glasgow, Greater Manchester, Hull, Kent, Leeds, Liverpool, Newcastle, Norfolk, Northamptonshire, Nottinghamshire, Oxfordshire, Southampton, South Yorkshire, Sussex, Tees Valley and Worcestershire. A further 90 `BIPC Locals` are being established by each BIPC, working with partner library authorities in each region to achieve a wider geographical impact.

Centres provide free access to collections of business databases and publications, including online market research reports, company data for over 144 million UK and global companies, start-up books and business directories, historical annual reports annual reports and over 60 million patents. The specific offering of each of the 20 centres varies according to the needs and opportunities of the particular area, with BIPC teams coordinating their own programme of activities which include workshops and one-to-one clinics (both online and face-to-face), events, panel talks and networking opportunities.

In 2020-21 the BIPC Network supported over 22,000 individuals through direct face-to-face or online activities, as well as handling over 5,000 research enquiries.
Some industry experts in Ukraine already offer informal support and guidance to their networks, sharing template licence agreements and advice on entitlement and eligibility. There is a desire for more formal trade bodies or associations to support creators and companies in protecting their rights, providing advice to their members and increasing awareness of best practice. The UK’s Institute of Contemporary Music Performance describes a trade association as:

“an organisation founded and funded by its members who operate in a specific industry. These are typically non-profit organisations, providing supportive communities, who actively educate their members on the pressing issues affecting the wider industry. Trade Associations also actively lobby and represent the interests of their specific industry and their members”.

There is scope to develop associations with capacity to understand the needs of each creative industry subsector and support development. In the UK, the Creative Industries Council (CIC) is a forum where government, creative businesses and creative organisations come together to address challenges for the sector, including areas such as IP, regulation, export markets and skills. Specific projects are taken forward by working groups, made up of professionals from across the sector. They focus on issues specific to individual creative subsectors, as well as challenges that affect the creative industries as a whole.

Thirdly, learning programmes should extend beyond creative industry practitioners and businesses to consumers. This will enhance audiences’ understanding of piracy and copyright infringement and how to purchase content safely, securely and in support of their favourite artists. Government-led programmes aimed at children, young people and adults will increase awareness and reduce consumer infringement. There have been several social media awareness campaigns and cinemas present a short reel before a film screening about piracy being a criminal offence. The growth of legitimate on demand platforms like Netflix, Apple TV/Music and Spotify can be effective in reducing piracy as many people sign up and pay fees, and are drawn away from using infringing websites. This shows that consumers are willing to pay for
access. Ukrainian platforms are following this model and a cultural shift to paying for content is gaining momentum. Among its priority activities, UNIPI seeks to raise awareness of intellectual property through educational projects, including through cooperation with stakeholders. Initiatives aimed at understanding the needs and developing copyright protection tools in the CCI sector are also being implemented by non-governmental organisations. Interaction of specialised state institutions on intellectual property issues, such as UNOVI, with other cultural actors combines efforts to prepare educational programmes and tools using the experience of other countries and help develop and implement reforms that are relevant to the Ukrainian context. Participants referenced a project in 2018 supported by the Ukrainian Cultural Fund to develop template licence agreements and other copyright resources. This suggests there is already positive action in this area and many willing organisations to take this work forward. The Get It Right From a Genuine Site campaign in the UK is an example of a consumer-facing project designed to raise awareness about accessing creative content legally. The case study overleaf provides more details about how the campaign was run.
Case Study from UK

*Get it Right from a Genuine Site* was an awareness campaign that promoted the value of the creative industries and educated UK consumers about accessing content legally.

The campaign was funded by the government, Internet Service Providers (ISPs) and rights holders. It was designed to target 16-24 year olds, parents and carers responsible for household internet connections and others who may influence young people’s actions in accessing their favourite films, music, ebooks and other creative material.

The campaign consisted of multiple elements, including advertising and promotion via digital, outdoor, print and TV, consumer PR, and social media initiatives. A dedicated website was set up to explain the law and to signpost audiences to legitimate, safe and secure sources for content. In addition, educational emails were sent directly to subscribers of participating ISPs to engage consumers directly, particularly those whose connections had been used to illegally share copyright protected content.

Originally launched in 2015, by 2017 the campaign had reached just under a quarter of the population. The evaluation showed that while overall levels of piracy had not changed, those exposed to the campaign significantly reduced their infringements and were less likely than others to have accessed content illegally. They were also less likely than others to see piracy as socially acceptable. Further waves of the campaign, including the most recent in Summer 2022, have seen similar impacts.
Collection and Monetisation

A strong common theme among the stakeholders we consulted was concern that collection arrangements still do not work effectively. Many creators and rights owners claimed that they essentially received little or no royalties at all from the use of their works and that they received little or no information about how the collection system operated. A number of stakeholders voiced suspicions of persistent malpractice among some collectors, who were allegedly collecting royalties without passing payments on to those entitled to receive them.

We were told that, where payments are received through collective arrangements, they are often at very low levels, with a lack of transparency about how tariffs are set. The legislative changes should improve this but it appears not to have had a major impact as yet. A number of participants draw unfavourable comparisons with the position in other countries, noting that work they created under international contracts achieved much higher revenue rates.

Another key factor often cited was the historic reluctance to pay on the parts of some categories of users of copyright material. This was a particular issue in relation to TV and radio broadcasters – likely to be among the largest users – who have historically been used to broadcasting content (particularly music) without paying any licence fee or royalties. This may in part be due to the legacy of distrust of CMO organisations. There are widespread perceptions across the sector of a history of fraudulent practice by some CMOs: for example we heard stories of several organisations claiming to represent the same sets of owners, and of money collected which did not find its way back to artists.

However, it was also claimed that many radio stations expect to be paid by creators to play their pieces. It appears, therefore that there may be an embedded a culture of reluctance to pay, which has developed over at least 20 years. This is likely to take time to shift. It will be important that the new requirements around governance and transparency are seen to be effective and that the accredited CMOs command confidence of both their creative industry members and the groups of businesses from whom they are expected to collect. The government should also
consider, at the appropriate time, the case for specific and targeted communications and bespoke guidance, to raise the profile of the recent reforms and increase pressure on those being slow to adapt to the strengthened framework.

It was reported that, in the music industry, deals between artists and record labels (particularly independent ones) are often informal. Artists often assign their IP rights away, in return for a one-off payment. Similarly, authors and producers of films will also often trade away all their rights for a lump sum. This may, in many cases, be a rational decision to make, given the commercial uncertainties inherent in the release of any new film or musical work, but there were general concerns that many CI businesses and individual creators have limited knowledge of how to value their IP, and how to calculate and acquire potential royalty income. Likewise, in the audiovisual sectors, it was reported that individual authors and producers can be disadvantaged when negotiating with investors, due to lack of capacity and knowledge of the contracting process. A number of participants advocated the establishment and/or development of industry trade associations who could provide guidance to their members and represent their interests in the wider policy arena. Some suggested that a single cross-industry collection organisation, could help bring clarity to the system. Recent reforms have moved in this direction, providing for a single accredited CMO for each industry segment.

Opportunities

When asked about the key opportunities to grow income from IP, two themes came up particularly strongly: digitisation and international markets. The need for effective, accessible digitisation of services and processes was a consistent message throughout our discussions, particularly in relation to the following.

- Official processes for registration of copyright works etc., making it easier for creators to register their work is likely to have a significant positive impact on registrations.
- Collection and greater online accessibility of data, including copyright
registrations, catalogues of works etc.

- Use of software tools to track use / plays of individual works, in premises and on radio etc, to enable more accurate and transparent collection and distribution of royalties.

The UK government’s Intellectual Property Office (IPO) is currently developing One IPO, a new online service for customers to view and manage all their IP rights in one place for the first time. The service aims to simplify processes for registering, linking or managing IP rights, transferring ownership, as well as updating account details such as changes of address. The service will launch in stages between 2024 and 2026.

In Ukraine, we understand that, while the process for registration of copyright is currently wholly paper-based, the new IP Office is working to deliver effective digital options. More widely, we understand that the IP office has already started holding meetings with groups of creative businesses to understand their views and needs and identify areas where they can work together.

While there is a substantial domestic market in Ukraine for cultural and creative products, a number of participants noted that there was also significant potential for growth in international markets. government and industry could work together to support Ukrainian creative businesses in building their presence internationally and providing guidance to those looking to develop export opportunities for the first time.

Performing Rights Society (PRS) for Music is a member-led collection organisation in the UK, with international reach. The following case study shows how it operates to support its members.
Case Study from UK: PRS for Music

PRS for Music is a collection organisation for songwriters, composers and publishers based in the UK. It collects and distributes royalties to its members when their works are broadcast, performed in public, or streamed or downloaded online. In 2022, PRS collected nearly £1bn in total revenues on behalf of over 165,000 members and paid out some £836m in royalties.

The organisation is owned and controlled by its members. It’s Board is overseen by a Members` Council, which approves the organisation` s budget, appoints the CEO and Executive Board members, and reviews company performance. There is no formal accreditation process as such for CMOs in the UK, but in order to operate, all collection organisations are required to meet detailed criteria set out in legislation — most recently the Collective Management of Copyright (EU Directive) Regulations 2016, which includes detailed requirements around governance, transparency and management in the interests of members, including publication of an annual Transparency Report, with detailed information on collections, costs and distribution.

PRS issues licenses on behalf of its members to businesses of all sizes, for all the uses of music which it covers — from broadcasting, to live events and playing of recordings in public spaces. For most organisations, licence fees are based on fixed tariffs, with some case-by-case agreements for the biggest organisations. There is scope for legal action via the IP Tribunal if businesses refuse to engage, but this is rarely used as the vast majority will agree to pay once approached.

PRS collects and pays royalties to its members on a fixed schedule, in line with its published distribution policy, which explains in detail how royalties are calculated, collected and paid. PRS uses a mix of methods to calculate the distribution of royalties — including, where possible and cost-effective, collection of detailed track-by-track information on performance numbers. This can involve, for example, collecting setlists for live performances, use of existing data sources, and use of music recognition software to track individual plays. This requires rge calcula-
Infringement

Online piracy remains a major concern, particularly for the film industry. We were told that, while piracy of music has not been eradicated, it is now less of a concern to the music industry, as legitimate online services such as Spotify and Apple Music become increasingly well-established. The top priority for music industry rights holders was to ensure that artists actually receive the royalty income to which they should be entitled from legitimate companies using or distributing their work. In the audiovisual sector, however, consumption of film, in particular, from pirate sites is seen as a serious and widespread problem.

“Piracy in the field of copyright and related rights means reproduction, import to the tax territory of Ukraine, export from the tax territory of Ukraine and distribution of pirated copies of works (including computer programs and databases), phonograms, videograms, illegal use of broadcasting programs, camcording, as well as Internet piracy, i.e. illegal use of copyright and/or related rights objects using the Internet.”

Source: Law of Ukraine “On Copyright and Related Rights”

It is exacerbated because, we were told, the major global distributors tend not to actively pursue piracy cases in Ukraine, presumably because, from an international perspective, they do not see it as cost-effective. Moreover, several of the biggest pirate sites are thought to be operated
from outside Ukraine – including from Russia – which clearly makes them more difficult to pursue directly, although we understand that a number of these have been blocked. So, while legitimate pay offerings, both domestic and international are now getting some traction in Ukraine, further promotion and awareness raising is needed to educate people away from pirate sites.

Enforcement
Recent changes to legislation, the establishment of a single collection agency in each area, and other reforms indicate that progress is being made to strengthen enforcement, but there is a feeling that more needs to be done to improve and change the habits of broadcasters and businesses. Many people pointed to “a culture of not paying” that seems to some to be growing, despite the reforms. Several reasons were suggested for this: frequent changes to the law which confuses the industry, ambiguities in artist management structures, cultural institutions that lack the budget to pay royalties, broadcasters’ general reluctance to pay, as well as speculation that some organisations are corrupt in their practices. There is a feeling that working in co-production with companies from the EU is preferable, as regulation and enforcement is more established so copyright use will be more consistently respected and valued.
Participants had mixed views about enforcement. Many believed that, in reality, enforcement is minimal. There is a perception that some larger companies are able to avoid paying for the use of IP “because they can.” They have significantly more power and resources than individual authors, who feel unable to challenge them. Others disagreed, however, and suggested that authors are able to protect their rights and it is the responsibility of the author to collect their own royalties and to seek legal advice if their copyright is infringed. Several people gave examples of the actions they take as individuals to protect their copyright, prevent piracy and collect payment for use of their work. This included hiring people to identify and investigate pirate sites, as well as visiting broadcasters personally to collect royalties. There were references to unions of musicians and directors who act as agencies to help their members promote their work and get remunerat-
ed for playback. There is a desire more formal trade bodies and trade unions to represent authors’ rights and support enforcement. Cinema is a major concern for pirated screenings in Ukraine as there is apparently little monitoring or standardisation of practices across the country. In contrast, global streaming platforms for music and TV use a paywall model that protects IP. Services based on user-uploaded content, such as YouTube, can be a particular cause for concern, although it was noted that Youtube has established procedures for notification and take-down of copyright-infringing material.

Relevant agencies
The UNIPI was formed in 2022 as the specialist department on IP, patent, trademark and copyright. It evolved from the National Intellectual Property Authority which was established under the Ministry of Economy. This new entity was set up to deliver a more reliable and efficient system and is responsible for the reviewing applications, registrations of IP across all industries and providing support and services. Rather than being an enforcement agency it works with other agencies to facilitate and promote implementation of the law by providing platforms for business associations, enforcement authorities and ministers to come together to discuss issues and best practice. It has the authority to issue procedural notices requesting that online platforms remove infringing copyright content.

The Department of Cyber Police, within Ukraine’s national police, also deals with online infringement and works with internet providers to take a proactive approach in addressing copyright issues. Its jurisdiction is limited to domestic matters which means it has no authority to tackle copyright infringements of Ukrainian content abroad. Many pirate sites are based in Russia and there is little that can be done to remove content.

None of the participants interviewed had experience of pursuing legal cases against infringements, although examples were given of small court cases before the war. It was noted that these cases had no impact on improving the system. As part of the judicial reform, a new special-
isec court for intellectual property was initiated to tackle infringement and ensure the enforcement of the law in commercial and civil cases. The aim of the separate Court is to reduce the length of court proceedings and increase convictions in IP cases. The development of the Court stalled due to the requirement for further examination of and clarification about overlap with other authorities and administrative courts.\textsuperscript{30} Revisiting the concept after the war would be useful in further improving operations for enforcement.

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Recommendations
The following recommendations have been listed in suggested order of priority to progress responsible copyright management.

1. Following the delay to implementation of key elements of the recent legislative reforms due to current circumstances in Ukraine, we recommend that government prioritises the development of a practical plan for resuming and completing implementation of the reforms (including the 2018 reforms to the collection system). In particular:
   a. Work on the implementation plan should start now so that it is ready to be implemented as quickly as possible when circumstances allow. The plan should be developed with input from government departments, industry and creative practitioners.
   b. This plan should include the development and delivery of specific, targeted communications and guidance, for creators and users of copyright works, to explain and raise the profile of the recent reforms and increase (positive) pressure on those being slow to adapt to the strengthened framework.
   c. The plan should include specific actions, for government and the IP Office, to maximise the transparency of the collection system, including the process for accrediting CMOs, tariffs which CMOs use in setting licence fees, and the way royalty distributions are calculated. It should also determine the actions to be taken for improving regulation and enforcement, setting out the role of government departments, industry and other bodies.
   d. The plan should include a government and industry-led programme of awareness raising for consumers, designed to tackle unlawful use of copyrighted material, and reduce consumer infringement. It should promote ways audiences can support their favourite artists to continue producing popular work.
2. The government should, as soon as possible, establish a forum bringing together representatives of government, regulators and creative business sectors for regular meetings to address challenges. In particular this should:

a. Be invited to discuss and feed in views on the development of the implementation plans, to ensure they have support from industry.
b. Provide a space for the open exchange of views on broader copyright-related issues.
c. Where possible, develop shared approaches in key areas such as communications, digitisation and transparency.
d. Identify opportunities for government and industry to work together, to support and facilitate Ukrainian creative businesses in gaining access to international markets and finding new opportunities to monetize their IP abroad.
e. Guide development of an education strategy for the entire value chain to promote awareness and understanding of the legislative reforms.
f. Steer the creation of industry-led opportunities for creators and creative entrepreneurs to undertake training in the management and valuation of copyright works. Bringing together influential and international organisations as part of this programme and drawing upon a wide range of experiences would have significant impact.

3. The government should consider increasing the role of the MCIP as the lead policy department for the creative industries and in the accreditation process for CMOs. It should create an action plan for any transfer of responsibility.
4. The UNIPI should lead development of a digitisation strategy for the management of IP rights, including a plan and timetable for digitizing key services more fully, including for registration of copyright works and for making key information and data (including on registrations, catalogues of works etc) as accessible as possible online.

5. The government, in cooperation with the forum, should support the establishment and development of independent trade associations for creative industry subsectors. This would provide supportive communities for addressing key issues of common interest, sharing knowledge and good practice, and providing tailored education for their members.

6. The government should work with education providers to include modules on copyright and intellectual property as a standard part of their creative industry teaching programmes. This will build awareness and promote best practice among new generations of creative entrepreneurs. The modules could be taught by legal experts and members from the forum mentioned in recommendation 2.

7. Funders of creative works, including UCF, Ukrainian Film Fund and other organisations, should review their terms and conditions to agree appropriate levels of royalty income for the creators they fund or support them in receiving royalty income from the works produced.
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APPENDIX 1

List of collective management organisations listed in the Register of collective management organisations (as of March 2023)

<table>
<thead>
<tr>
<th>Organisation Name</th>
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<tbody>
<tr>
<td>Public Union &quot;Ukrainian League of Copyright and Related Rights&quot;;</td>
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<tr>
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<tr>
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<tr>
<td>NGO &quot;Association of collective management &quot;Oberig&quot;;</td>
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<tr>
<td>Ukrainian public organisation &quot;CINEMA&quot;;</td>
</tr>
<tr>
<td>Ukrainian public organisation &quot;All-Ukrainian League of Authors&quot;;</td>
</tr>
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<tr>
<td>Public Union &quot;Ukrainian Agency of Copyright and Related Rights&quot;;</td>
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<tr>
<td>Public organisation &quot;Commonwealth of Authors of Ukraine&quot;;</td>
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<td>Public organisation &quot;Union of Right Holders of Ukraine&quot;;</td>
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<td>Public Union &quot;Organisation of Collective Management of Copyright and Related Rights&quot;;</td>
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<td>Public Union of Music Authors and Publishers;</td>
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<td>Public Union &quot;Authors and Publishers&quot;;</td>
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<td>NGO &quot;UNION OF UKRAINIAN COMPOSERS AND AUTHORS&quot;.</td>
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Infringement

Online piracy remains a major concern, particularly for the film industry. We were told that, while piracy of music has not been eradicated, it is now less of a concern to the music industry, as legitimate online services such as Spotify and Apple Music become increasingly well-established. The top priority for music industry rights holders was to ensure that artists actually receive the royalty income to which they should be entitled from legitimate companies using or distributing their work. In the audiovisual sector, however, consumption of film, in particular, from pirate sites is seen as a serious and widespread problem. It is exacerbated because, we were told, the major global distributors tend not to actively pursue piracy cases in Ukraine, presumably because, from an international perspective, they do not see it as cost-effective. Moreover, several of the biggest pirate sites are thought to be operated from outside Ukraine – including from Russia – which clearly makes them more difficult to pursue directly, although we understand that a number of these have been blocked. So, while legitimate pay offerings, both domestic and international are now getting some traction in Ukraine, further promotion and awareness raising is needed to educate people away from pirate sites.

Enforcement

Recent changes to legislation, the establishment of a single collection agency in each area, and other reforms indicate that progress is being made to strengthen enforcement, but there is a feeling that more needs to be done to improve and change the habits of broadcasters and businesses. Many people pointed to “a culture of not paying” that seems to some to be growing, despite the reforms. Several reasons were suggested for this: frequent changes to the law which confuses the industry, ambiguities in artist management structures, cultural institutions that lack the budget to pay royalties, broadcasters’ general reluctance to pay, as well as speculation that some organisations are corrupt in their practices. There is a feeling that working in co-production with companies from the EU is preferable, as regulation and enforcement is more established so copyright use will be more consistently respected and valued.

Participants had mixed views about enforcement. Many believed that, in reality, enforcement is minimal. There is a perception that some larger companies are able to avoid paying for the use of IP “because they can.” They have significantly more power and resources than individual authors, who feel unable to challenge them. Others disagreed, however, and suggested that authors are able to protect their rights and it is the responsibility of the author to collect their own royalties and to seek legal advice if their copyright is infringed. Several people gave examples of the actions they take as individuals to protect their copyright, prevent piracy and collect payment for use of their work. This included hiring people to identify and investigate pirate sites, as well as visiting broadcasters personally to collect royalties. There were references to unions of musicians and directors who act as agencies to help their members promote their work and get remunerated.

Project team

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