

IMPROVING DELIBERATION, IMPROVING COPYRIGHT

OUTCOMES AND
RECOMMENDATIONS

CREATe Working Paper 2020/6

LEE EDWARDS
GILES MOSS



CREATe

Improving Deliberation, Improving Copyright

Outcomes and Recommendations



Dr Lee Edwards, London School of Economics
and Political Science

Dr Giles Moss, University of Leeds

April 2020

Produced in collaboration with



CREATE



Project funded by



Arts and
Humanities
Research Council

Table of Contents

Executive Summary	2
Introduction	5
The project	6
Section 1: Purposes and Principles	8
Why consult?	9
Which principles are important?	10
Section 2: Challenges to realising the principles	13
Inclusive	13
Well-informed	16
Equitable	19
Accountable	21
Section 3: Solutions for improving consultations	23
Section 4: Final recommendations	36
Appendix 1: Methodology	39
Appendix 2: Existing government guidelines on UK government consultation processes	43
Appendix 3: Results from the SLIDO voting process	46
Appendix 4: Glossary of Terms	49
References	52

All photography by Dr Kris Erickson,
Associate Professor, University of Leeds



Executive Summary

In the project *Improving Deliberation, Improving Copyright* we collaborated with copyright stakeholders, other media stakeholders, and members of the public to develop a new approach to consultations that would complement existing government guidelines but also address some of the limitations of copyright consultations in practice¹. The project was structured according to the normative ideal of *deliberation*, prioritising “mutual communication that involves weighing and reflecting on preferences, values, and interests regarding matters of common concern” (Bächtiger, Dryzek, Mansbridge, & Warren, 2018, p. 2). The deliberative principles of inclusivity, equity and mutual respect guided how we worked with participants and facilitated their interactions with each other during the project.

Copyright consultations take place in the context of a landscape that is defined by uneven resources, knowledge and expertise among stakeholders. If consultation processes reinforce, rather than challenge, these inequalities, their outcomes are likely to be contested. The participants in this study argued that **consultations designed to take the context of copyright better into account have the potential to address the difficulties associated with copyright debates, and enhance the legitimacy of policy outcomes**. This means that consultation design should address the power dynamics that shape the copyright debate, and the different resources available to stakeholders, both of which affect their opportunities to participate in consultations.

¹ The project website contains a full summary of the outcomes from the dialogues and the workshop, as well as the content of this report. It can be found at <http://www.lse.ac.uk/media-and-communications/research/research-projects/improving-deliberation-and-copyright/Improving-Deliberation-Improving-Copyright>



This report presents the outcomes of the first two stages of the project: individual dialogues with 34 stakeholders representing a wide range of organisations and institutions in the copyright debate, and ten members of the public, about their experiences of consultations; and stakeholder workshops with 28 dialogue participants working together to answer three broad questions: who should participate in consultations; how they should participate; and why they should participate.

In their discussions, participants adopted a systemic perspective of consultations, treating them as **an overall system of connected methods** (Mansbridge et al. 2012) where the quality of the consultation depends on whether it contains the right combination of methods, and whether the links between different methods can be improved to achieve better outcomes. The participants also adopted a **stakeholder-centric approach** in their discussions, focused on the needs and perspectives of the different stakeholders involved, rather than those of the institution leading the consultation. They identified two purposes and four principles for conducting consultations:

- an **epistemic purpose** (to develop knowledge that will improve policy);
- a **democratic purpose** (to enable stakeholders to contribute to policy and improve the accountability of policy decisions).
- Principles of being **inclusive** (comprising equal access and participatory parity among stakeholders); **well-informed** (robust, wide-ranging evidence and mutual understanding among stakeholders); **equitable** (equal influence and equal treatment of stakeholder inputs, as well as a readiness to compromise); and **accountable** (transparency in key areas, and adequate justification of processes, decisions and outcomes).



Based on these findings, we make four general recommendations to guide decisionmaking when using a **stakeholder-centric, systemic approach to designing and implementing consultations**:

- 1 Design consultations as a system** using the principles (inclusive, well-informed, equitable, accountable) as benchmarks for assessing the value and effectiveness of each part of the process.
- 2 Prioritise novel solutions that can address multiple challenges**, because these will enhance the overall quality, efficiency and effectiveness of the consultation.
- 3 Use a mix of solutions that minimise tensions**. Where tensions between principles and/or outcomes seem unavoidable as a result of a particular combination of solutions, then context-specific solutions for reducing them should be explored.
- 4 Explain and justify decisions about the design and implementation of consultations** in light of the principles and challenges identified here. When decisions are controversial, deliberation about the principles to apply in relevant situations can help provide an agreed basis for decision-making.





Introduction

Copyright is a hotly contested topic. How it is legislated and implemented affects all of us, and particularly so today, where the lines between traditional categories such as user and producer, creator and consumer, have blurred. In other words, copyright is a matter of public interest and, as such, consultations offer an opportunity for all those affected by copyright to contribute their opinions on current practice and future policy. However, consultations are also vulnerable to structural issues that limit their effectiveness and legitimacy, including pre-defined agendas, accusations of excessive influence from particular economic interests, a format of engagement that can be inaccessible to the general public, and a lack of transparency about what happens to submissions once they are made (Erickson, 2014; Freedman, 2008: 80-104; Klein, Moss, & Edwards, 2015).

In the case of copyright, and as the evidence from participants in this project shows, these general limitations are exacerbated because of the political, social, economic and technological factors that make up the context for policymaking and influence how consultation processes have evolved. For example, there is limited engagement or understanding between those who want to increase copyright protection and those who want to increase public access to copyrighted work (Dobusch, 2014). Often, stakeholders defend their positions rather than engage in dialogue (Lemoine, 2020, 26 February). There are also imbalances in stakeholder resources: some have more time, finance and expertise to invest in consultations, while others are less equipped to engage. This also means that some stakeholders have more opportunity to build relationships with policymakers, which they can use to influence decision-making both within and outside the consultation process.



The complexity of some copyright-related issues and the fast-changing technological environment also mean that it can be difficult for some stakeholders to keep up with copyright developments. Members of the public, who are deeply affected by copyright policy but receive relatively little education about it, do not always understand its relevance to their own lives or its importance to creators and industries, and have few opportunities to be represented in consultation processes.

In sum, copyright consultations take place in the context of a landscape that is defined by uneven resources, knowledge and expertise among stakeholders. If consultation processes reinforce, rather than challenge, these inequalities, their outcomes are likely to be contested. In contrast, the participants in this study argue that consultations designed to take the context of copyright better into account have the potential to overcome the difficulties associated with copyright debates, and open up new avenues for a more legitimate copyright regime. Involving stakeholders in “consultations about consultation” can both support accountability for specific consultations, and ensure that any changes made better serve stakeholders as well as government². *Improving Deliberation, Improving Copyright* was designed with this purpose in mind.

The project

Improving Deliberation, Improving Copyright is guided by the normative ideal of *deliberation*, prioritising “mutual communication that involves weighing and reflecting on preferences, values, and interests regarding matters of common concern” (Bächtiger et al., 2018, p. 2). We assume that the legitimacy of consultations is improved if they are deliberative – inclusive, equitable, and characterised by mutual respect between participants during discussions and negotiations (Dryzek, 2010; Mansbridge et al., 2012; Warren & Mansbridge, 2013). Consultations are a formal participatory mechanism, built into government processes, and provide important opportunities for stakeholders to provide input for policymaking between elections. However, as our participants’ comments

² Existing consultation guidelines (Appendix 2) provide recommendations that go some way to addressing the difficult copyright context. For example, they prioritise inclusivity, a broad range of evidence, and enabling scrutiny of results. However, they also have some limitations: they do not explicitly recognise inequalities or their potential effects on the consultation process and outcomes, and do not provide any detail on the potential difficulties of implementing consultations in highly contested policy areas.



showed, they are not always deliberative. In the context of a policy issue like copyright, where inequalities between stakeholders affect their ability to participate, using deliberative ideals to structure consultations can help to ensure that policymaking is based on a sufficient range of stakeholders' evidence, and that the consultation itself follows a legitimate and fair process.

We worked with stakeholders to develop an approach to consultations that complements existing government guidelines and addresses some of the limitations of copyright consultations in practice. The project had three parts: stakeholder dialogues; stakeholder workshops with dialogue participants; and the production and presentation of the final recommendations to the Intellectual Property Office³. The dialogues were individual discussions with 34 stakeholders in the copyright debate, (see Appendix 1 for the range of stakeholders represented in the sample) and ten members of the public, to understand their experiences of consultations. These discussions formed the basis of the stakeholder workshops, where 28 participants worked in small groups to answer three broad questions: who should participate in consultations; how they should participate; and why they should participate. We adopted a deliberative approach to the discussions with participants, but they were not required to suggest deliberative ideas for improvement. Different types of deliberation did appear in their suggestions, but many of their ideas were not specifically deliberative (see section 3).

This report summarises the views expressed by participants in the dialogues and workshops: we identify principles and purposes of consultations; challenges to consultations; and possible solutions. The report concludes with recommendations that will help to overcome the current limitations of copyright consultations and increase the legitimacy of consultation processes and their outcomes⁴.

3 A full methodology can be found in Appendix 1.

4 The report is informed by academic literature on consultations and deliberation, and referenced appropriately. The findings – the purposes, principles, challenges and solutions – are all based on our participants' contributions to the project.



Section 1: Purposes and Principles

Policy consultation is a process where policymakers seek evidence and views from groups affected by a policy and/or from other contributors with relevant knowledge. We think most readily of written consultations, where stakeholders submit responses in writing to a series of questions. These written consultations may be broad, seeking general views on policy areas, or more tightly defined, asking for input on detailed plans. But policy consultation is not limited to formal, time-bound, written consultations. In this project, participants described consultations as **a complex, ongoing process, rather than a one-off event, involving various methods of engagement** (eg, multi-stakeholder workshops, roundtables, and one-to-one discussions as well as written documents)⁵.

Our participants considered the strengths and weaknesses of different methods used in consultation and how they work together in practice. When they did this, participants were approaching consultation in what recent democratic theorists call a “systemic” way, reflecting on how **consultation operates as an overall system** (Mansbridge et al. 2012) of connected methods, each of which has different advantages and limitations. The overall quality of the consultation therefore depends on whether it contains the right combination of methods, and whether the links between different methods can be improved to achieve better outcomes. This also means recognising the range of methods that could be used, and keeping options open as to when and how particular methods might be used in different contexts.

⁵ The Cabinet Office (2018) guidance on consultation reflects this view: “Consultation is not just about formal documents and responses. It is an on-going process”.



Why consult?

Our participants argued that consultation should have a clear purpose in order to ensure consultations are seen as genuine attempts to obtain stakeholder input. A Government Code of Practice on Consultations from 2008 explains the purpose of consultation as being about improving policy and accountability: “effective consultation allows the Government to make informed decisions on matters of policy, to improve the delivery of public services, and to improve the accountability of public bodies”.

Although some participants placed more emphasis on one purpose than the other, their views echoed this dual focus on better policymaking and enhanced accountability. The two main purposes they identified were “epistemic” and “democratic” (Mansbridge et al., 2012)⁶:

1 develop knowledge to improve policy (epistemic purpose)

2 enable stakeholders to contribute to policy and improve the accountability of policy decisions (democratic purpose)

Participants made a broad distinction between “policymakers” (those whose main responsibility is making policy and who run consultations) and “stakeholders” (external groups potentially affected by a policy or with an interest in a policy, who may contribute to consultations). However, they also noted that this distinction is sometimes blurred: stakeholders can, and should, contribute to policymaking, and they gain knowledge through their interactions with government and other stakeholders. Like policymakers, stakeholders may also be held accountable insofar as they are expected to explain and justify their contributions.

⁶ We draw on Mansbridge et al (2012) here who distinguish between the “epistemic” (developing knowledge) and “democratic” (improving the quality of democracy) functions of deliberative systems. They also refer to an “ethical” function. As we discuss later in the report, mutual recognition and respect is an important part of achieving inclusion, but this did not appear to be a main purpose of consultation from the perspective of our participants.



Which principles are important?

Principles guide how consultations are carried out. In the context of copyright, our participants revealed a desire for consultations that were **inclusive, well-informed, equitable, and accountable**⁷. Below we capture the ways in which participants viewed each one:

1 Inclusive

Inclusive consultations have two components: **access** and **participatory parity**. First, consultations should be accessible to anyone with relevant knowledge about a policy area and/or potentially affected by a policy. Second, consultation participants need the resources to participate and to be respected as a valued contributor. The political theorist, Nancy Fraser (Fraser & Honneth, 2003: 36), uses the term “participatory parity” to refer to the resources and respect required for stakeholders to participate meaningfully and on the same level.

2 Well-informed

Well-informed consultations also have two components. First, they should be based on robust, wide-ranging and rigorous **evidence** about the policy area. Second, they should be based on **mutual understanding** with opportunities for stakeholders to reflect on views different from their own, in order to develop thoughtful contributions.

3 Equitable

Equitable consultations comprise **influence** and **balance/compromise**. Consultations should offer stakeholders a genuine opportunity to influence⁸ policy outcomes; all contributions to the consultation should be treated as important; and there should be a willingness to negotiate and reach compromises where agreement is not possible.

7 Similar principles are discussed in academic literature. To evaluate public participation initiatives, Smith (2009) discusses the importance of four key “goods”: “inclusiveness”, “transparency”, “considered judgement” and “popular control”.

8 Knight and Johnson (1997) refer to the idea of “equal opportunity of access to political influence”. Aiming for “equal opportunity to influence”, rather than simply “equal influence”, is important in allowing for the fact that the quality of contributions to a consultation will vary and the positions of stakeholders may change when confronted with different views and new evidence (Bächtiger et al., 2018: 6).

4 Accountable

Two components contribute to accountability: **transparency** and **justification**. There should be transparency about key aspects of the consultation process to allow scrutiny by stakeholders. Stakeholders should explain the positions they adopt and, crucially, policymakers should justify the consultation process and outcomes, showing how contributions were considered and balanced, decisions made and final outcomes arrived at.

Figure 1 summarises the principles⁹ and their different components.

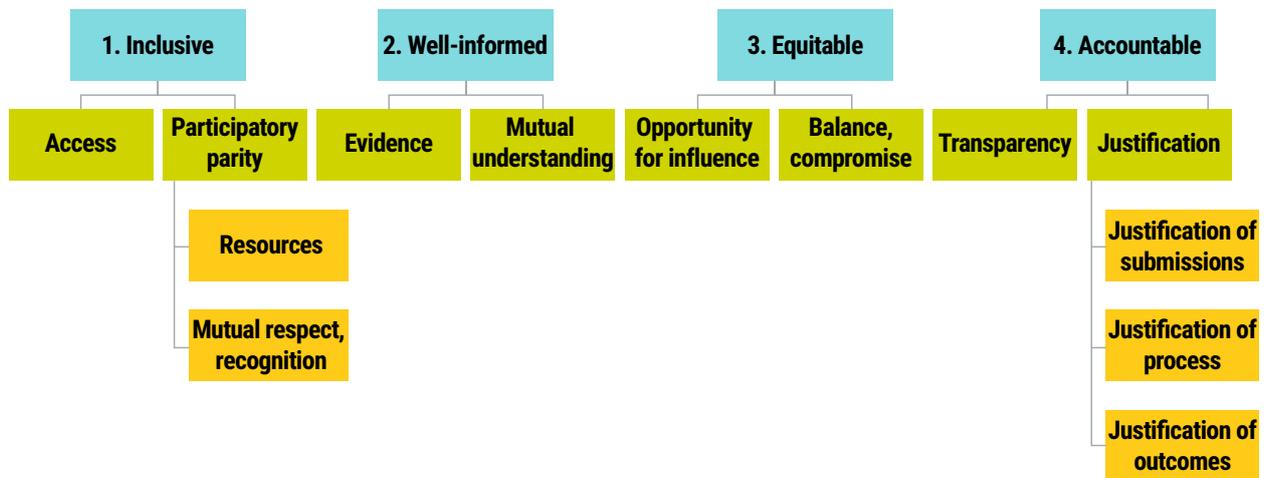


Figure 1: Key Consultation Principles

It is important to note that the principles may not be fully achievable in practice. They are what Mansbridge calls “regulative ideals” (Mansbridge et al., 2010), that is, aspirations to aim towards and yardsticks with which to evaluate current consultations. All the principles are important in achieving the purposes of consultation, but the relationships between them can be complex. In some cases, the components may overlap and be mutually reinforcing – realising one principle helps to realise another. In other cases, they may be in tension with each other. For example, mutual understanding supports participatory parity, compromise, and justification because these things require discussions to be carried out with mutual respect, a genuine intent to listen to other views,

⁹ Existing government consultation guidelines (Appendix 2) provide recommendations and suggest actions that can promote some of these principles. For example, ensuring consultations are clear, concise, and are published in a timely way facilitates accountability. Considering a range of different processes for engagement and targeting stakeholders both contribute to inclusivity. Taking consultation responses into account when making policy recommendations supports equity among stakeholders. However, government guidelines do not address the importance of deliberation, especially among stakeholders, and its benefits; nor do they recognise systems-level questions of how different guidelines and consultation methods might complement or conflict with one another.



and for participants to justify their positions. On the other hand, in some situations, transparency may reduce people's willingness to negotiate flexibly in a way that might enable compromise and balanced outcomes. Moreover, some consultation methods or practices will contribute to achieving some principles better than others. For example, an email campaign coordinated by an advocacy group may be inclusive, presenting a low barrier of participation to groups who might not contribute otherwise. However, it may not promote mutual understanding and meet the evidentiary standard required for well-informed consultation. Ideally, the principles would be balanced so one principle is not realised at the expense of another, and a consultation would use the combination of methods that ensures it reflects each principle as closely as possible.

In the following section we outline the main challenges our participants identified to achieving each of the principles. We then turn to their solutions and offer recommendations for improving consultations in the final section.





Section 2: Challenges to realising the principles

The different challenges cover a wide range of issues. Their relevance to any one case will depend on the type and topic of the consultation. They echo the general problems that have been identified for consultations noted in the introduction, but also reflect the copyright context, where the uneven distribution of resources, knowledge and expertise among stakeholders has important consequences for participation in consultations.

Inclusive

An inclusive consultation process would be one which was accessible, where all stakeholders have the resources to participate and are valued contributors. Our participants identified the following challenges to realising this principle in practice:

Uneven access

- Those with existing relationships in government (the “usual suspects”) have privileged access to consultations;
- Access to different stages of the consultation process is unequal (eg, some stakeholders are able to influence the agenda or questions, while some are only approached after these are already decided);
- Informal access to government and policymakers is unequal, but those who have it can more easily influence consultations via personal relationships;
- Not all stakeholders are aware of consultations taking place; smaller organisations, creative producers (both professional and citizen creators), start-ups and SMEs are all difficult to reach because they are more dispersed and do not always receive government communication about consultations;



- The “public” voice is difficult to identify, target and engage, and sometimes assumed to lack expertise;
- Consultation formats (eg, written consultations, face-to-face meetings) may not accommodate disabilities¹⁰.

Participatory disparity

- There is a lack of information and knowledge about copyright and consultations, especially among the public, which makes it harder for some stakeholders to engage;
- Jargonistic language and concepts are difficult for some stakeholders to work with;
- Stakeholders who participate in consultations less often may find face-to-face meetings with “the usual suspects” intimidating because of their relative lack of experience in these contexts;
- The lack of dialogue and uneven participation among representatives of different viewpoints (eg, public and industry) limits the development of mutual respect;
- Some associations may not fully represent the views of their members, or may not be fully inclusive of the groups they claim to represent, or may have a specific agenda;
- Stakeholders who have more material resources (time, finance, expertise and networks) to invest in consultation responses have an advantage over those who don’t have the same resources and are less able to produce the “right” kinds of evidence, or ground their arguments in the same level of technical expertise.

¹⁰ The government has produced extensive advice on making consultations accessible, which can be found here: <https://gds.blog.gov.uk/2018/09/13/accessibility-advice-when-creating-a-uk-government-consultation/>



Indicative quotes

I think the government always struggles to get messages out to the public and to other organisations. There are so many people they could be talking to so how they do it, yes, it is a hard one. *Stakeholder dialogue 28*

I guess mainly it is probably a matter of resources. The rightsholders' organisations have resources to pay for lobbyists and people who can do that. Whereas, you know, the educational sector, the council sector usually don't have such resource, so it's down to the passion of people who care about the topic and find the time to go to the consultation. *Stakeholder dialogue 25*

[W]e know what government consultations look like and feel like and there is a way that they do them. [...] So, I think we work around some of the formalities, I suppose, in some ways, because we can understand what they're trying to get at or what they're trying to do. *Stakeholder dialogue 30*

I think there's lots of room for improvement in social media to make it more responsive and more nuanced. That would cost resources and it would require looking at things differently. *Participant Group E*

It's important we use language and terms the user knows, or the end user knows. Very, very simplistic language. We've got to patronise a little bit. Plain English. *Participant Group C*

I'd agree that [face-to-face meetings] is best, but it's not always possible. We have a lot of disabled members who find it very difficult to travel. So, there's accessibility. *Participant Group E*

[I]t's throwing that hook out, isn't it, of getting people to bite, thinking, "This sounds interesting," either, "I don't know much about it, but it could be informative. I could learn something. It could be fun," or, "I know a lot about this and I really care about this. This is a very important issue for me". *Stakeholder dialogue (public) 6*

The biggest obstacle to the written process is that it's the only channel for people to do therefore it becomes a numbers game. Actually by splitting this up you can give the right attention to the written and the right attention and focus [to other forms] so that it actually makes both systems work better. *Participant Group B*



Well-informed

A well-informed consultation process would be characterised by quality evidence and mutual understanding among stakeholders. Our participants identified the following challenges to realising this principle in practice:

Limited range and quality of evidence

- Quantitative data tends to be emphasised, but cannot capture the whole picture of stakeholders' experiences with copyright policy;
- The emphasis on economic value and impact leads to a neglect of the social and public value of copyright/non-economic costs of policy options;
- Not all stakeholders can produce the kind of evidence that “matters” in consultations;
- Forms of evidence that the public or smaller stakeholders can submit (email campaigns, case studies, specific experiences) are not easily incorporated into analysis;
- Forms of evidence that the public or smaller stakeholders can submit are regarded as less valuable than “harder”, quantifiable evidence;
- Research can be difficult/expensive to produce and is not always trusted to be independent, so that even quantitative evidence is contested;
- Not all evidence is open to scrutiny, which means its quality can be questioned.



Lack of mutual understanding

- The lack of dialogue and uneven participation among representatives of different viewpoints (eg, public and industry) limits the development of mutual understanding;
- Making negotiations public may lead some participants to be formulaic or secretive about their negotiating position¹¹;
- The lack of opportunities for dialogue means that the polarised, seemingly zero-sum nature of the copyright debate feeds through to the consultation process;
- Without deliberation, some participation lacks value (eg, uninformed public participation may not recognise the trade-offs involved with different policy options; “usual suspect” stakeholders may not adequately understand the positions of those who do not regularly participate in consultations or copyright debates).

¹¹ Warren and Mansbridge (2013) differentiate between deliberative democracy and deliberative negotiation, defined as processes where different parties “make and respond to claims, arguments, and proposals with the aim of reaching mutually acceptable binding agreements.” (p. 92). Deliberative negotiation is characterised by mutual justification, respect, and reciprocal fairness. Research has shown that “closed-door” negotiations, which take place in private, make it easier for participants to develop mutual understanding and come to agreement. Making negotiations too public can have the opposite effect, because stakeholders may have to publicly sacrifice their positions.



Indicative quotes

There must be another way of, you know, looking at the whole question about whether you make an exception or not. Not just whether you're gonna lose money or not. *Participant Group C*

[W]e are often asked something like, "What would be the financial impact on the industry of us introducing this exception?" It's an economics question that you couldn't answer without a huge amount of expensive research, which might cost almost as much as the impact, so you don't do it. *Participant Group B*

The moment we're going to stream this online everyone is not engaging. You will have my official positions and that's all we're doing. [Y]ou need to be in a closed room to compromise effectively [...] [T]he types of measures that need to be in place is some elements of closed meetings as well as open meetings. *Participant Group B*

The IPO has got that sole responsibility for picking through [the evidence] and making those critical judgements about it [...] That's, I think, where some of the issues around transparency come in. If you put that deliberation outside of government, [...] You can then say, "Well, it's transparent now, you can see how that happened". *Participant Group E*

I think people just do need to be talking more, because we would be interested in what users want. We assume in a lot of cases what we think they want, but I think it would be useful to find out from them directly the challenges they are facing, and what would make life easier for them. *Stakeholder dialogue 18*

I think there's a lot of merit in having dialogue between different interested stakeholders, [...] it's important to understand each other, to understand the different viewpoints, and then you can start to moderate your views and try and – you know, they can start to try and bring things together, but that needs to be quite carefully structured and organised. *Participant Group D*

You can design an online tool [...] that anyone can answer because it has sliding scales, like would you have more of x or more of y? [...] you slide one, the other one slides, you go, "Hang on, I didn't mean that." [...] that would be really interesting, it's almost like gamification. It's like try to balance, create the balance your way in this compromise. *Participant Group D*



Equitable

An equitable process would be one where all stakeholders have an opportunity to influence consultation outcomes and there is balance and compromise where agreement is not possible. Our participants identified the following challenges to realising this principle in practice:

Perceived unequal influence

- If stakeholder contributions are disregarded by policymakers, consultations are seen as purely symbolic and undermine trust in the process;
- Stakeholders have uneven influence depending on their access to different parts of the process, resources to invest in the process, and on the relationships they are able to foster;
- Some forms of influence are invisible and/or unclear because they happen behind the scenes (eg, through informal meetings or at invitation-only discussions);
- The way questions are asked can limit input and therefore influence;
- Influence may be limited if submissions don't conform to the standards of evidence required (for example, "cut and paste" email campaigns may lack credibility because they do not demonstrate a thoughtful response);
- Forms of evidence that the public or smaller stakeholders can submit are regarded as less valuable than "harder", quantifiable evidence;
- Influence via consultations is limited anyway because consultation is only one part of a wider political process.

Lack of balance/compromise among polarised positions

- The lack of opportunities for dialogue means that the polarised, seemingly zero-sum nature of the copyright debate feeds through to the consultation process;
- Too much transparency might inhibit the deliberative process by reducing the willingness of stakeholders to share information, be honest about their positions, or to reach a compromise;
- The structure of consultation meetings and submissions tends to encourage people to defend their position, rather than genuinely consider other positions based on mutual respect and with a readiness to compromise.



Indicative quotes

“It’s easy to sort of dismiss when you are getting copycat responses, isn’t it? It doesn’t matter if it is 10,000 numbers from the Internet if they are all saying the same thing. [...] I mean not necessarily count them as 10,000 individual voices.” “Well that’s an interesting question. Do you count them as 10,000 or 1?” *Participants Group E*

In a policy field like copyright – where it’s about balancing economic interests and economic rights of creators, and certain types of intermediaries and rightsholders, with more abstract fundamental rights of creators or, also, rights about access to culture, which are not as easily expressed in economic terms – there tends to be, among policymakers, a tendency to attribute more importance to those people who can make some claim to economic might or economic impact. *Stakeholder dialogue 21*

I don’t think voices are equal because it’s a stratified process, and I think it’s normal that not all voices are equal. What is important, I believe, is for the unequal parts to not disappear in the larger process. So they do not get cancelled somehow by an overarching or oversized power of other parts. *Stakeholder dialogue (public) 1*

The way in which consultations work has to allow us to flag that “that has to be a choice, for one or the other” and, and so often it doesn’t. *Stakeholder dialogue 19*

You’d want to be sure that everyone was addressing exactly the same [thing], if it’s going to be a consultation. So you are able to compare answers to the same questions or views on the same issues. *Participant Group D*



Accountable

An accountable process is one which is transparent and where consultation contributions, outcomes and the process itself are all justified to stakeholders. Our participants identified the following challenges to realising this principle in practice:

Limited transparency

- There is a wide-ranging lack of transparency about consultations (eg, who is funding stakeholders/who is meeting the IPO/what influence they have/who is funding research/how are decisions made/how is evidence weighed up), which undermines trust in the process;
- Just sending out information is not transparency – information has to be accessible and understandable;
- Sometimes the motivations and funding sources for stakeholder participation are not transparent, which can raise questions about their motivation and distort the debate for other stakeholders and government.

Limited accountability

- Explanations of the analysis and decision-making that led to outcomes are not always available or clear;
- Explanations about why stakeholders are included in different parts of the process, or why the process itself is conducted in particular ways, are not always available or clear;
- There is no built-in process for acknowledging participation;
- The IPO is formally accountable to government, not stakeholders, for recommendations based on evidence;
- There is no single locus of accountability because consultation is one part of a wider political process that affects the outcome, and civil servants move between departments without being held accountable for their actions;
- There can be a lack of opportunity to scrutinise, discuss, and challenge the justifications other stakeholders provide for their positions.



Indicative quotes

There's always going to be missing evidence, there's always going to be limitations on resource, and I think it's being transparent about what you did with that evidence that you did have, with the methodology that the government has. *Participant Group E*

Often in these consultations they say evidence-based policymaking, but we don't get to see their methodology for actually analysing the evidence or weighing it or comparing different types of evidence. So it's not clear that the promise of evidence-based policymaking is fully met. *Participant Group E*

In terms of the follow-up to the consultation, there needs to be a sense that the respondees have been listened to, that a report has been written up which clearly takes account of what's been said, because that's an impact on how people are going to respond to these things in the future. If there's always a sense that these are just a tick-box exercise then that damages people's faith in the consultation process as a whole. So I think having a response afterwards which actually takes account of what people have said is really important. *Stakeholder dialogue 14*

You know, "I'll tell you who funds it. I'll tell you who owns it. I'll tell you where my money comes from." If you have got nothing to hide why should anyone be frightened as to why and how they function? *Participant Group D*

I think just communicating what the steps are, what scrutiny has been built into it and who... You need to know who is accountable, you know [for] the final decision and how has it reached that stage. *Stakeholder dialogue (public) 3*

I think [transparency is] absolutely useful and it also enables one to say, "Well hold on a minute, have you thought of inviting X, because they could contribute, they've got something to say about this?" So, making sure all the right people are round the table. [...] I have no idea how the questions are set, or who does that, who's responsible for that? *Stakeholder dialogue 8*



Section 3: Solutions for improving consultations

The eight priority challenges for current consultation processes can be summarised as: uneven access; participatory disparity; limited range and quality of evidence; lack of mutual understanding; perceived unequal influence; lack of balance and compromise; limited transparency; and limited accountability. Prioritising solutions for these challenges will help move consultations towards being more inclusive, well-informed, equitable, and accountable and make it more likely they achieve the democratic and epistemic purposes of consultation.

Like the challenges identified, the solutions that our participants suggested (see Table 1) are wide-ranging and will be relevant to different consultation contexts. Taken together, they are a set of useful options that the IPO and other public bodies can draw on to improve consultations. They are based on a detailed understanding of consultations as they operate in practice, including the ways in which different forms of inequality between copyright stakeholders affect their ability to engage in consultations and influence outcomes. They are also specific, rather than general, offering actual tactics to work with. Of course, some of these measures may already be adopted in some consultations. However, our participants based their suggestions on their own experience of contemporary consultations, and as such offer a stakeholder-centric view of the consultation process. Their feedback suggests that there is still scope to improve whatever is currently being done to deliver a better experience for those taking part.

Adopting a **stakeholder-centric view of consultations** means that consultation leaders try to view decisions from the perspective of the different stakeholders involved, rather than the institution. It is a powerful way of identifying whether what they *think* is happening is actually the *experience* of stakeholders and/or whether stakeholders are actually aware of what is already being done. For example, information about consultations may be posted in locations



that seem accessible or sent to “key” organisations for dissemination, but some stakeholders may never go to those locations, or may be excluded from networks so that they never receive the information. Thinking from the stakeholder perspective can help to avoid or eliminate these mismatches. It can also prompt reflection about what might and might not be working for those the consultation is ultimately designed to serve. In these circumstances, consultation leaders can consider whether they need to:

- 1** do an activity more;
- 2** do it more effectively;
- 3** think more about the relationship between the activity and other parts of the consultation system; and/or
- 4** explain more clearly to participants what they have done and why they have done it.





Table 1: Solutions for priority challenges

Principles	Priority challenges	Solutions
Inclusive	Uneven access	<ul style="list-style-type: none">• Make it easy to find information about consultations and to submit responses• Promote consultations effectively, using media, networks, representative groups, and online influencers to reach stakeholders where necessary• Use accessible, clear language and questions in consultations• Use creative systems of communication throughout, with multiple formats and options to engage members of the public and hard-to-reach groups (eg, video channels, voting technology, video conferencing, social media, websites, face-to-face workshops, “councils”, town hall meetings, written documents)• Adjust requests for information/consultation formats based on the stakeholders’ sector or knowledge• Create a safe, non-intimidating environment for all stakeholders to participate;• Use technology to communicate but recognise its limitations for some stakeholders and in relation to some information• Widen access by including a range of stakeholders at all stages of the consultation process



Principles	Priority challenges	Solutions
Inclusive	Uneven access	<ul style="list-style-type: none">• Leave channels of communication open even after the consultation is closed, so that stakeholders can still communicate suggestions or feedback• Monitor access by mapping or otherwise researching stakeholders in advance, to identify and address gaps in stakeholder responses that might suggest accessibility barriers
	Participatory disparity	<ul style="list-style-type: none">• Improve understanding and engagement with copyright (in public information campaigns/in the school curriculum)• Improve understanding of government consultations (in public information campaigns/in the school curriculum)• Communicate relevance and purpose so that stakeholders can make an informed decision about participating, understand why it is important to participate and that their contribution will be valued• Make sure face-to-face meetings welcome a wide range of people (eg, make them less formal) and enable broad discussions/ scenario assessments• Ensure adequate time is allowed for all stakeholders to respond• Provide support for resource-poor stakeholders to participate (eg, training in consultation processes, additional background information about the topic, a dedicated enquiry line for questions about process or required content)



Principles	Priority challenges	Solutions
Well-informed	Limited evidence	<ul style="list-style-type: none">• Widen the range and type of evidence requested to ensure all experiences are represented and to accommodate different stakeholder capabilities• Formally analyse and incorporate the value of qualitative evidence into the decision-making process (eg, as a way of understanding trends/views/exceptions)• Improve trust in the process (eg, use independent bodies to conduct research; open up evidence and analysis to stakeholder scrutiny; use an independent body to audit evidence and analysis, such as a citizens jury or panel)• Use technology/software programmes to gather and analyse some forms of evidence• Provide funding/other forms of support for stakeholders with fewer resources to do research• Tailor evidence requirements for different sectors to facilitate participation• Identify gaps in stakeholder responses in the analysis and address them



Principles	Priority challenges	Solutions
Well-informed	Lack of mutual understanding	<ul style="list-style-type: none">• Hold regular, informal “information exchange” meetings among stakeholders to facilitate relationship-building outside the formal consultation process• Ensure there are opportunities for dialogue and deliberation during the consultation process (eg, public deliberative events, workshops, more frequent face-to-face meetings, mixed stakeholder meetings, “town hall” meetings)• Frame consultations more broadly where possible, to facilitate more open discussion• Use creative tools (eg, games, voting software, sliding scales showing trade-offs) to develop mutual understanding among stakeholders• Ensure face-to-face sessions are chaired with a view to ensuring they are “safe”, non-intimidating spaces• Provide information to stakeholders in advance of face-to-face meetings, so that everyone knows what to expect and so that they have enough information to deliberate effectively (eg, background information in written or video format)



Principles	Priority challenges	Solutions
Equitable	Perceived unequal influence	<ul style="list-style-type: none">• Ask broad, open-ended questions in consultations, to facilitate more open discussion• Put the same questions/issues to everyone• Involve politicians earlier in the consultation process so that they better understand stakeholder views• Follow up with participants to explain how their input has been used• Use technology to assess the content and authenticity of contributions (eg, captcha systems to confirm responses come from a human being; fact-checker sites or services to confirm claims made; email verification requirements for online submissions)
	Lack of balance and compromise	<ul style="list-style-type: none">• Set expectations from the outset about what can be achieved and the need for compromise• Use indicative votes in stakeholder meetings to arrive at a compromise• Make clear that consultations take a range of views and information into account, and not only the interests of a limited number of stakeholders• Balance public and private discussions to maximise participants' willingness to share information and negotiate, while also enabling scrutiny



Principles	Priority challenges	Solutions
Accountable	Lack of transparency	<ul style="list-style-type: none">• Create a transparency register to monitor stakeholder contact and influence• Make transparency in key areas a requirement for all stakeholders (eg, their funding, motivations, data sources) alongside existing requirements of publishing submissions and making identities public• Publish the content of stakeholder meetings (redacted if necessary) and formal submissions• Give stakeholders information in advance of meetings so that they know what/who to expect and why• Ensure information disclosure is accessible and understandable for all stakeholders• Open up evidence and analysis to stakeholder scrutiny



Principles	Priority challenges	Solutions
Accountable	Lack of justification	<ul style="list-style-type: none">• Communicate aims and objectives, explaining the process to participants and enabling subsequent evaluation• Explain decisions about participation of different stakeholders and forms of evidence, judgements used in analysis, and how conclusions and recommendations were reached• Build in a follow up process to accommodate feedback and explain how stakeholders' input has been used (eg, a dedicated email address/web site/web form/video channel)• Be honest about limitations of the process (eg, the timescales, the gaps in evidence)• Clarify the IPO's role, the purpose and limitations of the consultation, the importance of including a range of views and information, the need for balance and compromise• Use an independent body to oversee consultations, audit evidence and analysis (eg, ombudsman/citizens jury/ independent panel)• Provide opportunities for stakeholders to review, question, and challenge the arguments put forward by other stakeholders



As noted in the introduction, deliberation was a normative ideal underpinning the project, because it is a way of ensuring that the outputs from consultations are robust, legitimate and democratic, thereby providing high-quality input for political decisions. A deliberative approach to consultation would focus on being inclusive, equitable, and characterised by mutual respect among participants during discussions and negotiations (Warren and Mansbridge, 2013). In addition, ideal deliberative encounters ensure that all participants are well-informed, having enough information on which to base their decisions, and may lead to new insights and knowledge. Deliberation is also important for accountability (Dryzek, 2010), because participants have to justify their positions and policy-makers need to explain how the deliberative encounter relates to outcomes. Given these characteristics, it can be seen that the four principles we identified through our participants’ discussions align with deliberative principles (see figure 2).

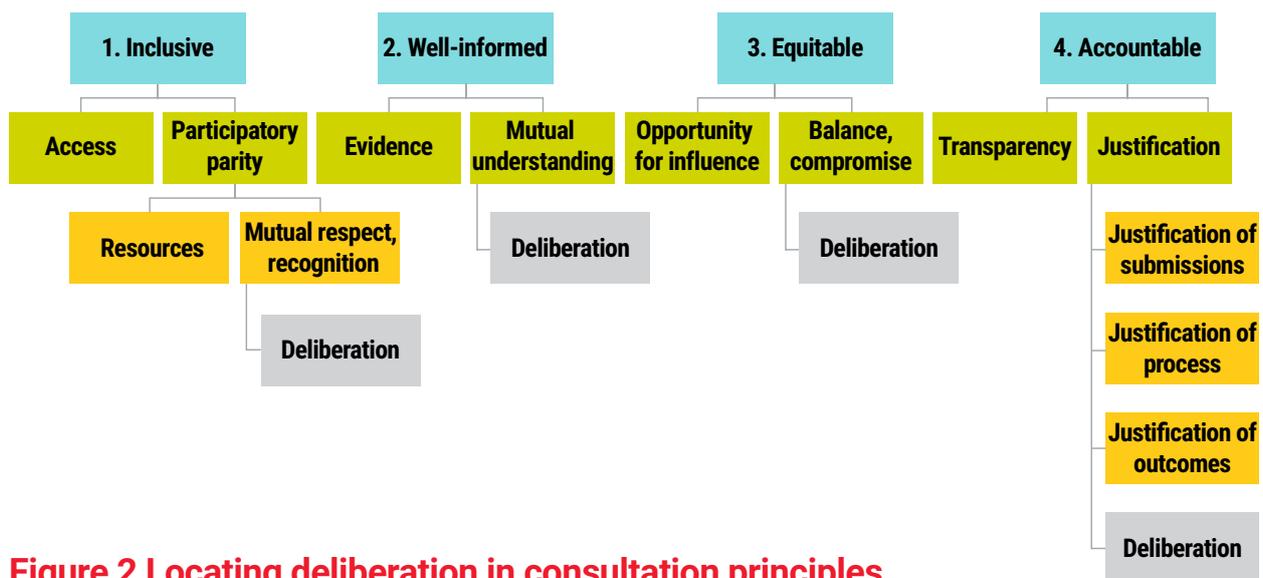


Figure 2 Locating deliberation in consultation principles

Many of the solutions our participants proposed reflect a desire to improve the deliberative character of consultations¹². For example, solutions for the problem of unequal access included holding **town hall meetings**. These kinds of meetings bring together a representative group of stakeholders in a central community space, for a day-long or weekend-long discussion about the topic of the consultation. The topic could be general (eg, what should be the balance between ensuring public access and private rights when making copyrighted

¹² The Involve charity has compiled an extensive list of methods for public participation on their website – see <https://www.involve.org.uk/resources/methods>



work available?) or more specific (eg, under what conditions should people be able to format-shift without penalty?). The participants are broken up into small groups, provided with information that can inform their discussions, and given specific tasks to work through and decisions to make. The outcomes of their discussions are collated and shared across the whole group, which then votes on different options for resolving the problems they are discussing (Lukensmeyer & Brigham, 2002).

Another solution for unequal access was to set up **regional “councils” for copyright**. Similar to an “e-panel” of citizens (such as that used by YouGov), a copyright council would comprise a group of stakeholders representative of the full range of industry and public groups affected by copyright. They would agree to be members of the council for a set period of time (say, three years), and would receive information and updates about both general and more detailed aspects of copyright policy. When a consultation arises, the council would meet and deliberate over the key questions, then put together a response. Ideally, the response would be a balanced representation of their combined views, and based on a discussion underpinned by mutual understanding and respect. It would help government understand the ways in which different policy options are viewed by the full range of stakeholders affected, as well as where pathways to a balanced solution might emerge.

Deliberation also requires sufficient information on which participants can base their decisions. The solution of **providing information to stakeholders in advance of face-to-face meetings** contributes to this requirement, because it could ensure that expectations about the meetings are set, roles are clear, and all participants have enough information to deliberate effectively. By delivering information in a variety of formats and not only relying on text, this kind of measure could also enhance inclusivity.

Using **creative tools for engagement** also draws on deliberative thinking, because tools like games and trade-off scales demand discussion from participants, reflecting on different options, weighing up advantages and disadvantages, looking at the connections among them, and finding an appropriately balanced solution. These kinds of tools could be used in more open consultations, where the basic direction of policy is reviewed (eg, what are the trade-offs associated with increasing public access to creative work, or increasing limitations to protect creators’ rights), as well as in more focused areas such as deciding on policy for format-shifting or making orphan works available.



Deliberation is evident in the idea of **informal meetings among stakeholders**, focused on sharing different perspectives of copyright policy so that stakeholders and government develop a better understanding of the overall landscape of concerns. They would also be a place where the deliberative principle of taking a **range of views and information into account** is reinforced. Held once or twice a year, these meetings would have a beneficial effect on the deliberative quality of engagement during formal consultations by creating a stronger foundation of mutual understanding and helping to set expectations about the need for compromise.

While many of the solutions individually have the capacity to improve the deliberative quality of a consultation, a systems perspective reminds us that they will always be implemented as part of a complex process where different methods are deployed at different times. Ensuring deliberative quality means thinking not only about individual methods, but also about the overall mix of activities involved in a consultation and the relationships among them. Viewed this way, some of the solutions may not be straightforward to implement, because connections between them might affect their success.

For example, **tensions** may emerge between solutions aimed at:

- *increasing transparency and achieving compromise*, since stakeholders may be less willing to negotiate flexibly and compromise on their positions in public;
- *increasing transparency and improving evidence*, because if stakeholders are required to make their evidence public or open it up to scrutiny, then they may withhold important or sensitive data;
- *equalising influence and widening evidence*, since it is complicated to integrate the types of evidence provided by some stakeholders into current analyses;
- *increasing access and equalising influence* for the public, since some channels of communication they use (eg, email campaigns) may be seen as lower quality than other contributions.



On the other hand, some solutions may **align** with each other:

- *widening evidence and increasing transparency* may support *improving mutual understanding*, because stakeholders would be able to see a wider range of perspectives in published submissions;
- *widening evidence* may support *equalising influence* because an increased range of stakeholder perspectives would be taken into account in the analysis of submissions;
- *increasing access* may support *equalising influence* by ensuring a wider range of stakeholders has the opportunity to engage in the consultation process.

The context of each consultation will affect how these tensions and alignments play out in practice, so that a different mix of solutions is likely to be appropriate in different cases. By understanding consultations as a deliberative system, and adopting a stakeholder-centric view of the process, appropriate decisions about how to build the “system” can be made.



Section 4: Final recommendations

A specific, one-size-fits-all model for consultations is unrealistic because each consultation is defined by specific objectives and contextual factors that will affect how they are designed. However, this project showed that adjusting the general approach to consultations to make them more stakeholder-centric and deliberative, based on an understanding of consultations as systems rather than linear processes, is likely to improve outcomes for all stakeholders. With this in mind, we make the following overarching recommendations:

- 1. Design consultations as a system using the principles as benchmarks** for assessing the value and effectiveness of each part of the process. *Ask: to what extent does this activity ensure the consultation is inclusive, well-informed, equitable and accountable? To what extent does it help us achieve democratic or epistemic outcomes? To what extent does the range and mix of activities adopted produce a consultation system that realises the principles overall?*
- 2. Prioritise novel solutions that can address multiple challenges**, because these will enhance the overall quality and efficiency and effectiveness of the consultation. *Ask: How many of the challenges are addressed through this solution? Are there alternatives that would enable the same outcomes but demand less of organisers and stakeholders?*
- 3. Use a mix of solutions that minimise tensions.** Where tensions are unavoidable, context-specific solutions for reducing them should be explored. *Ask: If we implement this solution, what impact will it have on other challenges? Will it enhance or conflict with other solutions? Who/what is the source of tension? Is there a way of engaging with them/changing the process to reduce tension but achieve the same or similar outcomes?*



4. Explain and justify decisions about the design and implementation of consultations in light of the principles and challenges identified here. When decisions are controversial, deliberation about the principles to apply in relevant situations can help provide an agreed basis for decision-making¹³. Ask: *How will stakeholders view this decision/outcome? How can we explain the process and the value of different methods more clearly? How can we encourage their feedback and ensure they know their contributions are valued?*

The participants in this project had a genuine interest in discussing consultation processes, but also lacked understanding of key parts of the process, even if they were regular contributors. Explaining how different consultation activities are designed to address challenges and achieve particular principles, and how they relate to policy outcomes is therefore particularly important. Moreover, in a constantly changing policy context like copyright, explanations are likely to be required, and contested, on an ongoing basis. Drawing on research and sharing best practice will also be essential to ensuring that improvements to consultations are robust, effectively justified, and benefit not only the copyright context, but also consultation practices elsewhere in government.

These recommendations are not designed to replace existing guidelines, but rather to add a new perspective of copyright consultations that takes as its starting points the complex, uneven copyright policy landscape; the stakeholder experience; the value of deliberation; and the recognition of consultations as systems rather than linear processes. Our participants' contributions revealed the importance of these starting points. Their insights are a direct result of this "consultation about consultations", a form of "meta-deliberation" (Landwehr, 2015; Thompson, 2008) that provides a basis for thinking differently about practices that may, from an institutional perspective, seem set in stone. While they have been developed through a close examination and discussion of the copyright "case", we would argue that they have value in any policy context where there is a tendency for decisionmakers to opt for known, tried and tested consultation methods that align neatly with institutional requirements – even if they do not work so well for all stakeholders.



Acknowledgements

The research team would like to thank all the 44 participants who gave so generously of their time, energy and ideas to generate the content of this report. We would also like to thank our collaborators, the Intellectual Property Office, Ofcom and CREATE, and our academic advisors, Professor Bethany Klein and Dr Kris Erickson, who have all enthusiastically supported the project throughout its duration. Dr Edwards and Dr Moss would also like to thank our Research Officer, Dr Lynne Nikolychuk, for her important contributions throughout the project.





Appendix 1: Methodology

The project began in June 2019 and had two stages.

Method	Date/s
Stage 1: Individual Stakeholder Dialogues	May 2019 – November 2019
Stage 2: Stakeholder Workshops	17 January 2020 (full day)
	5 February 2020 (evening)

Stakeholder dialogues

34 in-depth dialogues were conducted with individual stakeholders invited from a list of potential participants in sectors directly affected by copyright, working with copyright law, or otherwise engaged in debates about copyright. They included:

- Education Organisations and Libraries - 5
- Creative Industries - 4
- Licencing and Collecting Societies - 5
- Public Bodies - 5
- Politicians - 2
- Creative Producers - 6
- Civil Society organisations - 3
- Technology Companies - 3
- Academics – 1



10 members of the public also participated in individual dialogues. These participants had participated in a previous deliberative exercise on copyright run by Edwards and Moss in November 2016, and responded to a general invitation to all participants in the previous study. Care was taken to ensure a range of demographic characteristics and industries were represented in the group of ten. The final group included:

- 5 female and 5 male;
- 7 white and 3 BAME;
- 6 employed, 2 unemployed, one retired and one student;
- 3 aged 25-34; 3 aged 35-44; 1 aged 45-54; 3 aged 55-64
- 3 with direct experience of the creative industries

All participants were given an information sheet about the project and a consent form before participating. The background and purpose of the study was also explained at the beginning of each discussion.

All dialogues were conducted in London and Leeds. All but three were conducted face-to-face either at the participants' place of work, an alternative location (eg, a quiet cafe). Three dialogues took place via Skype to accommodate participants' availability. The dialogues followed a topic guide focused on the participants' experience of previous consultations and evaluation of those experiences, including questions relating directly to inclusion, deliberation, transparency, and accountability. The topic guide was trialled in two dialogues before being refined and used for the remaining 42 dialogues. The dialogues ranged from 1 to 1.5 hours each, providing a total of approximately 65 hours of recordings.

The dialogues were transcribed and analysed thematically. The analytical process was iterative: each researcher conducted an in-depth reading of a selection of transcripts to develop an initial coding frame. The coding frames were compared and revised, then applied to an in-depth reading of a second set of transcripts by each researcher. The results of this second independent coding were compared, discrepancies in interpretation identified, and a final coding frame agreed upon. All transcripts were then coded based on the agreed framework, and a word document containing the data was produced.

The results were published on the project website and a link was sent to all participants for their information and review.



Stakeholder workshop

This stage was substantively informed by the analysis of the dialogues. The original intention was to conduct a single one-day workshop. However, due to illness and last-minute availability changes, we ran an additional evening workshop following the main one-day event, to try and include additional participants. Even so, not all stakeholders were able to participate. The final participant breakdown was:

- Education Organisations and Libraries – 6
- Creative Industries - 2
- Creative Producers - 4
- Licencing and Collecting Societies - 3
- Public Bodies - 2
- Civil Society organisations - 2
- Technology Companies - 1
- Members of the public – 8

Three broad areas of discussion were identified for the workshop: who should participate in consultations; how should they participate; and why should they participate. Participants were allocated to small, mixed-sector groups, each of which had a facilitator allocated for the day. Members of the public were given a pre-workshop briefing to ensure they knew what to expect, and would feel comfortable engaging with other, more experienced stakeholders.



The workshop began with an introductory session briefly summarising preliminary findings from the dialogues, setting out tasks, and engaging participants in a Slido polling exercise. This was followed by three 75-minute break-out sessions focused on: 1) who should participate in consultations, 2) how should they participate and, 3) why should they participate. The sessions were structured around specific questions; key tasks to complete in order to answer the questions; and prompts for discussion. The tasks and prompts were informed by the findings from the dialogues and encouraged debate among the participants. At the end of each session, the groups returned to the main room for a summing up and review of their discussions. Four of the five break-out sessions were recorded and transcribed for later analysis.

The day concluded with a summary session where participants reviewed their discussions from the day and voted (using Slido) on a range of ideas that had emerged for improving consultations. Finally, after the workshop all participants were invited to vote on a more complete list of options that the research team consolidated from notes made throughout the day by the moderators, to capture how participants thought about different options, having had time to reflect on them after their workshop experience.

The evening workshop involved only 3 people, and the content of the main workshop was condensed to two sessions, led by Edwards and Moss. These participants also took part in the Slido poll after their discussions.



Appendix 2: Existing government guidelines on UK government consultation processes

Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Consultation Principles 2018

A. Consultations should be clear and concise

Use plain English and avoid acronyms. Be clear what questions you are asking and limit the number of questions to those that are necessary. Make them easy to understand and easy to answer. Avoid lengthy documents when possible and consider merging those on related topics.

B. Consultations should have a purpose

Do not consult for the sake of it. Ask departmental lawyers whether you have a legal duty to consult. Take consultation responses into account when taking policy forward. Consult about policies or implementation plans when the development of the policies or plans is at a formative stage. Do not ask questions about issues on which you already have a final view.

C. Consultations should be informative

Give enough information to ensure that those consulted understand the issues and can give informed responses. Include validated impact assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business or the voluntary sector.

D. Consultations are only part of a process of engagement

Consider whether informal iterative consultation is appropriate, using new digital tools and open, collaborative approaches. Consultation is not just about formal documents and responses. It is an on-going process.



E. Consultations should last for a proportionate amount of time

Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal. Consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.

F. Consultations should be targeted

Consider the full range of people, business and voluntary bodies affected by the policy, and whether representative groups exist. Consider targeting specific groups if appropriate. Ensure they are aware of the consultation and can access it. Consider how to tailor consultation to the needs and preferences of particular groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods.

G. Consultations should take account of the groups being consulted

Consult stakeholders in a way that suits them. Charities may need more time to respond than businesses, for example. When the consultation spans all or part of a holiday period, consider how this may affect consultation and take appropriate mitigating action, such as prior discussion with key interested parties or extension of the consultation deadline beyond the holiday period.

H. Consultations should be agreed before publication

Seek collective agreement before publishing a written consultation, particularly when consulting on new policy proposals. Consultations should be published on [gov.uk](https://www.gov.uk)

I. Consultation should facilitate scrutiny

Publish any response on the same page on gov.uk as the original consultation, and ensure it is clear when the government has responded to the consultation. Explain the responses that have been received from consultees and how these have informed the policy. State how many responses have been received.



J. Government responses to consultations should be published in a timely fashion

Publish responses within 12 weeks of the consultation or provide an explanation why this is not possible. Where consultation concerns a statutory instrument publish responses before or at the same time as the instrument is laid, except in very exceptional circumstances (and even then publish responses as soon as possible). Allow appropriate time between closing the consultation and implementing policy or legislation.

K. Consultation exercises should not generally be launched during local or national election periods

If exceptional circumstances make a consultation absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics team in the Cabinet Office.



Appendix 3: Results from the SLIDO voting process

Below are the results of the SLIDO voting process that took place after the workshop. The items represent options for changes to consultations that emerged through the workshop discussions. The voting was done on a scale of 1-10, where the higher the rating, the more important was the activity to the participants. The ranked items are listed in order of importance. Not all participants in the dialogues were able to attend the workshop, so the rankings listed here should be taken only as the aggregate views of the workshop attendees, not all participants in the study.

Item	Mean score
Use accessible language and questions in consultations	9.1
Be transparent about how different types of evidence are analysed and used in consultations	9
Be transparent about how different contributions are weighted in the consultation (also at different stages of the process) – eg, from more or less-informed stakeholders	9
Be transparent about how decisions are arrived at	9
Be transparent about who is included in the consultation	8.9
Be transparent about how the consultation was set up (eg, who set the agenda, how were questions decided, who was involved)	8.8
Make a clear link between consultations and outcomes	8.7
Put in as much effort after the formal consultation as before it (eg, to feed back on results, outcomes)	8.6
Include face-to-face meetings with a range of stakeholders in the consultation process	8.6
Keep transparency registers to ensure the influence of different stakeholders is monitored	8.6



Item	Mean score
Make it easy and convenient to contribute to consultations	8.5
Develop methods/analytical techniques or find existing tools to take qualitative evidence into account as well as quantitative evidence	8.5
Use third parties and community institutions to reach stakeholders (eg, libraries, community organisations but also industry associations)	8.4
Set expectations clearly about what can and can't be achieved through consultations	8.3
Run public information campaigns about copyright	8.3
Empower stakeholders who currently have less influence	8.3
Use representative bodies for stakeholders who are hard to reach	8.3
Include stakeholders with non-economic interests in the consultation	8.2
Make background information on the topic and process easily available	8.2
Make consultations a safe space for submissions (eg, especially when it comes to sensitive topics like infringement)	8.1
Avoid putting stakeholders into categories that might limit what they can say in their submissions	8.1
Include opportunities for dialogue between different stakeholders in consultation processes	8.1
Bring creative methods into communicating about consultations (eg, engage through games, films, images)	8
Incorporate creative, engaging methods into ways that stakeholders can submit evidence.	8
Make copyright relevant and important to people	8
Use existing networks of already engaged people to reach new stakeholder groups	8
Make sure all consultations have a detailed communications strategy for all parts of the process	7.9



Item	Mean score
Include education on consultations and/or copyright in the school curriculum	7.9
Include a broad range of technologies into the ways people can submit to consultations	7.8
Balance out unequal resources between stakeholders	7.8
Make sure consultations are relevant to the stakeholders invited to participate	7.8
Publish guidelines for submissions more widely	7.7
Vary the engagement with stakeholders depending on the consultation type	7.7
Introduce the idea of compromise into consultations (eg, into the questions)	7.5
Run more, regular copyright "town hall" meetings or other community consultations, for citizens (eg, once a year, 2-3 times a year)	7.5
Let stakeholders decide whether they want to participate, not government	7.4
Target stakeholders in advance	7.4
Explain participation in the context of playing a part in democracy	7.3
Use a broad range of technologies to reach stakeholders (eg, WhatsApp, Instagram, as well as web)	7.2
Adapt consultations (eg, create different versions) so that they are relevant to different audiences	7.2



Appendix 4: Glossary of Terms

Accessible	Available to anyone with knowledge about a policy area and/or potentially affected by a policy
Accountability	One of four key principles in the context of copyright policy consultations
Align	When different ideas, points of view or actions fit together or complement each other
Analysis	Approach to interpreting data in relation to a particular objective
Balance	Ensuring no one perspective dominates consultations and different views are considered in relation to each other
Barrier of participation	An obstacle that limits the ability to participate in consultations
Benchmark/Yardstick	A standard used as a point of reference to evaluate performance
Components	The parts that make up the principles underpinning the consultation process
Consultation methods or practices	The different activities that make up consultation processes
Dialogue	An exchange of views characterised by mutual respect, openness and reflexivity
Deliberative	An approach to dialogue that is inclusive, equitable, and characterised by mutual respect among participants
Economic value and impact	Anticipated or actual effects of copyright policy decisions on economic outcomes such as industry profits, or contribution to national income
Evidence	Data or information about the consultation topic



Evidentiary standard	The quality standard for evidence to be taken into account in a consultation
Format-shift	Converting a creative work (eg, a song) from one media format to another (eg, from a CD to a cassette tape)
Implement/ implementation	Putting ideas into action
Influence	Ability to affect policy outcomes
Interests	The reasons why stakeholders engage in consultations about copyright
Justification	Explanations of evidence, processes, decisions and final outcomes
Legitimacy	The authority associated with consultations by stakeholders
Locus of accountability	The person, group or organisation responsible for a decision or outcome
Material resources	Assets of value in a consultation (eg, finance, access to experts, time)
Mutual understanding	When stakeholders understand each others' views as well as their own
Non-economic	Aspects of life that are not directly economic – for example, culture, wellbeing, social relationships
Orphan work	Copyright-protected work for which rightsholders cannot be found
Participatory parity	Stakeholders enjoy equal resources and recognition to participate meaningfully in consultations
Policymakers	People in government whose main responsibility is making policy
Recognition	Respect offered to stakeholders as valid contributors to consultations
Regulative ideals	Ideal characteristics of consultations that also act as standards for evaluating consultations
Scrutiny	Critical and detailed evaluation



Stakeholders	Groups, organisations or individuals potentially affected by a policy or with an interest in a policy
Structural issues	Different aspects of the way society and politics are organised that affect consultations
Symbolic	Done only for appearance or out of obligation, but without any genuine impact
Systems-level	A perspective of consultation that considers the overall mix of activities involved
Social and public value	Non-economic value created for society as a whole
Transparency	Openness and honesty from government and stakeholders about different aspects of consultations (eg, decision-making, analysis, funding sources)
Targeting (stakeholders)	Communicating in ways specifically designed to reach particular stakeholders
Tension	When different ideas or activities are in conflict with each other



References

Bächtiger, A., Dryzek, J., Mansbridge, J., & Warren, M. (2018). Deliberative democracy: An introduction. In A. Bächtiger, J. Dryzek, J. Mansbridge, & M. Warren (Eds.), *The Oxford handbook of deliberative democracy* (pp. 1-32). Oxford: Oxford University Press.

Cabinet Office. (2018). Consultation Principles 2018. London Cabinet Office Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Dobusch, L. (2014). EU Commission's consultation report shows: Current copyright is unbalanced. Retrieved from <https://governancexborders.com/2014/07/25/eu-commissions-consultation-report-shows-current-copyright-is-unbalanced/>

Dryzek, J. (2010). *Foundations and frontiers of deliberative governance*. Thousand Oaks, CA: Sage.

Erickson, K. (2014). User illusion: ideological construction of "user-generated content" in the EC consultation on copyright. *Internet Policy Review*, 3(4). doi:10.14763/2014.4.331

Fraser, N., & Honneth, A. (2003). *Redistribution or recognition? A political-philosophical exchange*. London: Verso.

Freedman, D. (2008). *The politics of media policy*. Cambridge: Polity.

Klein, B., Moss, G., & Edwards, L. (2015). *Understanding copyright: intellectual property in the digital age*. London: Sage.

Knight, J., & Johnson, J. (1997). What kind of equality does democratic deliberation require? In J. Bohman & W. Rehg (Eds.), *Deliberative Democracy*. Cambridge, MA: MIT Press.



- Landwehr, C. (2015). Democratic meta-deliberation: towards reflective institutional design. *Political Studies*, 63(1), 38-54.
- Lemoine, L. (2020, 26 February). Copyright stakeholder dialogues: compromise, frustration, dead end? Retrieved from <https://edri.org/copyright-stakeholder-dialogues-compromise-frustration-dead-end/>
- Lukensmeyer, C., & Brigham, S. (2002). Taking democracy to scale: creating a town hall meeting for the twenty-first century. *National Civic Review*, 91, 351-366. doi:10.1002/ncr.91406
- Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J., . . . Warren, M. (2012). A systemic approach to deliberative democracy. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative systems: deliberative democracy at the large scale* (pp. 1-26). Cambridge: Cambridge University Press.
- Mansbridge, J., Bohman, J., Chambers, S., Estlund, D., Follesdal, A., Fung, A., . . . Martí, J.-L. (2010). The place of self-interest and the role of power in deliberative democracy. *The Journal of Political Philosophy*, 18(1), 64-100.
- Smith, G. (2009). *Democratic innovations: designing institutions for citizen participation*. New York: Cambridge University Press.
- Thompson, D. (2008). Deliberative democratic theory and empirical political science. *Annual Review of Political Science*, 11, 497-520.
- Warren, M., & Mansbridge, J. (2013). Deliberative negotiation. In J. Mansbridge & C. Martin (Eds.), *Negotiating agreement in politics* (pp. 86-120). Washington, DC: American Political Science Association.



CREATE

UK Copyright and Creative Economy Centre

School of Law / University of Glasgow

10 The Square

Glasgow G12 8QQ

www.create.ac.uk

2020/6 DOI:10.5281/zenodo.3907319

CC BY-SA 4.0

In collaboration with:



Arts and
Humanities
Research Council