



Minutes of Meeting of Licensing Forum

20th May 2008

Driving Standards Agency, Nottingham

Present:

William Pope	(Chair & Speaker)	Driving Standards Agency
Nick Carter	(Speaker)	Driving Standards Agency
Melanie Young	(Speaker)	Driving Standards Agency
Caroline Delaney	(Speaker)	Eversheds
James Fry	(Speaker)	Eversheds
Gavin Starks	(Speaker)	d::gen
Peter Shortt	(Speaker)	Shareholder Executive
Gillian Church		British Geological Survey
Chris Luton		British Geological Survey
Robert Smith		British Geological Survey
Graham Beasant		Central Office of Information
Neil Wilcoxson		Coal Authority
Claire Fotheringham		Driving Standards Agency
Katie Lees		Driving Standards Agency
Yvonne May		Driving Standards Agency
Michael Allen		DVLA
Rhian Doleman		DVLA
Elizabeth Morris		Environment Agency
Will Spendlove		Environment Agency
Roger Crocombe		Foreign & Commonwealth Office Services
Margaret Fuller		Fire Services College
David Dawick		Health & Safety Executive
Jane Allen		Land Registry
Frances Law		MHRA
Susan Corrigan		National Archives of Scotland
Beth Brook		OPSI
David Gordon		OPSI
Marcia Jackson		OPSI
Tim Padfield		OPSI
John Williams		OPSI
Tony Jardine		Ordnance Survey
Ashley Wright		Ordnance Survey
Shernet Johnson		Qualifications & Curriculum Authority
Tony Dent		UK Hydrographic Office

Introductory talk

- The Deputy Chief Executive of the DSA, Nick Carter, gave a short introductory talk on recent changes for the organisation. The event itself was being held at the new open-plan offices for DSA, and they felt that the move had progressed more smoothly than could have been anticipated.
- He then established the three main priorities of DSA. These were the provision of driving tests, licensing for instructors and enabling learning.
- In terms of the tests, around 2 million of the practical versions are taken per year, with an additional 1.5 million theory examinations. This workload involves the management of estates, property, call centres and other related infrastructure requirements. Despite these major commitments, DSA has established itself as a leader in e-Government, and has also launched some initiatives in joined-up services (e.g. automatic licensing run in conjunction with DVLA).
- There are approximately 40-60,000 licensed instructors in the UK. These professionals need to be checked on a regular basis, and DSA has an input into the strategic priorities in this process, although the more routine elements are administered by other organisations.
- The third objective has seen much recent activity from DSA. Traditionally, DSA has helped provide learning materials, either directly or through licensing arrangements. However, a recent Government consultation exercise had a particular focus on the continuation of driver education after tests have been successfully passed. The need to form partnerships emerged as a key theme, with a wider range of organisations needing involvement beyond the driving examiners; in particular, the educational sector was identified.
- These developments will substantially increase the number of publications demanded by the public. Innovation will be crucial, as will the ability to maintain control over DSA materials to avoid misrepresentation or similar abuses. As a result, the role of Bill Pope, Melanie Young and the licensing team at DSA is increasing in prominence, and events such as this Forum are crucial in maintaining this profile.

1. Licensing Activity at DSA

Bill Pope and Melanie Young, DSA

- Bill Pope emphasised that DSA is keen to build on its reputation for regulation and testing, and move towards an agenda based on wider driver education. Research points towards a public perception that the test is an idealised view of driving, and does not communicate the full reality of driving in normal conditions. However, providing this richer and more relevant experience is a major challenge for DSA
- Bill Pope is the Head of Learning Materials, which involves the creation and provision of DVDs, CD ROMs, lesson plans, books and related resources. The licensing team has identified conveying the right information to the right people as the key to success; given that statistics indicate that the group at highest risk of accidents are those who passed their tests in the last 6 months, engagement with this sector is crucial.

- The corporate structure at DSA means that Nick Carter (Deputy Chief Executive) is in charge of external relationships and forming partnerships. Bill Pope (Head of Learning Materials) works to consolidate these alliances. Meanwhile, Jill Lewis (Director of Driver Education & Learning) is responsible for Lifelong Learning, and Melanie Young is responsible for looking after DSA's Intellectual Property and licensing out Crown Copyright material.
- The DSA brand is also highly valued, and the organisation has found that others will try and exploit this, through means such as plagiarising materials or pretending to be acting as DSA. This raises a key question as to how to protect intellectual property.
- In order to establish authority as an organisation, it is vital that DSA builds trust and enthusiasm amongst customers. Recent developments here have included the publication of data bases illustrating the importance of the manoeuvres and techniques stressed in the test; the more 'real' people perceive the test to be, the greater the respect they will have for it. 'Safe Driving for Life' is the DSA vision which is aimed at continued education beyond the driving test.
- In terms of intellectual property infringements, it seems that there is a strong desire from other providers to be linked to DSA's brand. DSA currently holds around 65-70% of the book market in its area, with the rest held by licensees, but abuses of intellectual ownership still occur.
- However, the DSA brand faces some major challenges. A difficult balance needs to be struck, as it is necessary to maintain standards and rigour when awarding driving licences. At the same time, does the DSA connect with 17 year old learners, given its associations with central Government? As a result, a greater level of receptiveness to customers may be required to communicate standards, which licensees and partners might sometimes be better placed to achieve.
- Most of DSA's licensing activity is based around the theory test bank of questions, with approximately 30,000 images also involved in this intellectual property resource. At this point, Bill Pope handed over to Melanie Young to examine licensing activity at DSA.
- Melanie Young highlighted DSA's position as a trading fund forming part of the Department of Transport. This involves the licensing of material for greater public use, whilst ensuring that the corporate aim of 'safe driving for life' is not jeopardised.
- A vital element of this is controlling the use of DSA materials through licensing arrangements and copyright protection. It is paramount that any information used should be used correctly; for example, books should not contain outdated or obsolete material.
- The DSA has a range of resources available for licensing. There are four theory test question banks, alongside video clips used in the hazard perception test. In addition, there are other materials which can be licensed out (e.g. address lists).
- DSA has a range of copyright licences, which will be applied depending on the particular circumstances. Royalty-based licences see the money raised re-invested in road safety campaigns, whilst translation now offers 25 languages to customers. Advanced Driving

Instructors may release information for free to their pupils, whilst educational establishments will also not be charged. British Sign Language provision is being expanded at present, with a couple of products already available and others under development. A Memorandum of Understanding currently exists with Jersey, Guernsey and the Isle of Man, whilst research licences are aimed at the higher end of education (e.g. doctorate level).

- Licensing activity has grown immensely. In 2005, there were 5 types of licence; this has expanded to 8. This increased flexibility has encouraged greater activity; in the same period, the number of licences has risen from 33 to 130.
- Trade marks are crucial to protecting the intellectual property of DSA, and also increasing road safety. A particularly bad example as to how compromised standards can endanger is how one book captioned a 'No Entry' sign as 'National Speed Limit'; without enforcing intellectual property, such abuses become possible.
- As part of this, and also to try and engage with a wider section of the public, a number of trade marks have been established. These include the DSA logo, Driver CPC 'Get qualified stay qualified', Arrive Alive, Pass Plus and Level 5.
- DSA has had a relationship with OPSI since the first Information Fair Trader Scheme verification in 2004. The organisation has found the process helpful, with some positive recommendations and changes emerging. For example, customers can now see the range of licensing options themselves before making enquiries, which has both reduced the administrative burden and encourage re-use activity.
- In addition, by separating the publishing activity from the rest of DSA, it has been easier to get updates on the question bank to all licensees, including DSA, at the same time ensuring fairness.

2. **Re-use of Public Sector Information for Climate Change Research**

Gavin Starks, d::gen & AMEE ('The World's Energy Meter') www.amee.cc

- Gavin started by outlining the history of the project. 18 months previously, DEFRA expressed an interest in some collaborative work to publicise the 'Act on CO₂' campaign (<http://actonco2.direct.gov.uk/index.html>). The aim of this work program is to enable individuals to calculate their personal carbon footprints and receive relevant advice on their actions.
- At the time, it was judged that many people had awareness of these issues, but this had not translated into full engagement. This led to a desire to raise the visibility of the issue, and it was felt that offering a means for calculating a definitive measure of the carbon footprint was pivotal towards this. The data used in this process is now being released for general use.
- Given the availability of this information, a number of initiatives have been launched. AMEE and the 'Act on CO₂' calculator were already in place: this tool has proved to be an engaging exercise, although it can prove quite a lengthy process. Since the access to the information, other providers (e.g. Google) have offered similar services, which can often prove quicker and more accessible.

- Other examples are now proliferating, with www.change.ie (Ireland's plan of action on climate change), www.edenbee.com (an online community for the exchange of ideas offering monthly carbon mapping) and www.thecarbonaccount.com being prominent applications. One particular initiative has seen Radiohead ask for travel details for those who attend their concerts, so that the next tour will see venues chosen in locations minimising the environmental impact of fans' transport.
- www.dopplr.com has also attempted to reduce the amount of information to be inputted by users requesting a carbon footprint calculation. Here, the platform is integrated with a number of other sources (e.g. Global Positioning System data), allowing a figure to be estimated without any further information required from the user. Home and transport information is taken into account by this tool.
- A wide range of data providers are now part of the process, with the reliance on DEFRA diminishing rapidly. Government standards are still recognised as the base line, but services can now integrate other data sets to expand their work.
- Charities, non-Governmental organisations, councils and businesses such as Morgan Stanley are now involved in calculating their corporate footprints; at present, around 850,000 environmental assessments are being made for individuals and organisations.
- There is now a clearly established chain to the system; the data is produced by a range of groups, which is then compiled by AMEE and can be used by developers to create their own websites on climate change. AMEE is a neutral data provider, and will anonymise all data before sending it to developers or allowing its use for data mining or similar work.
- These developments should all help the creation of 'energy identities', which will be compiled from a range of sources and be released as users desire. As the process evolves, it is hoped that models of company activity will be possible, and that national and global estimates will become increasingly accurate and accessible.
- It may also be possible for individuals to compare their footprints with their neighbours. By fragmenting and devolving the data, it may soon be possible to make such accurate and specific information readily available.
- AMEE is aware of the debate on the issue, but argues that the statistics suggest that the current direction of change indicates potential catastrophe. The change required is major at present, and will necessitate a reduction in the overall levels of energy consumption.
- The combination of mass engagement via shareable platforms, and continued Government involvement ensuring standards and reputation, would seem to be the best method of maintaining the momentum of this campaign. AMEE itself takes great pride in its openness in this effort.
- AMEE uses Creative Commons licences to facilitate this process, alongside a 'Click-Use' arrangement with DEFRA. There are no barriers to competition, which should also help free the data.

- Data providers are at liberty to maintain the copyright on their work, as AMEE does not own the data. AMEE can act as a syndication platform for copyrighted material, enabling data to be licensed from data providers to the service providers.
- At this point, questions were taken. Firstly, AMEE's money generation was raised; Gavin responded that there is a service fee charged to service providers for the maintenance of the platform; however, charities are charged less than corporate clients. AMEE releases its software as Open Source, enabling continual room for innovation (e.g. Facebook applications).
- Secondly, a delegate asked about AMEE's experiences with DEFRA and the Department for Transport. Gavin reported that they had been open and willing partners throughout, with DEFRA having been looking for an open source solution for some time. In addition, the positive personal response of David Miliband to a submission on the matter had also proved encouraging.

3. An introduction to Intellectual Property

James Fry, Eversheds

- James established the subject matter by demonstrating the large number of intellectual property rights involved in a bottle of Coca-Cola. As well as the brand name, the shape of the bottle itself, the logo, the cap design and the slogan were all relevant examples. In addition, database rights and know-how / confidential information will protect the exact list of ingredients.
- Rights owners will look to ensure that the coverage of intellectual property in their goods is as wide as possible, with the greatest number of aspects possible included. There are numerous reasons for this, such as protection against copying, increased potential for revenue generation, quality control / brand reputation and cost reduction.
- It is also important to differentiate the different forms of intellectual property - some are monopoly rights, others protect against copying, some arise automatically, while others require registration. For example, copyright arises automatically when a work capable of copyright protection (such as a literary, dramatic, musical or artistic work) is created; however, registered trade marks involve an application and registration process.
- Copyright, as well as being automatic and long lasting (generally author's life plus 70 years), requires a minimum level of effort from the creator and the work must be recorded in a permanent form. Software can also be protected by copyright.
- Ownership of copyright can prove complex. Generally, the author is the first owner, although employees will find that their employers own the copyright they create in the course of their employment duties unless there is a contractual agreement to the contrary. However, if work is commissioned, then the person undertaking the work will own the copyright not the commissioner, unless there has been a written assignment of the copyright created to the commissioner. This means that, if third parties are involved in designing new works, agreements covering copyright ownership should be put in place beforehand.

- Joint authorship - i.e. where the work is created as a result of collaboration between two or more parties and their contributions are not distinct from each other - can often arise, although it can cause problems. This is because unless agreed otherwise, none of the joint owners can copy, amend or distribute the work without the consent of the other joint owner(s). This can lead to 'locked' works where none of the joint owners can use the work.
- The owner of copyright has the exclusive right to copy and disseminate the work or adapt it, amongst other things. Infringement occurs where a third party, without the copyright owner's consent, does any of the acts which are the exclusive rights of the copyright owner in relation to the whole or a substantial part of the copyright work. Whether something constitutes a substantial part is assessed on a qualitative basis so copying of small parts of a copyright work (in quantity terms) might amount to copyright infringement if these parts are considered to be the key elements of the work.
- The remedies for breach of copyright include interim or permanent injunctions, compensation in the form of damages or an account of profits and seizure / disposal of infringing articles. Defences can be mounted on the grounds of consent to use, use of an insubstantial part and 'fair dealing'. There are a range of other defences relating to use in education, and use by librarians, amongst other things.
- Trade marks are marks which distinguish the goods and services of one organisation from those of others and often take the form of words or logos. Trade marks can be registered and unregistered. If registered, the ® symbol can be used (although beware that it is a criminal offence to use this symbol against a mark which is not a registered trade mark - including applications). If a mark is an unregistered trade mark the ™ logo can be used next to it to warn third parties that the mark is being used by your organisation as a trade mark.
- Registered trade marks need to be capable of being represented in graphic form and must also be distinctive, not just descriptions of the goods or services in relation to which they are registered and used and must not be deceptive. Once granted, they are registered for 10 years although may be renewed indefinitely in 10 year blocks.
- Registered trade marks can be easier to enforce than unregistered trade marks because as the registered proprietor of a trade mark you have a certificate demonstrating your rights. Registered trade mark infringement occurs where a third party uses, in the course of trade, without the registered proprietor's consent:
 - a) a sign which is identical to the proprietor's trade mark in respect of identical goods/services for which the mark is registered; or
 - b) a sign which is similar to the proprietor's trade mark in respect of identical or similar goods/services to those for which the mark is registered or a trade mark which is identical to the proprietor's trade mark in respect of similar goods to those for which the mark is registered, provided that in each case there is a likelihood of confusion on the part of the public; or
 - c) a sign which is identical or similar to the proprietor's trade mark in respect of identical, similar or dissimilar goods/services, if the registered trade mark is one which has a reputation in the UK and the use of the sign, is without due cause, and takes unfair advantage of or is detrimental to the distinctive character or repute of the registered trade mark.

- One case which shows that companies need not be selling competing products to be infringing a registered trade mark concerns Rolls Royce. An independent company started selling 'Rolls-Royce Washing Machines'. Rolls-Royce successfully argued that, whilst they didn't sell washing machines, the sales by this third party under the Rolls-Royce brand could undermine the reputation of the firm should their machines prove to be substandard.
- However, beware of making groundless threats of trade mark infringement which can actually give the defendant the right to legal comeback against you. Legal advice should be sought before alleging trade mark infringement against any third party.
- Unregistered trade marks can be protected by the law of passing off which is established if a trade mark owner can show goodwill in the mark, show that a third party has made a misrepresentation leading to confusion amongst members of the public that the goods of the third party are the trade mark owner's goods or originate from the same place and loss or a likelihood of loss can be demonstrated.
- An example of this is that UPS mail vans are a shade of brown in which UPS will have built up goodwill and this colour-scheme could not be replicated by other courier services without risk of a passing off action being brought against them. In a case in the 1980's a supermarket had launched 'Puffin' biscuits which were very similar to the more famous 'Penguin' version. United Biscuits suing for trade mark infringement and passing off. The court referred to an 'Idiot/moron in a hurry' test, and successfully argued that individual consumers in a rush could easily purchase the supermarket's brand accidentally when they had intended to buy United Biscuits' Penguin biscuits because the Puffin biscuits looked similar and were next to the Penguin biscuits on the supermarket shelves.
- Internet domain names are also important as they often incorporate an organisation's key trade marks. They are, however, registered on a first come first served basis. Even if a trade mark used in a domain name is not registered, if a domain name incorporating an organisation's trade mark has been registered by another concern who intends to trade off the reputation of the trade mark owner, or mislead the public into believing that they are selling goods on behalf of the trade mark owner, then the trade mark owner may be able to reclaim that domain name from the third party.
- Other intellectual property rights of interest to the audience may include Crown copyright, database rights and moral rights. Database rights can protect the arrangement of a database - i.e. a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means - where there has been substantial investment in obtaining, verifying or presenting the contents of the database. Moral rights are rights which are personal to authors of copyright works, which run alongside the copyright in the work. They cannot be assigned but can be waived unconditionally. These included the right to be identified as the author of a copyright work. If the author asserts this moral right then they will have to be acknowledged by the concern using that material as the author. For example, you see such assertions in the fly sheets of novels which include wording along the lines of: "the moral rights of the author under Part II of the Copyright Designs and Patents Act 1988 have been asserted".

- Companies may build up 'know-how' - this is not strictly an IP right but has been defined as information which is secret, substantial and identified. This is protected through the maintenance of confidentiality.
- As a result, it is vital for organisations to have an intellectual property strategy/policy. Audit trails are important - such as keeping original, dated, documents - and evaluations of third party consents required to use intellectual property rights should start the process. It is helpful (though not essential) to use copyright notices on copyright works. An organisation's overall trade mark portfolio should be examined, deciding what needs protection, considering whether additional applications are needed and whether international protection is required.
- Clear and robust arrangements should be in place, even for matters such as designing a corporate logo, and matters should be anticipated and monitored in advance rather than waiting for crises and abuses. In addition, if one matter is allowed to slip, then other parties may complain of inconsistency of approach, especially where public bodies are concerned.

4. Trading Fund Assessment

Peter Shortt, Shareholder Executive

- Peter started by giving some background information on the Shareholder Executive. The body was created in 2003, and originally formed part of the Cabinet Office. They were subsequently transferred to BERR, and their work involved most ministries across Whitehall.
- Their aims are to investigate the best forms of governance, attempting to increase shareholder value and offer advice to organisations on these matters.
- They also aim to bring private sector / commercial discipline to Government, with most members having backgrounds in investment banking, venture capital or similar fields. To this end, they offer a variety of business models, valuations on business activity and advice on public policy delivery.
- The upcoming trading fund assessment exercise is a response to the 2008 budget; however, despite being mentioned in the budget, it has still yet to be formally announced. The exercise will also be part of the Power of Information review, which has already made 10-12 recommendations in March 2008.
- The exact terms of reference of the assessment are currently awaiting approval, and should be finalised soon. Once these are available, they will be posted on the website at www.shareholderexecutive.gov.uk.
- Once these have been signed off, then the Shareholder Executive will enter into formal conversations with the trading funds, their parent departments and related organisations. The dialogues with the trading funds will be key in the assessment exercise, and at present it is hoped that the recommendations arising will be formalised by autumn 2008.
- For all trading funds, a similar process will be followed. Firstly, a 'stock take' examining governance structures and future business plans will be conducted. This will lead to the first wave of recommendations. 'Data rich' trading funds will be the initial focus; of particular

interest here will be an audit to establish the information held, and an examination of pricing regimes, data dissemination policy and related matters. OPSI will also have an input into this process.

- This will be followed by a steering group. As well as the Shareholder Executive and OPSI, the Office of Fair Trading, the Treasury, BERR and the Cabinet Office will be involved in this.
- The extent of trading funds in commercial activity, and the structuring of their information assets will be of key.
- However, the Shareholder Executive is well aware of the disparate nature of trading funds, and will avoid any implementation of a single model. Instead, by creating models of each fund, and developing a sense of the impact of any changes and the cost implications, sensitivity will be paramount. Once the proposals are made, they will be presented to ministers for a response.
- The next steps are to agree and announce the terms of reference, offering advice to ministers in the autumn of 2008. The first points of contact here will be Yvette Cooper and Shriti Vadera from BERR.

5. Arrangements for the next meeting

It was decided by delegates that London would make the most convenient location for the next meeting. OPSI indicated a willingness to host the next event, but after the meeting Frances Law from MHRA suggested that her organisation's HQ, located near Vauxhall, may become available. The Licensing Forum will take place in late September or early October, and potential delegates will be notified.

David Gordon OPSI
23rd May 2008