

Dear Sir/Madam,

**TAKING FORWARD THE GOWERS REVIEW OF INTELLECTUAL PROPERTY:
PROPOSED CHANGES TO COPYRIGHT EXCEPTIONS**

The Consortium of Research Libraries in the British Isles (CURL) is pleased to make a response to the UKIPO consultation paper "Taking Forward the Gowers Review of Intellectual Property – Proposed Changes to Copyright Exceptions". In particular CURL wishes to be associated with the detailed, thoughtful and careful responses which have been submitted to you by the British Library and Universities UK/GuildHE.

CURL (<http://www.curl.ac.uk>) is a consortium of 29 large university, national and other research libraries based in the UK and Ireland (a list of members can be found on the Web site). The Consortium's purpose is to increase the ability of research libraries to support the local, national and international research community (e.g., by working with others to develop a national framework for research support, and through the delivery of a union catalogue, development of the Archives Hub, and participation in and support for collaborative projects).

GENERAL CONSIDERATIONS

The fundamental principle which underpins copyright law in the UK is one of balance – copyright law should protect the legitimate rights of rights holders whilst also supporting the user in terms of private study and research. That principle, and the exceptions to which it has given rise, should hold as good in the digital environment as in the print and analogue world.

In this context, it should not be the case that – by accident or design – individual contracts can be allowed to override copyright law in the UK, as is increasingly happening (a survey of commercial contracts offered to HEIs would show many similarities to the analysis of contracts offered to the British Library). This practice undermines the principle that copyright law is founded on a sense of balance between the various parties. One of the most significant developments which could emerge from this consultation is the recognition, grounded in law, that individual contracts cannot overturn copyright law.

It is equally the case that existing fair dealing and library privilege exceptions for non-commercial purposes should be applicable to digital as well as analogue material, and should embrace both electronic copying and electronic delivery, within the prescribed amount limits, and without incurring payment of copyright fees.

RECOMMENDATION 2

We support the statements in the British Library's submission concerning the proposed extension of educational exceptions to Distance Learning. Distance Learning is an important new feature of the UK Higher Education environment including for researchers and it is important that the experience of such students, no matter where they are located as registered UK students, is at least as good as those students who are based on-campus.

However, we would emphasise that while paper materials purchased by a Library can be used by ALL members of our institution who are registered library users, this may not be the case where digital readings are offered through a VLE, where access is often restricted to registered members on a particular course because of licences attached to the use of the digital form of the work. If, as is increasingly likely, such readings are available only in digital form, all users will not enjoy the same fair dealing privileges as they do currently in a paper environment because they are denied access to readings. This is an instance where a licence has overridden the principles of copyright law in the UK, and this seems unfair to us.

RECOMMENDATION 9

We strongly support the extension of copyright exceptions for research and private study to cover sound, film, broadcasts and on-demand communications. Copyright law should be format-independent and not restricted to certain types of material. We believe it to be vital that such extensions to the exceptions in copyright law are made as speedily as possible and should cover both research and private study. Indeed, it is impossible and unacceptable to distinguish between these two activities in a Higher Education environment.

The extended exceptions should also cover all fields of study, and not be limited to a prescriptive list. This organisation encourages inter-disciplinarity at all levels of study and research; the restriction of extended exceptions to a number of named subject fields would not support inter-disciplinary work, which is a feature of the UK Higher Education environment.

RECOMMENDATION 10A AND 10B

CURL strongly supports the British Library's suggestion that s. 42 of the Copyright, Designs and Patents Act (1988) should be amended to enable libraries, archives and museums to make digital copies of all classes of work in their permanent collections for the purposes of archiving and preservation, including where necessary the ability to format shift and circumvent any technical prevention measures.

Libraries, archives and museums have a vital role to play in ensuring the preservation of the cultural and educational heritage of the UK in digital form and the future of the research library and information infrastructure. We stress that digital preservation is not the same as providing an access copy. While it is unlikely that every library, museum, archive or gallery will have the technical and financial resources to undertake digital preservation initiatives, some of our members certainly will have this capability, reflecting their responsibility for archiving in a paper environment.

We urge that any clarifications to s. 42 of the Act be compiled flexibly. The purpose of such clarifications should not be to restrict the ability and number of institutions able to undertake digital preservation, but to create a framework and a balance of rights for all stakeholders to enable institutions to do this work. As the British Library response notes, rights holders themselves will benefit from this development, since their work as authors and content creators will be preserved digitally in perpetuity.

EXAMINATION ISSUES

Universities are keen to mount institutional research outputs into their online repositories and CURL member libraries have taken a leading role in this development. Research theses are increasingly consulted in this way, following examination and award of degree, as they are thus more accessible. The authors gain greater visibility as a result of this means of dissemination. Third party materials are often used in such dissertations for the purposes of criticism or review. The exemptions in s. 30 of the Copyright, Designs and Patents Act do not explicitly cover the use of third-party materials in dissertations, once the examination is over and the degree awarded. This has caused concern in Higher Education and it would be helpful if the exemptions in s. 30 could be explicit about the deposit of digital research theses into repositories, with regard to third-party rights.

CURL is pleased to be able to make this response to the UKIPO's consultation. Copyright acknowledges the fundamental right of authors to be associated with their intellectual outputs and to enjoy the fruits of their work. We believe that the points we have made above serve to extend the exceptions to copyright law and respect the fundamental principle which underpins copyright law – that of balance between the rights of authors and users.

Yours sincerely

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