



Gowers Copyright Consultation
Copyright and Intellectual Property Enforcement Directorate
UK Intellectual Property Office
Concept House
Cardiff Road
Newport
NP108QQ

April 5 2008

Dear Sir or Madam,

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

Further to the helpful meeting I had on 26/2/2008 with David Humphries, Janette McNeill and Michele Hambridge from the Copyright and IP Enforcement Directorate, here is a brief summary of our views on the proposed changes, focusing in particular on Recommendation 2 (“extension to educational exceptions to include distance learning”), with rather briefer comments on Recommendations 8 (“format shifting exception”), and 9 (“extending the exception for copying for research and private study”)¹.

By way of background, ALT is a professional and scholarly association which brings together those with an interest in the use of learning technology, which we define as “the broad range of communication, information and related technologies that can be used to support learning, teaching, and assessment”. We have over 200 organisations and over 500 individuals in membership, and our six aims are to:

- represent and support our members, and provide services for them;
- facilitate collaboration between practitioners, researchers, and policy makers;
- spread good practice in the use of learning technology;
- raise the profile of research in learning technology;
- support the professionalisation of learning technologists;
- contribute to the development of policy.

General

Copyright law enables those who can get to or obtain assets from libraries to use these for non-commercial purposes. Digitisation has changed the landscape. On the one hand, with the right permissions and right technical infrastructure digital content can reach people anywhere, at low cost; on the other, users’ access to and entitlements to use digital content are constrained by contract rather than enabled by the copyright exemptions. The

¹ This response was written by Seb Schmoller with substantial input from Paul Bacsich and Caroline Windrum.

Registered Charity No: 1063519

Central Executive Committee: *Paul Bacsich, Liz Bennett, Gayle Calverley, Linda Creanor, Cathy Ellis, Tom Franklin, Dawn Leeder, Robin Mason, Dick Moore, John Phelps, Fred Pickering, Steve Ryan, John Slater.*

ALT Ambassadors*: *Wendy Hall, CBE, Professor of Computer Science at the University of Southampton; Terry Mayes, Emeritus Professor at Glasgow Caledonian University; John Taylor, leader of the FE Self Implementation Regulation Team.*

* Ambassadors provide informal advice to ALT on matters within their area of interest, and act as advocates for ALT.

Registered address:

**Gipsy Lane
Headington
Oxford OX3 0BP, UK
Phone: + 44 (0)1865 484125
Fax: + 44 (0)1865 484165
Email: admin@alt.ac.uk
<http://www.alt.ac.uk>**

need for revisions to the copyright exceptions is thus pressing, and the Gowers recommendations overall are welcome and forward-looking.

Recommendation 2: extension of educational exceptions to include distance learning

We strongly support the recommendation that educational provisions be extended to cover distance learning and interactive whiteboards, though it would be unfortunate if the changes to the law are so narrowly cast as only to apply to formal distance learning, or only to apply to a particular class of display technology. If, as paragraph 46 of the consultation document makes clear, educational exceptions should be defined by “intent, category of use and activity”, it is important that the terminology used in the revised exceptions is broad and “future proof” enough to accommodate new technologies as they arrive, as well as new classes of learner or learning or educational establishment.

We support the extension of the Section 35 of the Copyright Designs and Patents Act, 1988 (CPDA) to allow educational establishments to record on-demand communications in addition to traditional broadcasts, and can see no policy rationale for not permitting this. The change would simply introduce some sensible consistency. Certainly there would be no rationale for insisting that only on-demand communications that had been the subject of an original traditional broadcast could be recorded; nor would the distinction be a practicable one on the ground.

The suggestion that access should be subject to security measures is not contentious provided that it is not a requirement that a person who has authenticated themselves to an educational establishment’s network would necessarily be required to go through some additional “log-in layer” to access recorded resources. Whether or not this is required should be up to the establishment, rather than it being forced on them by a revised CPDA.

The short answer to your question “how should onward communication beyond a secure environment be prevented?” is “with some difficulty”. Our view is that the most important things for an educational establishment to get right are the terminology and rules within its user-rights agreement, and the training and induction processes for staff and learners.

The phrase “teacher and pupils at an educational establishment and other persons directly connected with the activities of the establishment”, is, on the face of it, narrow. In our face-to-face discussion UK IPO colleagues indicated that the intention is to include “teachers, students, pupils, of schools, colleges, and universities, and other persons directly connected with the activities of the establishment”, but it is important that the language of the revised provisions does not lead the reader to believe that the provision applies only in the schools sector, or only to learners physically present “at” the establishment. Furthermore, given the diverse range of entities that are involved in the provision of publicly funded education it is important that learners have the same entitlements for access irrespective of the nature of the establishment to which they are enrolled².

You ask on page 12:

“Should limits be placed on the form of communication used by educational establishments to communicate extracts to distance learners?”

“Should the expanded exception be limited to communication inside a VLE?”

² A trainee on course X at a further education college should not be treated differently to a trainee on course X run by a private training provider, or by a prison. This is particularly relevant with the more integrated approach to Further Education Skills and Regeneration at the heart of the government’s skills agenda.

“Should communication by email outside a VLE be permitted?”

and on page 13

“Do you agree that access should be subject to security measures, such as a requirement to enter a secure password in order to access the recording?”

“What other security measures might be appropriate?”

“Who should be able to access extracts made available by an educational establishment in a VLE?”

“What level of responsibility should an educational establishment have for maintaining the security of a password protected VLE?”

“How should onward communication beyond a secure environment be prevented?”

As I indicated in our face-to-face meeting, the questions betray too narrow and “frozen” a view of the sort of technical infrastructure, and authentication methods, and the range of communication options pertaining within educational establishments now and in the future. Even if it was desirable to limit things in the ways suggested by the questions (which we do not accept), the pace of change, and the diversity of systems across education, make such specific constraints unworkable.

On page 13 you ask some questions about “works”. As indicated earlier in this response we fully support the Gowers view that educational exceptions should be defined by “intent, category of use and activity”, rather than by media type. Our basic position here is that the exception should be as wide as possible, and that there would probably be more mileage in relying on a simple test of reasonableness, than in making the proposed expansion within the framework currently set by Section 36 of CPDA. For this reason our responses to your questions on this issue are as follows.

“Should section 36 be expanded to include classes of work other than short extracts from published literary, dramatic and musical works?” *Yes.*

“If so, what classes of work should be included?” *Avoid any restrictions on classes, relying instead on intent, category of use and activity.*

“What consequences would such an amendment have on rights holders?” *Rights holders would have their work exposed much more widely.*

“What benefits would there be for educators?” *Substantial, but the major beneficiaries would be learners, whose experience as learners would be enriched.*

“If the exception is expanded to other works, what limits should be placed on the size of extracts?” “Would the application of existing limits to other works be desirable or practical?” *Any attempt to apply specific or % size limits would fail.*

Recommendation 8: format shifting exception

We fully support the proposal to create a new exception to copyright to allow consumers to make a copy of a work they legally own so that they can use the work on any device in their lawful possession. This would bring the law into line with the widespread behaviour of citizens. We believe the proposed extension should be extended, beyond personal private use, with a view to permitting format shifting for non-commercial research and for private study. We do not consider that a requirement to dispose of format shifted copies if the original was sold or otherwise disposed of would be enforceable, and if that is the case then there is no point in including such a requirement.

Recommendation 9: extending the exception for copying for research and private study

We fully support the Gowers recommendation to allow private copying for research to cover all forms of content, and we believe either the expanded exception should cover private study as well as research or that the definition of the latter should be wide enough to embrace the former. We are concerned for UK IPO to ensure that “research” is defined widely enough and not by “academic level”, and we believe that the expanded exception should cover all types of works. We do not believe that there should be a link to a formal course of study or to activity in a research establishment, believing that the extended exception should apply to citizens as a whole. In relation to the latter we note the current DIUS consultation on informal adult learning, and it would fly in the face of current policy thinking if research and private study were defined narrowly by one arm of Government, whilst being widely cast by another. Finally, we would strongly support the suggested production of guidance on fair dealing. Such guidance could also include advice on the boundaries of the expanded exception.

Yours sincerely



Seb Schmoller
Chief Executive
seb.schmoller@alt.ac.uk