



4 February 2009

The Future
Copyright and IP Enforcement Directorate
Intellectual Property Office
Concept House
Cardiff Road
Newport
NP10 8QQ

Dear Sirs,

ALT is pleased to be invited to respond to the questions that you posed in the Paper "The Future"¹.

ALT is the leading UK body bringing together practitioners, researchers, and policy makers in learning technology, within and beyond FE and HE. ALT is a professional and scholarly association which brings together those with an interest in the use of learning technology. We have over 200 organisations and over 500 individuals in membership. Our members include leading academic and other creators of educational digital content as well as researchers, educational policy makers, and those that deploy and deliver electronic content to support learning and teaching in FE and HE (practitioners). Nearly all HE establishments in the UK are organisational members as are many FE content providers, government agencies, and software suppliers².

We are therefore better able than most to address the questions from a balanced point of view.

ALT was strongly in favour of the constructive direction being taken by the Gowers Review of Intellectual Property, as can be seen from our response to the preliminary consultation on proposals to extend the educational exceptions to copyright³. Our anxiety now is that there may be some backsliding on that report, driven by a narrow set of interests overruling the broader interests of the UK.

¹ <http://www.ipo.gov.uk/c-policy-consultation.pdf>

² There is a brief overview of ALT on page eight

³ http://www.alt.ac.uk/docs/UKIPO_consultation_ALT_final.pdf

Registered Charity No: 1063519

Central Executive Committee: *Liz Bennett, Gayle Calverley, Linda Creanor, Cathy Ellis, Carol Higgison, Robin Mason, Dick Moore, John Phelps, Fred Pickering, Steve Ryan, Nicola Whitton.*

ALT Ambassadors*: *Dame 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 Regulation Implementation 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>**

There has been work on the economic arguments from the point of view of the state. The consensus is that openness is the most favourable approach (for a sound presentation of these ideas see, for instance, Rufus Pollock's "Innovation and Imitation With and Without IPRs"⁴).

Furthermore, there is a growing body of literature across a number of subject areas that an open access approach to academic publishing does not diminish the impact of the work (see for instance Harnad and Brody's "Comparing the Impact of Open Access (OA) vs. Non-OA Articles in the Same Journals"⁵). Peer review and editing arrangements are now worked through and in place. Thus paying for the results of scientific or academic work in a "charged" form does not increase impact or value. The open access movement in academic publishing is here to stay, and is growing substantially. Furthermore, with a lot of research funded by government or charitable trusts it seems to many that it is unreasonable for authors and third parties to profit from making knowledge available to the public stakeholders.

On the software side we agree strongly with Gowers that *"there is little evidence that software patents increase incentives"*, and that the *"evidence suggests software patents are used strategically; that is, to prevent competitors from developing in a similar field"* and that *"a new right for pure software patents should not be introduced, and so the scope of patentability should not be extended to cover computer programs as such"*. With the boundary between content and software becoming increasingly blurred it is important that the UK avoids actions that will result in large quantities of time and effort being diverted into non productive activity.

Q. Does the current system provide the right balance between commercial certainty and the rights of creators and the creative artist? Are creative artists sufficiently rewarded/protected through their existing rights?

It is inevitable that the law will lag behind the technology and that the "no-man's-land" between the two will be an inconsistent area with variability of treatment. Given the length of time after the advent of the photocopier that paper copyright and the relevant exceptions took to be understood and worked through (over 10 years), it is hardly surprising that the advent of digital content in its many forms has been a cause of concern that it is now time to resolve.

It is hard to know whether creative artists and their employers are sufficiently rewarded/protected through their existing rights. This is a matter of judgement and is a function of their expectations and the deals which they strike with their "publishers".

Traditionally, for instance in the book industry, the rights were transferred to the publisher who was responsible for significant costs such as those involved in promotion and production. Creators were thereby well protected but rewards for authorship were usually modest. At the same time loss of revenue through illegal reproduction was a small problem and the educational exceptions were generally accepted and respected, although strongly argued against initially by the publishers.

Creators of academic (research) and learning and teaching support content are rarely highly rewarded in a direct fashion with the possible exception of some school textbooks and in a number of specific areas such as medicine. Returns in the £200 -£2000 band for

⁴ http://www.rufuspollock.org/economics/papers/innovation_and_imitation_talk_rennes_2008.pdf

⁵ <http://eprints.ecs.soton.ac.uk/10207/01/06harnad.html>

a learned work that takes months to produce are the norm and this often comes some time after the effort. The main reward comes not from the licensing of content but from recognition and esteem leading to other funding or to career development.

Such creators are therefore keener to have their work used, recognised, and cited, rather than to earn royalties for them. There is some evidence that, in the case of electronic artefacts, employers are taking a larger role in negotiations, but returns are still modest.

Creators' priority is for the system to interfere minimally with this search for recognition and esteem. This is far from being achieved. Timeliness is an important criterion as timely recognition can have a greater effect on lifetime earnings overall. The advent of very cheap digital reproduction is viewed as an opportunity for wider and faster dissemination and usage.

In some recently reported instances, the costs of text books can be high and so loss of revenue as a result of reproduction as part of pirate electronic versions, usually in subset form. Again the academic creator's attitude is often an ambivalent one. Electronically, pieces of a textbook can be and are unbundled so that a small relevant portion can be included in a course. This can not be done with a paper version. The learner's choice is to buy the textbook, use the library or do without and rely on notes. Users, especially student users, are not keen to pay for more than they need.

Institutions also have recognised that the value of content in their delivered courses is to *support* revenue streams rather than to *be* a revenue stream. Perceived value in a course is linked to support, dialogue, assessment and recognition; rather than to content.

This is evidenced by the moves of many universities to put certain parts of their courses and the content online. At the extreme, Harvard, the UK Open University and others make owned content freely available to all. There has also been a high casualty rate amongst high profile HE organisations such as the UK eUniversity that built their business case models on charging for content.

This widely held view of the value of being a creator of educational content amongst our creating members is shared by the membership as a whole. It has clear parallels in the software industry.

More widely, digitisation has changed the whole landscape. With the right permissions and technology, content can reach people anywhere at low cost. Reproduction costs have plummeted thereby disintermediating significant parts of the publishers' traditional value added function. The nature of promotion has also changed and this again often disintermediates the rights holder's traditional role.

Ensuring that works are rapidly encountered through search engines and that scholarly peer reviews of works are conveniently available requires work but the costs are still significantly lower than for conventional marketing. It is far from clear that this change has yet worked through to the benefit of the creator and indeed this is bound to take time as traditional contracts unwind.

Many rights holders have thus sought to redefine a major part of their role as one of enforcement with expanded legal and technology functions. This has resulted in a proliferation of contracts and conditions and a lack of transparency which is not to the benefit of society.

One would expect therefore that over time the balance would move towards the creator being protected and rewarded in a flexible fashion of their choosing at the expense of the rights holder. Experience would suggest that this may be a slow process.

In some countries, for example EU countries such as France, some moral rights cannot be assigned to others and remain with the creator. This is intended to work to the benefit of both the creator and the consumer and seems so to do.

Ideally the creator should have a major say in what usage can be made at what cost by signing up for one of a small number of standard packages which should be independent of publisher. Our creators report that this is currently rarely the case. For instance, many individual creators when asked seem very happy for significant use of their artefacts for non profit educational purposes (which itself needs an agreed standard definition, possibly assisted by the work already undertaken by Creative Commons⁶) and are surprised that it has been prohibited by their rights holder. Others may prefer something more restrictive but it needs to be made more standard and understood.

Knowledge of any such decisions made by creators in this area should be readily available to the public, preferably by a simple website lookup. Should the data be available it seems likely that such a website would arise. This would facilitate the equivalent of ethical investing by the public. The mechanism could work as with the Creative Commons search in Google. Initiatives in this area are becoming more popular as the global public addresses the issue of disintermediation between creator and consumer with corresponding efficiency gains for the system as a whole.

Q. Is our current system too complex, in particular in relation to the licensing of rights, rights clearance and copyright exceptions? Does the legal enforcement framework work in the digital age?

A certain amount of complexity, especially with respect to exceptions is inevitable. The convergence of media without a corresponding convergence of the system, so that different media have been essentially treated differently has led to undue complexity. To reduce the complexity, the system needs to be as far as possible technology independent with media and specific pieces of hardware or software used for illustrative purposes only. Currently contracts offered by various suppliers tend to be very specific as to media and other technology choices. According to our creator members, they also vary considerably and are not easy to renegotiate. Ensuring that legislation is essentially technology independent also serves to future proof legislation and limit the size and duration of the future “no-man’s-land”.

Examples of measures that would result from such action include that educational provisions should apply uniformly to all media, and that Section 35 of the Copyright Designs and Patent Act should allow bona fide educational establishments (those defined by government) to record all communications such as podcasts in line with the current terms and conditions for off air recording..

This would also argue for a liberal approach to format shifting. It is unreasonable to expect users to have to buy or relicence digital content as a result of changes in technology although it may be reasonable to require the overall number of copies *in use* to be limited by a license, as is common with software although anything decided on must be easy for users to understand and must be enforceable in a sensible fashion. This precludes active deletion or returning of old copies, especially if obsolete formats are involved.

⁶ <http://creativecommons.org/>

A major source of complexity comes from the international dimension of the problem. A major area that needs sorting is relationships with jurisdictions outside the UK, especially in other parts of the EU and in the US. Our members report that sometimes US legal requirements are imposed worldwide. This is a clear role for government here as the current system works to the disadvantage of UK users.

Thus the framework needs further work to make it relevant, technology independent, and future proof. It needs to deliver royalties within a reasonable time to the creator, if royalties are being paid. In addition, to make the resulting framework enforceable, use needs to be made of effective and efficient user led authentication (see below).

Q. Does the current copyright system provide the right incentives to sustain investment and support creativity? Is this true for both creative artists and commercial rights holders? Are those who gain value from content paying for it (on fair and reasonable terms)?

We have already noted the economic benefit work undertaken at Cambridge and elsewhere that seems to show that a more liberal approach is economically of overall benefit to the country. This is especially the case in public areas such as education where there is a tradition of sharing and repurposing content with proper acknowledgement but without large fees or delays being imposed.

Rights clearance issues have substantially increased the cost of many educational courseware projects and have been responsible for the failure of projects. Digitisation projects have been especially difficult, for instance where the rights holders are difficult to identify and find (such as collections of medical images that have been used for some time in face to face teaching). There needs to be more thought given as to what is reasonable in chasing rights holders, especially when the resulting material will be used for government approved establishment educational purposes. One option would be to encourage "take down" provisions as an alternative to rights clearance.

The FE/HE community has recently spent very considerable funds (over £30M) in digitising relevant national resources for educational use and for posterity. A major capital component has been the work involved in rights clearance (in some projects up to 40%). This has brought the ongoing sustainability of such projects into doubt if the resources are to be kept current. Such activities should be performed once only for all formats and there is a need for a "light touch" exception based approach that does not waste scarce public funds. This would be to the advantage of all especially to any creators who are still alive when the process terminates.

Our member organisations are naturally law abiding and anxious to conform to good practice. In the case of the photocopying exceptions, they are keen to inform the individual worker of what they can do and to ensure as far as possible that no license is broken in error. Thus for instance prominent notices are displayed next to all photocopiers and the organisation provides training for administrators and others who advise individuals. Wordings have been carefully agreed with rights holders collectively.

The absence of anything uniform in the digital arena is more likely to lead to unknowing breaches. Many individual teachers do not know what they can and cannot do with any specific piece of content and it is unreasonable to expect such knowledge when content is so diverse and licenses so opaque. If the copyright exceptions were to be extended in a

simple, easy to understand fashion, so that knowledge could be readily disseminated and appropriate warnings put on websites and elsewhere in educational establishments, then creators would enjoy a better and fairer return. There is another clear role for government here in devising and promulgating standards.

Q. What action, if any, is needed to address issues relating to authentication? In considering the rights of creative artists and other rights holders is there a case for differentiation? If so how might we avoid introduction further complication in an already complicated world?

The JANET community which contains all UK HE and FE establishments, and is increasingly incorporating schools, has a well developed set of systems for authentication and authorisation. It is implemented at every site. It was put in place to prevent unauthorised use of materials or resources including content such as electronic copies of journals or software that has maximum simultaneous usage criteria. Issues such as proper interworking with the NHS and supporting work based learning with remote students have been addressed as this was required to ensure proper usage of institutional resources, initially software but now a much wider set of artefacts.

While the UK academic community network was and still is a world leader, the facilities it offers are increasingly being made available more widely as the global need is perceived. It is thus reasonable to expect any organisation offering content to have in place an effective system for authentication and subsequent authorisation. Nearly all organisations need this for their own business purposes.

Longer term more global solutions such as OpenID and/or third party IDs such as Google's may come increasingly into play but the essential point is that it is up to the user authority what to deploy and how to report without having to mount multiple intrusive systems.

With a lot of global work underway, systems that rights holders try to impose often are reported by our members as poor and hard work to implement and use when compared with the available professional systems. This is a waste of resource for the UK.

Some systems are inappropriate for UK learning institutions, especially those with substantial numbers of distance or work based learners. Publishers' systems that use IP address ranges as part of an authorisation mechanism are especially inappropriate and lead to a lot of unnecessary work.

By contrast, it is unreasonable for an organisation to be expected to mount a number of other systems at the whim of suppliers. What should be expected and accepted is that the organisation has such a system and has used it to enforce any rules about the precise users that are allowed to use content and any restrictions on concurrency, time of day etc that the license imposes. This should be open to report and verification on a reasonable request basis.

There remain the problems of the "hat" that an individual is wearing when accessing artefacts. For example, is a doctor in a teaching hospital acting as a researcher or as an NHS employee (or both) when accessing something? Such issues will always remain and are best handled by clear guidelines that are agreed. No authentication system will be able to address the "intention" for which something was accessed in all cases.

A recent US survey⁷ shows that community colleges are the largest providers of on line material. Many have developed codes of practice involving education and notification of staff and students of the rights and permissions associated with such materials. This is made possible by a more uniform central understanding in spite of the fact that the US has a federated system. Training, standardisation, and the avoidance of ambiguity are perceived as the key to ensuring better compliance. This unsurprising result is likely to be replicated in the UK.

In the UK, the advent of the Unique Learner Number which everyone in UK education will have within a few years, together with possible use of the DIUS MIAP system may make some aspects of the process simpler and easier to follow in the future and hence easier to monitor for times when individuals are in formal education programmes.

Again the key is to harness a joint wish for usage to be properly monitored and licensed, efficiently, effectively and understandably without increased complexity. Our organisational members subscribe to such a code⁸ through being part of the JANET community and have the role of educating and ensuring compliance. With the current proliferation of terms and rules and the lack of standards, this is reported as too complicated. It need not so be: greater simplicity is easily achievable.



Seb Schmoller
Chief Executive

⁷ <http://www.itcnetwork.org>

⁸ <http://www.ja.net/company/policies/janet-aup.html>

About ALT

ALT provides a focus for the expanding community of learning technology practitioners and researchers in further and higher education. At its heart are technical and academic staff who are seeking to support their students' learning through innovative uses of learning technology. ALT was formed 15 years ago, and is a registered charity.

ALT's 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.

Members

Currently we have as members:

- over 500 individuals;
- nearly all of the UK's main higher education institutions;
- a significant number of further education providers;
- a growing corporate membership including bodies such as Becta, DIUS, LSC, HEFCE, SFC, and JISC, as well as large and small software, hardware, telecommunications, and e-learning businesses⁹.

Activities

We produce:

- a quarterly Newsletter in web and print formats;
- the ALT Journal (an international peer-reviewed journal devoted to research and good practice in the use of learning technologies within tertiary education);
- a fortnightly members' email digest;
- publications aimed at practitioners, sometimes produced in conjunction with other organisations.

We organise:

- ALT-C, which is the UK's annual main academic conference for learning technologists, which attracts over 600 attendees¹⁰;
- conferences on topics of interest to learning-technology practitioners, as well as occasional free events such as focus groups and regional meetings;
- visits and exchanges with sister bodies;
- regular workshops and symposia, for example on evaluation, peer-to-peer software, accessibility, and learning object design; and Policy Board meetings which bring together senior representatives from member organisations, to consider current significant developments in the learning technology domain.

⁹ Institutional and corporate members are listed on our website – <http://www.alt.ac.uk/>.

¹⁰ The 2009 ALT conference "*In dreams begins responsibility*" – choice, evidence, and change will be in Manchester between 8 and 10 September, chaired by Professors Gilly Salmon and Tom Boyle

ALT's perspectives on learning technology

ALT understands learning technology as the systematic application of a body of knowledge to the design, implementation and evaluation of learning resources. The body of knowledge – the fruit of research and practice – is based on principles of good learning theory, instructional design and change management but is grounded in a good understanding of the underlying technologies and their capabilities. Learning technology makes use of a broad range of communication, information, and related technologies to support learning and provide learning resources. ALT believes that learning technology adds value to both the efficiency and the effectiveness of the learning process, by offering:

- opportunities to improve and expand on the scope and outreach of the learning opportunities they can offer students;
- ways to ensure equality of opportunity for all learners;
- alternative ways of enabling learners from cultural and social minorities, learners with disabilities, and learners with language and other difficulties to meet learning outcomes and demonstrate that they have been achieved;
- quality control and quality enhancement mechanisms;
- ubiquitous access opportunities for learners;
- enhanced opportunities for collaboration which may increase the re-usability of learning objects and resources.

However, the value that learning technology can add to the learning process is influenced by a number of important factors, including the following.

- The immaturity and volatility of some learning technology mean that there is a lot of work involved in keeping up with available products, especially with a market that is shaking out. Accordingly, much effort is wasted through poor understanding of the technology and its application.
- There are a lot of products and services which are not especially suited to UK FE and HE pedagogic models.
- It is possible to make expensive errors when there is a misalignment between technology, pedagogy and institutional infrastructure or culture. These errors are often repeated in parallel between educational institutions.
- Standards and specifications are evolving, hard to understand, easy to fall foul of, and tend to be embraced with zeal, without the cost and quality implications being properly understood.
- Much effort is also dissipated through a poor understanding of the theory and pedagogy that underpins the use of the technology.
- The absence of a widely established and practiced methodology by which rigorously to evaluate e-learning, and through which to develop the secure body of knowledge on which to build learning technology as a discipline.