Modernising copyright exceptions – short briefing prepared by LACA:
The Libraries and Archives Copyright Alliance

Introduction

The need for change

Despite the impact of the digital age on teaching, learning and research, the exceptions in UK copyright law enjoyed by researchers, the over 15 million people estimated to be in education and everyone else who uses copyright materials for any reason have been narrowed over the last 20 years, whilst the rights for copyright owners have been strengthened (for instance by the extension of the copyright term to life plus 70 years, the extension of term for sound recordings, and by the introduction of new rights for rental and lending). Both Professor Hargreaves’ report and the White Paper Modernising Copyright have recognised this, and the proposals for new and amended exceptions are the necessary conclusion.

These proposed changes to the UK’s copyright regime are vital to supporting innovation and growth in the UK. They are of crucial importance to not-for-profit libraries and archives in the digital age, helping them serve more effectively, their patrons in full and part-time education, as well as citizens, and to reduce costs and overheads, thereby leading to greater efficiency, innovation and improved research.

There is no validated evidence that any of the proposed new exceptions will damage the legitimate commercial interests of rights holders. In a digital world where everyone who uses a computer is subject to copyright law, if citizens do not feel the law appropriately supports their own personal and educational needs it will be ignored and seen as increasingly irrelevant to modern day life. It is vital, therefore, that we have a balanced copyright system that respects the legitimate interests both of rightsholders and of all users of copyright works.

Licensing schemes

Rights owners often claim that limitations and exceptions are rendered unnecessary by the existence of licensing schemes. They forget that many copyright works are not, and in some cases cannot, be covered by licensing schemes. There is, for instance, no scheme for unpublished literary works (such as private letters) nor one for private films or documentary photographs. Archives and libraries have no choice but to rely on exceptions in order to provide a service to the public. Similarly, the...
internet is used by all, from school children through to academics, as part of their study; to suggest that every page of the internet can be licensed for learning seems entirely impractical.

**Provision to protect copyright exceptions from override by contract**

Currently, universities, public libraries and schools subscribe to vast amounts of electronic content, via hundreds of contracts. It is, therefore, NOT copyright that dictates how that content can be used, but the contracts.

Every contract has varying terms and conditions that have to be complied with in order for the library or user not to be in breach of the agreement. Just as it is not possible to have a separate agreement for every book on a shelf, it is not possible for the thousands of libraries in the UK to negotiate each contract to guarantee what their users can do with the large amounts of electronic content now available for purchase. Across the library sector we do not have the resources or legal expertise required to do this.

All we ask is that, irrespective of the many varying terms of these contracts and the large number of contracts libraries have to negotiate, all libraries, students, researchers and citizens have certainty around the minimum actions they can do with the electronic content which they have purchased or have legal access.

We believe that everyone who uses electronic content should be able, as a bare minimum, to use that material in line with exceptions to copyright as decided by the will of Parliament.

The proposed provision to protect copyright exceptions from override by contract, which already exists in Irish, Portuguese and Belgian copyright law, is therefore essential, so that people may know that they can apply the norms of exceptions to copyright to content to which they have legal access. Without this, we are expecting every librarian, student, researcher and citizen in the country to be experts in contract law, and have read and understood all the terms and conditions for every eBook or e-database they access through a library.

**Proposed important changes to the Copyright, Designs and Patents Act 1988 include:**

- **Research, Libraries and Archives**

  Extensions of Section 29 (fair dealing for the purposes of private study or non-commercial research) and Sections 38, 39 and 43 (copying of works by librarians and archivists)

  This proposal is intended to update UK law to cover the copying under “fair dealing” of a portion of any type of copyright work by those who wish to use it for their own personal study and non-commercial research purposes. This has already been the norm in the US and most of Europe for many years.
Knowledge is encapsulated not just in text, but also in sound and film. Without such an extension to UK law, students and researchers will continue to be unable to make copies of the varying types of content held in the libraries and archives across the UK that are essential to their research or study.

**Extension of Section 42 (copying by librarians, archivists or curators: replacement copies of works).**

Copying for preservation purposes must be extended to cover all types of copyright work because archives and special collections risk the loss of large amounts of audiovisual material without having the lawful ability to copy from one medium to another in a fast-paced digital environment. Waiting until copyright expires also dramatically increases the cost of preservation as the expertise, techniques and hardware required become rarer and rarer.

- **Text and data mining**

**New Exception for ‘data analysis for non commercial research’ (new s.29A and Sch.2 Para 2C)**

It is said that “Data is the new oil”. A new text and data mining exception will dramatically boost non-commercial research by allowing computers to “read” material we already have purchased or have legal access to. In an era of “big data”, research must be supported by allowing organisations and individuals to extract facts and data contained in such material on a large scale. The lack of such an exception means that UK research continues to lag behind countries such as the United States, Israel, Japan and a number of other countries in East Asia, which already allow text and data mining, and places our researchers at an immediate disadvantage. The current situation is that overseas researchers are allowed to analyse text and data material that originates from the UK, whereas we are not. This new exception will provide excellent opportunities to support vital research in medicine, biology, geology and earth and life sciences, leading to new discoveries and greater innovation.

- **Exceptions for people with disabilities**

**Disabled persons – making copies of copyright works for personal use (31A) and making accessible copies for disabled persons generally (31B)**

All print-disabled learners should be on an equal legal footing, with a right to have information provided in an accessible format, as required under Section 20 Clause 6 of the Equality Act 2010. Amending the existing exceptions for visually impaired people so that they cover all impairments that prevent a person from accessing and making use of all types of copyright work will achieve this.
• *Education*

Amendments to Exceptions for Education (Section 32 and Sections 35 and 36)

Currently, the permitted acts for educational purposes are largely unfit for the digital age, where teaching in educational establishments is interactive and computer software and the internet are integral aspects of lesson and lecture delivery. Students need to be able to appraise information presented in any medium.

Amending the law in respect of educational purposes will support the use of technology-driven access to resources supporting teaching, learning and research across the UK, whilst ensuring that this does not disadvantage rights owners.