

Libraries and Archives Copyright Alliance Test Case

Notice of complaint to the Secretary of State in line with sections 296ZE and 296ZEA of the Copyright, Designs and Patents Act 1988 [as amended] – where Technological Protection Measures (TPMs) prevent a complainant from benefiting from an eligible copyright exception

Background

[S.296ZE and 296ZEA of the Copyright, Designs and Patents Act 1988](#) provide a remedy for overly restrictive technological protection measures that prevent permitted acts.

In September 2015 the Libraries and Archives Copyright Alliance (LACA) made a complaint to the Intellectual Property Office (IPO) on behalf of a *bona fide* researcher at a UK university who was prevented by the CAPTCHA TPM from taking an electronic copy of a free to access online database for the purpose of text and data mining for a non-commercial purpose as permitted under the UK's Text and Data Mining Exception (CDPA s.29A)

Below is a log of the steps taken

May 2015

The researcher wished to use data that is freely available on a legal website without having to register. However, CAPTCHA TPM prevented the files from being downloaded in a format suitable for text and data mining for non-commercial research. The researcher contacted the rightsholder to request access, using an online form on their website as no other contact information was available, but did not receive a reply.

August 2015

August 13th

The researcher contacted the rightsholder again, saving a screenshot of his request and the confirmation of having sent it. No response was received.

LACA agreed to submit a Notice of Complaint on behalf of the researcher.

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Representing ARA: The Archives & Records Association, ARLIS/UK & Ireland: The Art Libraries Society of the UK and Ireland, BIAL: British and Irish Association of Law Librarians, The British Library, CILIP: the Chartered Institute of Library and Information Professionals, HearFirst, IAML/UK & Ireland: The International Association of Music Libraries, Archives and Documentation Centres, LIS-COPYSEEK online community, Museum Libraries, The National Library of Scotland, The National Library of Wales, The National Archives, Scottish Council on Archives, Share the Vision, Society of Chief Librarians in England and Wales, SCONUL: Society of College, National and University Libraries, Universities UK, The Wellcome Trust.

September 2015

September 3rd

Notice of Complaint submitted to IPO. It had taken several days to prepare.

September 4th

IPO acknowledged receipt of Notice. Their email also stated that “As an initial step we will consider whether the complaint is in scope”.

September 21st

The Notice of Complaint form asks for full contact details of the rightsholder. As these details were not given on their website, LACA took information from the Who.is website where it is registered.

Email to LACA from IPO:

“Would it also be possible to confirm whether or not [the researcher] or yourselves have tried to contact the [rightsholder] in any other way? We note that you have included a telephone number in section 6, but have not indicated whether you have made contact through alternative means to access the information required”

September 21st

The researcher confirmed that he had not tried to call the rightholder on this number.

September 24th

The IPO were informed that neither the researcher nor LACA had telephoned the rightsolder, but that we would try to.

September 25th

Two LACA members attempted several times to phone the rightsholder on the number listed on the Who.is website where the legal website is registered. There was no response.

In a further attempt to make contact, LACA looked up their address on Google Maps and it appeared to be in the same building as a branch of the College of Law.

September 29th

A LACA member went into the College of Law and spoke to the receptionist, asking if they had heard of the rightsholder. They had not.

October 2015

October 1st

A further attempt to contact the rightsholder by telephone was made. There was no answer.

The IPO was informed that LACA had been unsuccessful in its attempts to contact the rightsholder by phone or in person.

October 2nd

IPO acknowledged this email. The email said:

“I will be in touch shortly to let you know how the complaint will proceed – firstly we need to establish whether the Captcha technology is in scope”

October 15th

LACA received the following email from IPO:

“Please accept my apologies for the length of time the process is taking - we are still considering whether the complaint is in scope. In relation to contacting [the rightsholder], I have identified a possible point of contact which you may wish to explore to enable a voluntary resolution of the issue where possible. Through online searches, I have identified that the [rightsolder] use [name of accountants] to act for the company, and to provide any company returns and annual accounts... You may be able to contact them directly with a view to be put in contact with the relevant individual responsible for the [website] although I can't guarantee this will be successful.”

LACA decided to wait for confirmation from the IPO that the complaint was within scope of s.296ZE before attempting to contact the rights holder via their accountant.

November 2015

November 6th

LACA received confirmation from the IPO that the complaint was **not within scope**.

“Copying for the purposes of text and data mining under s.29A CDPA is a “permitted act” for the purposes of s.296ZE CDPA as are acts which may be done under the exception in reg.20 CRDR (see s.296ZE (11) (b)).

The Complainant has stated that the CAPTCHA technology applied to the site prevents him from carrying out a permitted act in relation to the sentencing web page and seeks a remedy under s.296ZE CDPA. However, it appears that the complaint falls outside of the scope of s.296ZE since s.296ZE(9) provides the section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them. As users of the website are able to download the databases on-line, then the terms and conditions governing access to those works will prevail, and it will be necessary to approach the owner of the website to request permission to copy/extract the data.” (IPO, November 2015)

July 2016