

## **Technical review of draft legislation to modernise copyright exceptions Supplementary Response from LACA: The Libraries and Archives Copyright Alliance**

### **Ss.37 and 41: copying by librarians for users:- Lack of provision to prevent contractual override**

**July 2013**

LACA, the Libraries and Archives Copyright Alliance<sup>1</sup>, had submitted its main response to the IPO's various technical consultations for modernising the copyright exceptions on 17<sup>th</sup> July 2013, in time to meet the first of the IPO's deadlines.

This is a supplementary response, prior to the 2<sup>nd</sup> August 2013 deadline for final receipt of comments concerning the research, libraries and archive exceptions. It concerns the lack of provision to prevent contractual override in the new ss.37 and 41.

#### **New s.37 Copying from published works by librarians for non-commercial research and private study**

On page 1 of the technical consultation document the government states in Para. 4:

"In line with its policy set out in "Modernising Copyright", and consistent with the amendments to Section 29 on research and private study, the Government intends to amend Sections 37 to 40 and 43 of the Copyright Act, which relate to libraries and archives. These provisions will be amended to cover all types of copyright work, irrespective of the medium in which they are recorded."

We understand this statement to mean that the government's intention is that the provisions in the revised s.29 apply also to s.37. However, we do not think that the draft legislation has achieved this because s.37 omits any mention of contracts not overriding exceptions.

The lack of provisions preventing contractual override in s.37 will create a situation whereby libraries can by contract be prevented from supplying copies of works to their patrons, yet the patrons would not be prevented from making their own copies in person. This situation would be untenable for busy library users and deny remote users full access to their library's collections.

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<sup>1</sup> <http://www.cilip.org.uk/laca>

### **New s.41 Copying by librarians: supply of copies to other libraries**

The lack of provisions preventing contractual override in s.41 will mean that libraries can by contract be prevented from supplying copies to the users of other libraries via those libraries (this is what s.41 is about). Since it is impossible for every library to acquire and hold every work published in their own collections, library patrons could be denied full access to the published repertoire, particularly as more and more copyright works held in libraries become available only in digital form governed by contracts. The strength of the whole inter-library network in the UK, built up over the last century, that allows patrons to fully access any work held anywhere in the library system, would be undermined to the serious detriment of research and study by library users.

### **Conclusion**

Sections 37 and 41 are there to permit library users to ask librarians to copy on their behalf what they, the users, would otherwise have been copying themselves under s.29.

**Sections 37 and 41 therefore need to mirror the provisions of s.29** and will not achieve the government's stated objectives if they do not do so. In order to be effective these sections must include provision to prevent contractual override.

LACA cannot see the reason for the absence of a contract override provision from the exceptions in ss37 and 41, especially as it was promised in Annex D Research and Private Study of the government's paper '*Modernising Copyright*' (p 35), which covers copying both by users themselves and by librarians and archivists. This states that "provision will be made to prevent this permitted use from being undermined by contracts, provided of course that such use is fair".

Furthermore, there is nothing in the Information Society Directive (2001/29/EC) to preclude it. We therefore very strongly urge the Government to rectify this serious omission of wording in the new ss. 37 and 41 and bring them into line with the revised s.29 by including in both sections the words that appear in the revised s.29 concerning prevention of contractual override:

"To the extent that the term of any contract purports to restrict or prevent the doing of any act which would otherwise be permitted by this section, that term is unenforceable."