



Department for
Business, Energy
& Industrial Strategy

Amanda Solloway MP
Parliamentary Under Secretary
Minister for Science, Research &
Innovation
Department for Business,
Energy & Industrial Strategy
1 Victoria Street
London
SW1H 0ET

David C Prosser PhD FRSA
Research Libraries UK
254 Senate House
Malet Street
London WC1E 7HU

T +44 (0) 20 7215 5000
E enquiries@beis.gov.uk
W www.gov.uk

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c/o [REDACTED]

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Dear Dr Prosser,

Thank you for your letter dated 30 March, sent on behalf of Research Libraries UK and the other signatories. You raised issues relating to copyright and the use of educational materials online, following the shift to online teaching and research by schools, universities, libraries and archives during the COVID 19 crisis. These issues include the copying of textbooks, reading books online and access to works contained in libraries which may now be closed. You also put forward some specific ideas to address these concerns. I am answering your letter as the Minister responsible for Intellectual Property.

Your first suggestion was that the Government issue a statement under section 171(3) of the Copyrights, Designs and Patents Act 1988. This section, which concerns restricting enforcement of copyright in the public interest, has been used rarely and only where there have been criminal or unethical issues to consider. It is applied by the courts on a case by case basis, after an infringement has taken place, and it is therefore not possible for the Government to issue a general statement to invoke the section in advance.

Your second suggestion was emergency legislation or, alternatively, soft-law initiatives, to make infringing acts by educators not actionable by rights holders. It is an important principle of copyright that rights holders should be able to manage the use of their works, except in very limited circumstances. A broad action of this type by the Government would prevent rights holders from doing that across a very wide area, thereby denying them the income on which many creators and others in the creative industries rely. It would also be incompatible with the international copyright framework which says that any exceptions to copyright must not cause unreasonable prejudice to rightholders.

The third suggestion in your letter seeks to address the issue of remuneration for rights holders by requesting a system of compulsory licensing where the Government would pay compensation. Compulsory licensing in this broad sense would also remove exclusive rights from rights holders and is likely to be incompatible with the international copyright framework.

Although we do not believe that the proposals which you have set out are viable, I am pleased to note that many rightholders and collecting societies have taken unprecedented steps since the start of this crisis to make their works more widely available.

A number of publishers have taken steps to allow schools, universities and libraries to access their publications and use them online more easily. For example, several publishers have agreed to allow libraries and bookshops to do live storytelling online. The Publishers Association has published a summary of the wide-ranging actions taken by publishers in response to the present crisis (available here: <https://www.publishers.org.uk/covid-19-publishing-industry-response/>)

The Wellcome Trust has published a Coronavirus consensus statement, which has been signed by many major research journals and publishers. The signatories to this statement commit to making research and data related to COVID 19 available and freely accessible.

There are numerous other partnerships between rights holders and not-for-profit organisations to make more materials available.

The Department for Education (DfE) has made a list of resources for teachers and parents to use at this time (available at:

<https://www.gov.uk/government/publications/coronavirus-covid-19-online-education-resources>).

All publicly funded schools in England also benefit from central licences which are agreed between the DfE and organisations which manage the repertoire of rights holders, such as the Copyright Licensing Agency (CLA). Many individual institutions in the UK also have licences. These licences have specific terms and conditions in place, including limitations on the quantity of a work (such as a textbook) which may be copied. The DfE has met with CLA to discuss the current situation and has agreed new, more generous terms that are in place until the end of the academic year for licensed UK schools, Sixth Form and Further Education colleges. The CLA has also widened the terms of its Higher Education Licence. Other CMOs have made public statements on how their licences enable the sort of digital uses you set out and provided additional resources on their websites to help licensees seek out appropriate content.

Not all copyright works or uses are covered by these licences, which is why the Copyright, Designs and Patents Act 1988 (CDPA) provides several exceptions to copyright which may be used to help deliver education.

One of these exceptions (Section 36 CDPA) allows educational institutions to copy extracts of up to 5% of a work which is not otherwise available under their licences, and these may be made available on a secure electronic network.

Another exception (Section 32 CDPA) allows copyright works to be used for illustrative purposes during teaching as long as their use is fair, non-commercial, limited to the persons giving and receiving instruction, and acknowledges rights holders. Many materials used in presentations by teachers, including those which are streamed remotely to students, are likely to fall within this provision.

Other copyright exceptions which might be helpful in the circumstances raised in your letter – each with their own requirements – are those for quotation, criticism and review (Section 30 CDPA), and research and private study (Section 29 CDPA).

There is guidance on the exceptions relating to education and teaching online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/375951/Education_and_Teaching.pdf.

All the exceptions in copyright law have been carefully considered, looking to balance the right of creators to be paid for their works, as well as the rights of users who may have justifiable need to access those works. This is why they contain restrictions, such as limits on the amount of a work which can be copied. Many require that use of a work is a “fair dealing”. It is likely that the courts will take a generous view of fair dealing during the present crisis, in particular where licences for the reasonable use of works are unavailable.

It will not be possible for organisations to use every copyright work in every situation, whether under licences or exceptions. However, in most cases, copyright should not be a barrier to children and adults in education having access to appropriate materials.

I hope that this response is helpful to you and the other signatories. I have copied this letter to the Rt Hon Gavin Williamson CBE MP, Secretary of State for Education, and the Rt Hon Oliver Dowden CBE MP, Secretary of State for Digital, Culture, Media and Sport.

Yours ever,

A handwritten signature in black ink, reading "Amanda Solloway". The signature is written in a cursive style with a large, sweeping flourish at the end that loops back under the name.

AMANDA SOLLOWAY MP

Parliamentary Under Secretary of State - Minister for Science, Research and Innovation