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| Title: Extend exception for copying for research and private study IA No: BIS0311 Lead department or agency: IPO Other departments or agencies: | <h2 style="margin: 0;">Impact Assessment (IA)</h2> |
| | Date: 13/12/2012* Stage: Final Source of intervention: Domestic Type of measure: Secondary legislation Contact for enquiries: joanna.huddleston@ipo.gov.uk |

| | |
|--|---------------------------|
| Summary: Intervention and Options | RPC Opinion: AMBER |
|--|---------------------------|

| Cost of Preferred (or more likely) Option | | | | |
|---|----------------------------|--|------------------------------|----------------------|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, One-Out? | Measure qualifies as |
| £0m | £0m | £0m | Yes | Zero net cost |

What is the problem under consideration? Why is government intervention necessary?
 Copyright law allows researchers and students to copy some types of copyright works (literary, dramatic, musical and artistic) for research and private study, but not sound recordings, films and broadcasts. Those who wish to conduct non-commercial research and private study on such works must therefore obtain permission from the copyright holder, often an expensive and time-consuming process that may not be successful. To allow sound recordings, film and broadcasts to be copied solely for research and private study purposes without permission from the copyright holder, copyright law will need to be changed.

What are the policy objectives and the intended effects?
 The aim is that all copyright works, including sound recordings, films and broadcasts, should be available for reasonable use in genuine research and study, while not unduly infringing the rights of copyright holders in such material. This change will remove the current inconsistency caused by the uneven treatment of different media, and will enable increased quantity of higher quality research in relevant fields. Other benefits will include reducing transaction costs and removing unnecessary rights clearance barriers for existing research. It may also lead to improvements in media literacy skills.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 - **Option 0- Do nothing**
 - Option 1 - Change the scope of copyright law to allow copying of all types of copyright works for non-commercial research purposes and private study
 - Option 2 – Introduce an exception to copyright allowing educational institutions, libraries, archives and museums to offer access to all types of copyright works on the premises by electronic means at dedicated terminals for research and private study. This option is independent of option 1 and reflects responses to a consultation question.
 - Option 3 – Implement Options 1 and 2, with appropriate protections for right holder interests. This is our chosen option, as it combines the benefits of both.
 The case for a possible non-legislative option – a blanket licence – was considered at consultation stage and discounted as unworkable. It is therefore not re-considered here.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 04/2020

| | | | | | |
|--|--------------|----------------|-----------------------|---------------|---------------------------|
| Does implementation go beyond minimum EU requirements? | | No | | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro | < 20 | Small | Medium | Large |
| | Yes | Yes | Yes | Yes | Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: n/a | | Non-traded: n/a |

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible: SELECT SIGNATORY Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Change the scope of copyright law to allow copying of all types of copyright works for non-commercial research purposes and private study

FULL ECONOMIC ASSESSMENT

| | | | | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|---------|------------------|
| Price Base Year 2012 | PV Base Year 2012 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: 0 | High: 0 | Best Estimate: 0 |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--------------------------------------|-------|---|-------------------------------|
| Low | 0 | 1 | 0 | 0 |
| High | 0 | | 0 | 0 |
| Best Estimate | 0 | | 0 | 0 |

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise the costs due to lack of available data, despite seeking additional evidence through consultation.

Other key non-monetised costs by 'main affected groups'

To rights-holders: some licences (such as the ERA plus licence) may not be needed if (a) the sole reason for holding the licence was research and private study and (b) the unlicensed use would be "fair dealing". Consultation responses suggest (a) may be uncommon; (b) is by no means certain. Costs would also arise if the exception could be abused to justify copying for entertainment purposes, or from putting in place measures to minimise this risk.

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--------------------------------------|-------|---|----------------------------------|
| Low | 0 | 1 | 0 | 0 |
| High | 0 | | 0 | 0 |
| Best Estimate | 0 | | 0 | 0 |

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits despite seeking additional evidence through consultation, but illustrative examples has been set out on pages 11 and 12.

Other key non-monetised benefits by 'main affected groups'

To individuals students and researchers, from increased opportunities to undertake research which meets current needs and opportunities. To society, from improved quality of research, and improved knowledge and skills. While the exception covers non-commercial research and study, there is the potential for subsequent economic benefits from new products and services enabled by increased quantity and quality, and new categories, of research.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

Rights-holders have expressed concern that some users could pass off some recreational use of materials as research or study and so will not pay appropriate fees for that use. Such uses are outside the scope of the proposed exception; it is nonetheless important to implement in such a way that any scope for abuse or misunderstanding of the extension to the exception is minimised. We have assumed that this is possible, as the existing exception appears not to have caused these adverse effects.

BUSINESS ASSESSMENT (Option 1)

| | | | | |
|---|-------------|--------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: 0 | Benefits: 0 | Net: 0 | Yes | Zero net cost |

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce an exception to copyright allowing educational institutions, libraries, archives and museums to offer access to all types of copyright works on the premises by electronic means at dedicated terminals for research and private study.

FULL ECONOMIC ASSESSMENT

| Price Base Year 2012 | PV Base Year 2012 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|---------|------------------|
| | | | Low: 0 | High: 0 | Best Estimate: 0 |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--------------------------------------|-------|---|-------------------------------|
| Low | 0 | 1 | 0 | 0 |
| High | 0 | | 0 | 0 |
| Best Estimate | 0 | | 0 | 0 |

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise the costs due to lack of available data, despite seeking evidence through consultation.

Other key non-monetised costs by 'main affected groups'

Institutions: will incur costs of providing dedicated terminals and material on such terminals (e.g. digitisation), but this is a cost of using the new exception rather than a cost imposed by it.

Institutions and rights holders: will both incur costs from developing rules and procedures for such access, to the extent necessary. Consultation responses indicated that existing "walk in access" contracts at some UK universities provide a good template, which suggests additional costs may be limited.

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--------------------------------------|-------|---|----------------------------------|
| Low | 0 | 1 | 0 | 0 |
| High | 0 | | 0 | 0 |
| Best Estimate | 0 | | 0 | 0 |

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the costs due to lack of available data, despite seeking evidence through consultation.

Other key non-monetised benefits by 'main affected groups'

Users: Gain access to works not otherwise available because they are too fragile etc. and/or save time and costs through reduced need to train in handling such materials. Digital access may improve functionality, e.g. allow easier search of text.

Institutions: Reduction in transport cost of physical works to and from archives, and associated staff time. Ability to offer access to preserved works.

| | | |
|-------------------------------------|-------------------|------|
| Key assumptions/sensitivities/risks | Discount rate (%) | 3.5% |
|-------------------------------------|-------------------|------|

Similar to Option 1, it is assumed that the requirement for dedicated terminals on the premises of institutions will help this measure by introducing it in such a way that any scope for abuse or misunderstanding of the exception is minimised. We have assumed that this is possible, given the existence of "walk in access" agreements.

BUSINESS ASSESSMENT (Option 2)

| | | | | |
|---|-------------|--------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: 0 | Benefits: 0 | Net: 0 | Yes | Zero net cost |

Summary: Analysis & Evidence

Policy Option 3

Description: Implement Options 1 and 2

FULL ECONOMIC ASSESSMENT

| Price Base Year 2012 | PV Base Year 2012 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|---------|------------------|
| | | | Low: 0 | High: 0 | Best Estimate: 0 |

| COSTS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--|---|---|-------------------------------|
| Low | 0 | 1 | 0 | 0 |
| High | 0 | | 0 | 0 |
| Best Estimate | 0 | | 0 | 0 |

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise the costs due to lack of available data, despite seeking evidence through consultation.

Other key non-monetised costs by 'main affected groups'

Rights holders: possible reduction in licensing income, though scope for this appears limited. Possible costs arising from implementing in such a way as to facilitate infringement or make it harder to combat it.
Institutions and users: costs of developing and complying with rules on access, to the extent not already done for existing exceptions and contracts.

| BENEFITS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|---|----------------------------------|
| Low | 0 | 1 | 0 | 0 |
| High | 0 | | 0 | 0 |
| Best Estimate | 0 | | 0 | 0 |

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the costs due to lack of available data, despite seeking evidence through consultation.

Other key non-monetised benefits by 'main affected groups'

Users will have access to a greater range of research and study material, at lower opportunity cost in some cases (e.g. from quicker electronic access). Society benefits from improved quality of research, and improved knowledge and skills, with the potential for subsequent economic benefits from new products and services enabled by increased quantity and quality, and new categories, of non-commercial research.

| | | |
|-------------------------------------|-------------------|------|
| Key assumptions/sensitivities/risks | Discount rate (%) | 3.5% |
|-------------------------------------|-------------------|------|

For both options 1 and 2, there is evidence that suggests implementation is possible without particular hazard from increased risk of infringement, or increased difficulty in tackling infringement, caused by the measure. It is therefore assumed that this is possible for this combination of Options 1 and 2.

BUSINESS ASSESSMENT (Option 3)

| | | | | |
|---|-------------|--------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: 0 | Benefits: 0 | Net: 0 | Yes | Zero net cost |

Evidence Base (for summary sheets)

Background

The UK has a copyright exception relating to research and private study. Under current copyright law, researchers and students are able to copy some types of copyright works (literary, dramatic, musical and artistic) for research and private study.

Section 29 of the Copyright, Designs and Patents Act (CDPA) provides that fair dealing with a literary, dramatic, musical, artistic works and typographical arrangements for the purposes of private study does not infringe any copyright in the work, and so does not require the user to obtain prior permission from the copyright holder.

“Fair dealing” is an established concept in UK copyright legislation. It currently applies to exceptions for non-commercial research, private study, criticism and review, reporting of current events, and education. The meaning of fair dealing has been developed in case law. The Court of Appeal (in *Hyde Park Residence Ltd v Yelland* (2001)) described the test for fairness as the objective standard of whether a “fair minded and honest person” would have dealt with the copyright work in the manner in which the defendant did, for the relevant purpose. Uses that competed to any significant degree with commercial exploitation of the work by the rights holder would most likely not be fair dealing; nor would use beyond what was necessary for the research or study in question.

In addition, under the EU Copyright Directive, member states are able to provide exceptions that allow educational institutions, libraries, archives and museums to communicate works from their collections to people on their premises by electronic means for the purpose of research and private study.¹ Such use must be limited to individual members of the public. The UK CDPA does not currently provide an exception of this type. Consultation responses revealed a strong wish from such institutions and their users to be able to provide such a service, with some examples of where it could be beneficial, and similar concerns to those above from rights holders as to potential impacts on piracy and licensing.

Problem under consideration

The current exception to the law does not cover sound recordings, films and broadcasts. This means that people who wish to make use of these copyright works for the purposes of non-commercial research and private study, for example in the fields of musicology (several tracks may be needed for computer analysis and sound recordings are often used to illustrate lectures), media studies, film, oral history, architecture, medicine (audio / visual stimuli), genealogy and science, need to obtain permission from the copyright holder. Obtaining permission can be an expensive and time-consuming process, especially if the copyright holder is difficult to trace or does not respond to a request. Non-commercial researchers usually lack the funding and the mechanisms to undertake these transactions.

Over 121 of the respondents to an earlier consultation following the 2006 Gowers Review commented on the research and private study exception (see “Taking forward the Gowers Review of Intellectual Property: second stage consultation on Copyright Exceptions”, <http://www.ipo.gov.uk/consult-gowers2.pdf>). The majority of respondents supported the introduction of such an exception and considered that all types of work and areas of study should be within its scope. We understand this to be in part driven by a belief in principle that all fields of research should benefit from a similar access to source material. Responses to the 2011 copyright consultation broadly replicated this.

In both cases, researchers and students provided argument and evidence that the rights clearance process was complex, time consuming and expensive, in proportion to the uses sought. They gave examples of problems they had encountered obtaining permission to copy works, particularly where they needed to contact several copyright holders (who did not always reply). Whether they obtained permission to make copies frequently depended on the commercial value of the work. In some instances researchers needed to travel long distances to view original works at designated premises, as they were unable to obtain copies to use locally therefore incurring substantial costs. It is possible that some researchers may simply make unlawful use of the work.

1 Article 5(3)(n) of the Copyright Directive

Also in line with responses to the earlier Gowers consultation, some organisations representing rights holders stressed in their responses to the 2011 copyright consultation that copyright works should not be 'free for all', and that care should be taken to avoid crafting a solution which enabled abuse of the exception for purely entertainment purposes. For example, the FA Premier League were concerned that the situation would occur where; 'Claims to be "students of the game" [of football] compiling and offering to others audio-visual and/or text and data currently protected by IP rights should not be sufficient to claim exception under this heading'. The scale of any potential harm would be affected by both the scope of the exception and the degree to which the abuse of those rights takes place already. A number of arguments were also made as to the nature of the legal basis for the exception, but these would not of themselves impact on the costs and benefits of the government's selected option.

In addition, responses to the 2011 copyright consultation indicated a problem with providing access to the range of copyright works held by educational establishments, libraries, archives and museums. This was particularly the case for materials that could not readily be provided in physical form because they were too fragile to risk (e.g. old manuscripts) or incompatible with modern software (e.g. old computer programs) but had already been digitised for preservation purposes.

Rationale for intervention

Researchers and students who specialise in sound, film and TV, or want to use those as sources for other study (e.g. historical), are not able to use those media with the same freedom with which they can use textual works. This is increasingly problematic and limiting given the importance of media literacy, the role of sound recordings, film and TV in many people's daily experience, and the function of those media in providing the record of daily life and events, particularly in the 20th and 21st centuries.

In addition, copying is a vital part of study in time-based media (audio, film, video) where digital tools are used. Researchers should be able to make copies of copyright works for the purposes of research, provided the use meets reasonable conditions which are outlined in law such as fair dealing. The status quo is likely to make UK research less effective, less efficient, and more constrained in its scope.

A statutory intervention is necessary to set out the uses that can be made of the material without infringing copyright.

Policy objective

Those conducting non-commercial research or private study would be able to make (appropriately limited) use of any copyright work, for the sole purposes of their genuine research or study, without the need to contact the copyright owner. This would remove inconsistencies in the law that currently lead to higher transaction costs for some students and researchers compared to others.

In order to ensure that this exception does not damage incentives to creators, we plan to keep it as a "fair dealing" exception. This will mean individuals could not copy entire works where they would ordinarily have had to buy them, but they could copy extracts from them.

Options

- | | |
|----------|--|
| Option 0 | Do nothing |
| Option 1 | Change the scope of copyright law to allow copying of all types of copyright works for non-commercial research purposes and private study |
| Option 2 | Introduce an exception to copyright allowing educational institutions, libraries, archives and museums to offer access to all types of copyright works on the premises by electronic means at dedicated terminals for research and private study. This option is independent of option 1 and reflects responses to a consultation question |
| Option 3 | Implement Options 1 and 2 |

Option 0 - Do nothing

Doing nothing would result in continued undesirable limitations on research and private study. These costs would fall initially on researchers and students, from lack of opportunities to undertake research which meets current needs and opportunities.

It is likely that impacts from failure to amend the framework to enable appropriate use of film, sound and video will grow if the use and social importance of such media increases. This is likely to further increase incentives for infringing use of the media in research and private study, which the Government also views as undesirable both in itself and for the example it sets.

Doing nothing would fail to deliver the Government's commitment to act on the (independent) Hargreaves Review. Consultation responses make some good arguments but few are dead set against an exception in principle, though raising a number of concerns in practice.

Subsequent costs would fall more broadly on society from missed opportunities for research and for improving knowledge and skills; and ultimately from missed opportunities for benefits from new products and services which could have been enabled by increased quantity and quality, and new categories, of research. These wider negative effects would also be likely to increase over time, if the social and economic importance of digital media increases.

Option 1 - change the scope of copyright law to allow copying of all types of copyright works for non commercial research purposes and private study

This option would enable the copying of sound recordings, films and broadcasts. In particular it would remove inconsistencies in UK national law and result in reduced transaction costs, thus facilitating social innovation through the building of knowledge, expertise and skills.

Costs

Some costs will fall to rights holders. Rights-holders could lose some future revenues from licences foregone for which they currently gain fees every year. We are aware of two types of collective licence that already permit the transmission of works over secure networks ;the CLA licences that apply to educational establishments, and the ERA Plus licence provided by the Educational Recording Agency (ERA) in relation to broadcasts. The vast majority of educational establishments and Local Education Authorities (LEAs) already subscribe to the CLA licences, and the number of those with ERA Plus licence is increasing - over 70 universities out of 180 have taken out an ERA Plus licence to date (ERA figures) – reflecting the popularity of distance learning. We don't however know how this translates into revenues as the data we have only relates to cost per capita, as shown below.

Applicable annual tariffs for ERA Plus (per capita, per annum) are:

| | |
|-------------------------------------|------------|
| Primary/Preparatory school students | 16p |
| Secondary school students | 29p |
| Further Education students | 54p |
| Higher Education students | 84p |

We have for example data from ERA and (in a PwC-authored report) CLA on the number of licenses held. However, institutions would be expected to cease licensing only if the scope of the licence currently held was substantially greater than the activities that could be undertaken as fair dealing. In other words, if a licensee is doing a small amount of what's possible under a licence, it's possible that they will decide that fair dealing will cover their use. If they are doing a lot of the licensed activity, it would be prudent to remain licensed as their activity is less likely to be fair dealing.

Although consultation responses mention one or two examples of this scope mismatch in reprographic copying, many institutions hold copyright licences for a variety of reasons so would not necessarily alter their licensing behaviour. If a college needed an ERA Plus licence for educational reasons, for example, extension of the UK's research and private study exception on a fair dealing basis would not allow the licence to be dropped. Based on the limited number of respondents indicating any inclination to rely on the exception, appreciable falls in licensing income therefore seem unlikely. The Natural History Museum suggested it might be able to dispense with its CLA licence (£7000), although whether this would be legal is unclear and it is not obvious how this relates to the proposal. Attempts to quantify the overall impact further would be disproportionate to the likely scale of impact.

Mirroring concerns expressed in connection with the earlier Gowers Review proposals, rights holder respondents were concerned that an exception should not have the effect of allowing users to work around technological protection measures that they had put in place to prevent wide scale copying (e.g. measures which prevent people who buy a DVD from making a copy of it). For example, the Motion Picture Association said "Any copies made under the exception of works protected by technological measures should be similarly protected, to protect unauthorised redistribution." The Government agrees with this view.

The impact of any allowed workarounds to technological protection measures will depend on the prevalence of existing (unlawful) workarounds, among other factors. There may be costs associated with increased infringement if the technological protection is removed or weakened. Also increased administrative costs will occur if it remains with the rights holder having to provide a copy on request. The consultation sought evidence on these and other impacts. We have been unable to quantify the likely effects, but believe that harms from existing infringement will not be increased materially unless the exception legitimises access to TPM-breaking technologies that are not widely available.

There is also a risk of abuse by some users relying on it to copy works they would like to see or hear for entertainment purposes rather than for advancing their research or study in a particular field. This could impact on rights-holders in terms of lost revenue. However, given that opportunities for this infringement already exist, and that the exception would not permit use for entertainment purposes, there will only be a net increase in the costs of piracy if the exception either encourages the practice or makes it harder to take action against an infringer. It is not clear from consultation responses why it would do so, provided it was clear that "abuses" of the exception by false claims of study or research were entirely unlawful.

The Government sought detailed evidence in order to assess potential impacts on rights-holders, in particular, evidence related to;

- the current value of licences for actions which the exception would cover,
- any costs related to servicing future demand,
- costs of measures to minimise abuse, and
- defining the optimum scope of the exception, and any related safeguards.

There was not substantial evidence returned in the consultation to gain proportionate insight on any these issues, however, some evidence was received in terms of the value of licenses for actions:

- The Imperial War Museum indicated around 5% of its film licensing income (£20,000 p.a.) came from licensing for research and private study; its expectation was that it would still be able to licence film for commercial research and entire films for non-commercial research and private study.
- ERA distributes £8.2m p.a. for its licences (which give much broader rights than the exception)
- One provider suggested its licensing income would be £3m-£4m in licensing fees if all institutions took up its service; it is not clear whether this would be caught by the exception and if so to what extent

There could be some additional costs to libraries and educational establishments from administering and supporting increased research and study. We sought evidence to assess costs and benefits to such institutions, which considered potential demand and the practical costs of serving it and monitoring to prevent abuse.

Looking at the consequential changes envisaged to amend sections 38-39 CDPA that permit libraries to make and supply copies for research and private study, in line with proposed changes to s29, individuals, libraries and archives provided figures to illustrate the costs that users would be charged:

- “potentially £200 for a single episode on a home video tape”²
- “£45+VAT for a sound recording (£180 +VAT per hour), compared to new music albums available from £7.99-£8.99 on a well-known online retailer and older CDs available for £3.99-£4.99.” [British Library, also quoted by LACA]

The implication of these figures is that library copies are much more expensive than commercial ones in any case. Concerns remain from rights holders about potential competition between libraries and other such institutions and rights holders’ own commercial archives.

The costs would be borne by users and would at least cover the costs of the institution providing the copies.

Benefits

Benefits would fall in the first instance to researchers and students. Some licensing and administrative search costs for licences will no longer be required (possibly including some of the ERA plus licence fees cited above), and the increase in the quantity of material for research, and the ability to use the full range of material befitting to current needs and opportunities.

As indicated above, because it is unclear whether and to what extent any licensing would cease, no quantification has been made of the benefits to researchers, students or academic institutions, or the corresponding potential loss to rights holders. The net effect of any reduction in licensing would be positive because of the reduction in administrative effort.

It has not been possible to accurately estimate the benefits as we do not know the number of students who will be affected and who currently clear works. We have illustrated, using the number of students who study Media Studies in the UK (in the table below), what the potential benefit could be. It is not clear how many of them would otherwise illegally use the work or how many other students outside Media Studies would be affected.

| | Post Grad ft | Post Grad pt | First Degree ft | First Degree pt | TOTAL | Total if assume pt = 0.5 ft |
|---------------|--------------|--------------|-----------------|-----------------|-------|-----------------------------|
| Mass Comm. | 7110 | 3760 | 36970 | 1575 | 49415 | 46747.5 |
| Media studies | 2605 | 1020 | 23590 | 770 | 27985 | 27090 |

Higher Education Statistics Agency (HESA): 2009/10 students by Subject

The typical actions involved in obtaining permission to copy a literary work (e.g. a book), and estimates of the time taken to perform each action, are set out in “An economic analysis of copyright, secondary copyright and collective licensing”, by PwC for the Publishers Licensing Society, 2011 (see Table 10). These stages (and the estimated time taken for each) are:

- 1) Researching and identifying who owns the copyright in a work (1 hour);
- 2) Contacting the copyright owner (0.5 hours);
- 3) Negotiating with the copyright owner (3 hours);
- 4) Paying for the right to copy the work (0.5 hours).

Total time taken to clear the rights to copy a literary work = 5 hours.

We have not been able to obtain equivalent figures for the variety of works covered by this exception, but since similar tasks would be required for films, music and broadcasts we are assuming that the work involved would be similar.

² We take this to refer to copying an episode of a TV show from a home video tape to a more durable digital medium.

For the purposes of illustration, we have priced the time taken to clear rights on a per-work basis at £6.08 per hour (the current national minimum wage) on the basis that such research and private study will be done predominantly by students in higher education; there are fewer post-doctoral and academic staff. We estimate around 3,281 doing research in a related field (There are 4375 “Design, creative & performing arts” researchers; around three quarters of academic staff across all disciplines have a research role. Source: HESA figures for 2009/10). This would give 31,266 potential users.

We would also need to know the average number of works a researcher would clear in a year. Here if we were to assume that 2, 5 and 10 works were cleared per researcher every year then our illustrative estimate gives a benefit of the exception between £1.9m and £9.5m.

$$£6.08 \times 5 \text{ hours} \times 31,266 * \text{number of works per researcher (2, 5 or 10)} = £1.9\text{m} - £9.5\text{m}$$

However, this also assumes no non-lawful use of works under the current regime and if we were to accurately calculate the benefits then we would need to allow for a proportion of potential requests to be met illegally. However it is not possible at this stage to provide any meaningful assumption surrounding this; consultation has not generated any further insight into how this might be quantified accurately.

An alternative figure provided to Gowers in 2006 by SCONUL suggested that administrative costs of rights clearances by Higher Education Institutions were in excess of £30m p.a.

The PwC report cited above estimates that it takes about 4.5 hours for a copyright owner to clear the rights to copy a single work. Assuming that licence requests will either be processed by an author/creator or treated as an administrative task by their publisher or other representative, we can calculate upper and lower estimates of current admin costs to copyright owners using ASHE 2011 earnings figures with a 16% uplift³.

Average hourly earnings for artistic and literary occupations = £15.20

Average hourly earnings for administrative and secretarial occupations = £9.84

Therefore, high and low estimates of the current admin cost to copyright owners associated with clearing a single work are calculated as follows:

$$\text{High estimate} = 4.5 \text{ hours} \times (£15.20 \text{ hourly earnings} \times 1.16 \text{ uplift}) = £79$$

$$\text{Low estimate} = 4.5 \text{ hours} \times (£9.84 \text{ hourly earnings} \times 1.16 \text{ uplift}) = £51$$

$$\text{Best estimate} = (£79 + £51) / 2 = £65$$

Therefore using our illustrative estimate of the number of works above this would give benefits to the rights holder of between £3.2m and £24.7m.

$$\text{High estimate} = £79 * (31,266 * 10) = £24.7\text{m}$$

$$\text{Low estimate} = £51 * (31,266 * 2) = £3.2\text{m}$$

$$\text{Best estimate} = £65 * (31,266 * 5) = £10.2\text{m}$$

Wider and subsequent public benefits would be gained from the increase in quantity, scope and quality of research and study, and improved knowledge and skills.

While the exception covers non-commercial research and study, there is the potential for subsequent social and economic benefits from new products and services enabled by increased quantity and quality, and new categories, of research.

National Records of Scotland described their employment of a copyright specialist who works full time on the copyright aspects of requests for plans. Roughly half of such requests cannot be fulfilled by copying by the organisation, but an applicant attending the archive will be able to make their own copy (preservation considerations permitting). This suggests that around half of the staff member’s work, and virtually all of the travel time and expenses of applicants, could be eliminated through the exception in line with consultation paragraph 7.82.

3 This is a commonly accepted uplift to account for non-wage overhead costs <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-256648>

During the consultation we requested detailed qualitative and quantitative evidence relating to:

- current costs and processes of obtaining licences for actions which the exception would cover,
- the extent of research currently not undertaken, and the potential for additional research which could result, and potential future demand ,
- defining the optimum scope of the exception, and
- the value of supporting media literacy and related skills.

A range of opinions were received in these issues, but no evidence was put forward to support these. The lack of relevant information suggests that further research would require considerable effort for relatively little return, on which basis no additional work is proposed.

The case for change

On balance, the Government considers that the benefits of Option 1 are likely to outweigh the costs. In the absence of strong quantitative data, our rationale for this is as follows:

We have identified and provided illustrative figures for administrative savings for all parties from the exception. Provided that the exception is drawn in such a way as to reflect concerns of rights holders over possible abuse (including over impacts on technological protection methods), direct costs are likely to be low. A fair dealing exception will tend to minimise negative impacts on licensing: whether a suitable licence is available is a factor in whether use of a copyright work is fair dealing. Fair dealing is also most likely to save the administrative costs of a small number of requests to use works: for larger numbers of requests, licensing will be a good way to reduce such costs. Furthermore, the real benefit of the exception is likely to lie in enhanced capacity for research and development of skills and knowledge through private study.

On this basis, a fair dealing exception with guards against abuse seems to offer potential benefits outweighing (limited) costs.

Option 2 Introduce an exception to copyright allowing educational institutions, libraries, archives and museums to offer access to all types of copyright works on the premises by electronic means at dedicated terminals for research and private study

The consultation sought to investigate the demand and case for a possible additional exception relating to research and private study. The Copyright Directive includes a category of copyright exception in article 5.3(n) for “use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;”. The establishments in question (“Institutions” in the text below) are educational institutions, libraries, archives and museums

Relevant evidence on the costs and benefits of such an exception was sought through consultation

Consultation responses again indicate a degree of demand from libraries and other Institutions that would benefit from the exception, and from their users. The costs and benefits of such an exception are considered in this IA, although quantification is not possible on the basis of the evidence provided during the consultation.

Costs

There are potential costs to rights holders to the extent that (a) the exception reduces demand for their products and (b) abuse of the exception creates opportunities for piracy.

(a) Should not happen because of the exclusion of works and other subject-matter “subject to purchase or licensing terms which are contained in [Institutions’] collections”, which was highlighted in some responses to consultation as a necessary constraint. (b) should not be possible and evidence provided to the Review suggests libraries already seem to operate a fair degree of scrutiny over who makes copies of works within their possession.

Institutions will have to provide the physical apparatus to do this, with appropriate levels of security, scrutiny over terms of use and similar restrictions to ensure responsible use, but this will be part of their own cost-benefit analysis: they’ll only do it if they think it’s necessary. It is not a cost imposed by the exception *per se*; it is the cost of making use of the exception.

Benefits

Predictions of benefits from this measure in consultation responses were on a case study/example basis with little or no quantification. For example, the Natural History Museum identified cost savings from the “dedicated terminals” provision through dispensing with the need for a physical document delivery service between its on-site and off-site collections: it would “save the staffing, lease and running of the shuttle vehicle”. These savings were not quantified. By way of illustration, “man and van” hire in London – where the museum is based – is available for £15 per hour. Taking this as a proxy for the full cost of a shuttle service (including administration) during an 8 hour day, 250 working days per year gives an indicative figure of £30,000 for the potential saving in this one example.

Institutions and users were more prone to talk of benefits in terms of access to works: either those too fragile to handle without special training or already preserved digitally. Some respondents to consultation also cited benefits of access by people with disabilities to digital copies. These benefits are not reflected here to avoid any degree of double-counting with the “Copyright exceptions for disabled people” impact assessment. However, it is likely that access to cultural archives through this exception would complement and enhance the benefits of the broader exception for people with relevant disabilities.

Reductions in need for special training to handle fragile works would lead to a cash and opportunity cost (time) benefit for users, and would increase the pool of potential users.

The case for change

On balance, the Government considers that the benefits of Option 2 will outweigh the costs. In the absence of strong quantitative data, our rationale for this is as follows:

Provided that the exception is drawn in such a way as to reflect concerns of rights holders over possible abuse, direct costs are likely to be low. There is potential for cost savings through the substitution of digital delivery for physical delivery. The main benefit of the exception is likely to lie in enhanced access to cultural works that have been digitised. The costs of providing such access are essentially voluntary on the part of Institutions.

On this basis, a fair dealing exception with guards against abuse seems to offer potential benefits in the public sphere outweighing limited costs to rights holders.

Option 3: Implement Options 1 and 2

The consultation indicated an appetite for users for both Option 1 and Option 2, which are separate but complementary, while rights holders were concerned to minimise the scope and scale of any exception and particularly the potential for adverse impacts by unauthorised copying. On the basis of the analysis set out above for the individual options, the costs and benefits of implementing both are considered. The Government has chosen this option as the one which will maximise the predicted benefits.

Costs

The costs of the policy are those of the two separate Options 1 and 2; we have not identified any potential for cost savings by implementing both.

There are potential costs to rights holders to the extent that (a) the exception reduces demand for their products and (b) abuse of the exception creates opportunities for piracy.

As noted in Options 1 and 2, the scope for (a) appears to be limited in current practice. (b) should not occur if the policy is implemented well.

There are also some administrative setup costs associated with establishing the various schemes, which it has not been possible to quantify.

Benefits

The benefits of the policy are those of the two separate Options 1 and 2.

Benefits come from two main sources: additional access to material for research and private study (with consequent benefits to that activity) and cost savings.

The first category tends to benefit those conducting research and private study directly. However, it is generally understood that there are spill-over benefits from fundamental research, so improvements to research may have broader positive consequences for the UK economy and society. Institutions and users described benefits in terms of access to works: either those too fragile to handle without special training or already preserved digitally. Some respondents to consultation also cited benefits of access by people with disabilities to digital copies.

Cost savings from not having to administer permissions are not quantified, although some examples to illustrate possible sources and magnitude are provided in Options 1 and 2. These savings may accrue to both rights holders and their representatives and users/institutions, since the former must deal with the requests from the latter.

The case for change

On balance, the Government considers that the benefits of Option 3 are likely to outweigh the costs, given that it is a composite of Options 1 and 2, both of which are judged beneficial:

Options not considered

In the consultation, the scope for alternatives to legislation that could deliver the benefits identified in Option 1 was considered.

A strong theme of right holder submissions to the consultation was to suggest the Government take a similar approach to some other copyright exceptions and extend research and private study to new classes of work as described above, but only to the extent that no licensing scheme was available. This would clearly provide a very high level of assurance that the financial interests of right holders were being protected and an incentive to license. Its advocates argue that it would have the further benefit of creating clarity as to the scope of what is or is not permitted. For example the ERA suggests that growth in licensing markets ‘will be stunted if the owners of rights are constantly arguing with users over whether they can “get something for nothing” rather than applying transparent and easily accessed license terms’. However, it is potentially inequitable to users: some users could be forced to buy licences for uses much broader than the exception in question, while others would pay nothing. The British Screen Advisory Council notes a very considerable difference in scope between the ERA Plus licence (which allows communication of whole works to many people) and a fair dealing exception (which allows individual copying of part of a work), for example. Or a licence may close off uses unnecessarily, thus reducing the net impact of the measure.

On balance, the Government does not consider this approach necessary to achieving the policy aim. Although protecting right holder interests is very important, bodies that are affected by the existing research and private study exception did not argue that they are adversely affected by it as a fair dealing exception. For example, publisher John Wiley & Sons supports the proposal for extension to other kinds of works on a non-commercial, fair dealing basis, subject to guarding against potential abuse.

Summary and preferred option with description of implementation plan

On the basis that both Option 1 and Option 2 appear to have benefits, at the level of evidence available, Government intends to proceed with Option 3, which combines the benefits of both. This would involve extending the existing copyright exception for research and private study to sound recordings, films and broadcasts; similarly extending the related provision allowing copying by libraries etc. for these purposes; and introducing a new exception to allow material to be offered for research and private study on dedicated terminals in educational institutions, libraries, archives and museums.

Risks and assumptions

Users would not be able to rely on this exception to copy works they would like to see or hear for entertainment purposes rather than for advancing their research or study in a particular field. Rights-holders fear the measure would mean lost revenue. Therefore it is essential in implementing this exception to do so in a way that minimises the opportunities for both accidental and deliberate misuse.

Direct Costs and Benefits to Business Calculations (following OIOO methodology)

Under the “One In, One Out” rule, whereby a measure that has a net cost to business must have a measure or measures of equivalent cost removed in order to be implemented. Despite consultation we are not able to quantify the costs and benefits of our chosen option but note that the predicted impact of the measure would be a benefit from reduced administration and delivery costs shared between the various interest groups, with some upside from improved education, research and innovation. Therefore we have counted this as a zero-cost measure, although we expect its actual impact to be that of an out.

Wider impacts

There could be additional impacts on the capacity of providers to offer goods and services in some subsectors, if those sectors are affected by misuse to the extent that it undermines the market for goods and services, but this is judged unlikely. It may also stimulate the development of research-orientated copyright licences for institutions and/or individuals, which would be new markets or sub-markets for rights holders.

Implementation Plan: The proposal will be implemented through UK secondary legislation, as part of a wider package, minimising additional specific costs and risks as discussed.

Evaluation

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the copyright reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured. This will depend on the type of benefit, as some benefits will be measured by applications and take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the copyright system, as well as research commissioned in order to measure the benefits.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the copyright reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

***Note:**

This Impact Assessment (IA), which is one of a series of IAs concerning copyright exceptions, was originally published in December 2012 alongside the policy statement “Modernising Copyright”. It was republished to accompany the publication of the secondary legislation that implements the chosen options set out in the IAs. Since the original publication of the IAs the Government has engaged extensively with stakeholders both formally (through a technical review of the draft legislation) and informally. No new evidence has been provided that has led the Government to alter the overall numerical assessment of the costs and benefits contained within this IA.