[redacted]

From: Richard Mollet [RMollet@publishers.org.uk]
Sent: 26 February 2014 15:20
To: [redacted]
Cc: Susie Winter
Subject: Re: UK response to EU consultation

Dear [redacted]
Thank you very much for sending this through (especially useful as I am about to meet with my European counterparts!)
Some very welcome robust messages in here from what I have so far briefly read. I look forward to seeing what other EU members say!
Kind regards
Richard

Richard Mollet
Chief Executive
The Publishers Association
[redacted]

On 26 Feb 2014, at 16:15, [redacted]@ipo.gov.uk> wrote:

> Susie, Richard [with both Alliance and PA hats]
>
> The UK response is now with the Commission and is online at http://www.ipo.gov.uk/pro-policy/policy-information/policy-notices/policy-notices-eu.htm - I wanted to make sure people got a chance to see it before the Council Working Group on Friday, given some of the concerns previously expressed re UK agenda.
>
> [redacted]
>
> [redacted]
> Intellectual Property Office
> [redacted]@ipo.gov.uk
> [redacted]

[redacted]

From: Richard Mollet [RMollet@publishers.org.uk]
Sent: 27 February 2014 15:51
To: [redacted]
Cc: [redacted] susie@allianceforip.co.uk
Subject: Re: Publishers Association Press Release : Copyright Review February 27

[redacted]

No it doesn't surprise me! I'm not sure I would call it a contradiction as such, more a disconnect...(which you'll also not agree with of course!)

And no, I am not hypothesising anything; I am just hoping that government has strong market based evidence for its hypothesis.

Hope to see you soon,

Kind regards

Richard

Richard Mollet
Chief Executive
The Publishers Association
[redacted]

On 27 Feb 2014, at 16:46, [redacted]@ipo.gov.uk> wrote:

> Richard
>
> It won't surprise you to learn that the Government doesn't see a contradiction on its domestic agenda.
>
> Happy to meet on digital exhaustion/secondary markets at some point. As a matter of interest, are you suggesting as a general point that secondary markets can never increase primary market demand? That's quite a strong hypothesis.

[redacted]

From: Richard Mollet [mailto:RMollet@publishers.org.uk]
Sent: 27 February 2014 13:28
To: [redacted]
Cc: [redacted] susie@allianceforip.co.uk
Subject: Fwd: Publishers Association Press Release : Copyright Review February 27

[redacted]

Thank you for the link you sent yesterday on UK government's response to the EU consultation. I attach below a release we have put out on the back of it. As you see we support your European stance and would love to see it in the UK too (!) especially with regard to contract override.

It would be good to pick up on the digital exhaustion issue with you at some point - the argument that being able to resell would increase primary market demand seems to me to be without evidential foundation.

Kind regards

Richard Mollet
Chief Executive
The Publishers Association

Government Copyright Advice to Brussels Should Be Heeded in Whitehall

London, 27 February 2014 – The Publishers Association has today welcomed the UK government's approach on copyright in Europe, but has called on Ministers to apply their advice to EU policy makers to their own policy development.

Yesterday the Intellectual Property Office published the UK government's response to the European Commission's consultation on the review of copyright. It stated that the copyright framework should be built upon a robust evidence base, be technology neutral and protect the rights of creators as well supporting new businesses and services. The Government also tells the Commission that it should not be assumed that exceptions are the solution to every problem and notes the importance of efficient licensing solutions.

The response is published at a time when the government is imminently to publish statutory instruments to change copyright law in the UK.

Commenting on the government response, **Richard Mollet, Chief Executive, The Publishers Association** said:

"It is terrific to see that the UK government has come around to the view that copyright is something to be supported and strengthened. We have long held that the economic strength of British publishing and all creative industries is driven by our ability to develop and license works.

"The British government is sending this message very strongly to Brussels, but it is ironic that some of its own proposed measures for the UK fail it own tests. For example, there has been no evidence or assessment in support of the UK's proposal to allow English contract law to be subservient to copyright. Nor have we ever seen detailed analysis of why the UK government believes the current licensing arrangements for data and text mining are not sufficient.

"Evidence, analysis and considered judgment are the right things to be asking of Brussels and we urge officials in London will follow this path as well."

The Publishers Association

The Publishers Association is the leading trade organisation serving book, journal, audio and electronic publishers in the UK. Membership comprises 113 companies from across the trade, academic and education sectors. Its core service is representation and lobbying, around copyright, rights and other matters relevant to members, who represent roughly 80% of the industry by turnover. www.publishers.org.uk.

[redacted]

From: Richard Mollet [RMollet@publishers.org.uk]
Sent: 10 March 2014 16:31
To: John Alty
Cc: [redacted]
Subject: RE: our telecon on Friday

Dear John
Likewise it was very good to talk; and thank you for this feedback on the SIs.

We were indeed given that assurance on the issue of contract override, as it applies to data text mining; however, the answer we received is not one to the question we posed.

The concern with contract override is somewhat wider than its interplay with other parts of the clause on data mining, as it appears in many of the other draft SIs. The real issue is that the wording of the draft SI in the technical consultation seeks to vitiate UK contract law by preventing rightsholders from making contracts which would be protected by Article 6.4 (4) of the Information Society Directive. The question is therefore not if publishers will be protected per se, but whether the UK government is acting within European Law in framing these provisions in the way it has.

Despite repeated requests for a response to this question, or a response to advice we received from Counsel and passed on to the team, we have never received one. We have therefore raised this with the legal advisers to the Joint Committee on Statutory Instruments with the hope that they will have more luck in finding out exactly if [redacted] argument is correct; or if not, why not.

And that's good to hear re the education exceptions and licences.

Thank you again for getting back to me so soon.

Kind regards
Richard

Richard Mollet
Chief Executive
The Publishers Association Limited
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Registration number 3282879; Registered office: 6th Floor, 25 Farringdon Street, London EC4A 4AB

-----Original Message-----
From: John Alty [mailto:John.Alty@ipo.gov.uk]
Sent: 10 March 2014 16:05
To: Richard Mollet
Cc: [redacted]

Subject: our telecon on Friday

Dear Richard

It was good to catch up briefly on Friday and we will be in touch further on industry representation on the steering group for PIPCU.

On the copyright exceptions you raised contract override. As I believe [redacted] said at your earlier meeting, the guidance will confirm that publishers are not prevented from imposing access terms and conditions, including technological measures on networks where they deem that necessary for security and stability, but that once someone has been granted the right to read a work contract terms should not prevent them from benefiting from the exception.

You also mentioned education licences and [redacted] here has been in touch with [redacted] to clarify any issues cause by the delay in the exceptions coming into force. He seemed reassured that our guidance will confirm that education licences such as the ERA licences which run from
1 April will remain valid, and will clarify for the avoidance of doubt that licences will still be needed by schools in order to record broadcasts and make photocopies.

Best wishes

John

John Alty CB
Chief Executive
Intellectual Property Office (IPO)

Concept House
Cardiff Road
Newport
NP10 8QQ

Tel: + 44 (0) 1633 814500

[redacted]

From: [redacted]
Sent: 11 April 2014 11:13
To: 'rmollet@publishers.org.uk'
Cc: Ros Lynch; 'susie@allianceforip.co.uk'
Subject: Re: Exceptions to copyright law - Update following Technical Review

Dear Richard

I'm off on leave from today, but I wanted to let you know that the team are looking at the points Susie has sent in. Whether they will come to quite the same conclusions as you remains to be seen...

I gather you might be off to an OECD workshop on the value of IP in Paris in mid-May, by the way. Good that they are plugging in creative industries if so.

[redacted]
- sent from handheld device

From: Richard Mollet
To: [redacted]
Cc: Ros Lynch; susie@allianceforip.co.uk
Sent: Thu Apr 03 07:59:32 2014
Subject: Re: Exceptions to copyright law - Update following Technical Review

[redacted]
Thanks for your response and yes Susie has updated me too.

I must say I find it extraordinary that the IPO could be content to be writing into official documents, which as you know have legal force, statements which are so clearly ambiguous (at best) and potentially misleading to consumers and businesses at worst.

The explanatory notes simply do not reflect what you are saying in the SI. This is storing up trouble and no doubt expensive litigation for the future; the costs of which would be completely unnecessary if only the EN were to be tightened up now.

In our most recent conversations on the SIs with you (in January) and the Minister (in March) the whole tenor has been "if you don't think the statutory language is clear don't worry because the explanatory notes will make it clear". You can imagine our surprise and frustration therefore to find that this isn't the case and that the EN are so riddled with discrepancies.

We would therefore urge you to rethink the approach to the EN during this passage of the SIs through parliament so at least when they are brought into law everyone is utterly clear about where they stand.

Kind regards
Richard

Richard Mollet
Chief Executive
The Publishers Association
[redacted]

On 2 Apr 2014, at 23:33, [redacted]@ipo.gov.uk> wrote:

Dear Richard

[redacted]

From:	Richard Mollet [RMollet@publishers.org.uk]
Sent:	03 April 2014 08:00
To:	[redacted]
Cc:	Ros Lynch; susie@allianceforip.co.uk
Subject:	Re: Exceptions to copyright law - Update following Technical Review
Follow Up Flag:	Follow up
Flag Status:	Flagged

[redacted]

Thanks for your response and yes Susie has updated me too.

I must say I find it extraordinary that the IPO could be content to be writing into official documents, which as you know have legal force, statements which are so clearly ambiguous (at best) and potentially misleading to consumers and businesses at worst.

The explanatory notes simply do not reflect what you are saying in the SI. This is storing up trouble and no doubt expensive litigation for the future; the costs of which would be completely unnecessary if only the EN were to be tightened up now.

In our most recent conversations on the SIs with you (in January) and the Minister (in March) the whole tenor has been "if you don't think the statutory language is clear don't worry because the explanatory notes will make it clear". You can imagine our surprise and frustration therefore to find that this isn't the case and that the EN are so riddled with discrepancies.

We would therefore urge you to rethink the approach to the EN during this passage of the SIs through parliament so at least when they are brought into law everyone is utterly clear about where they stand.

Kind regards
Richard

Richard Mollet
Chief Executive
The Publishers Association
[redacted]

On 2 Apr 2014, at 23:33, [redacted]po.gov.uk> wrote:

> Dear Richard
>
> Having checked back with colleagues, we aren't contemplating any changes to the guidance in the near future but if you want to send some thoughts in writing then of course I'll pass them on for the relevant teams to consider in due course. I've just spoken to Susie to say something to that effect.
>
> [redacted]
>
> -----Original Message-----
> From: Richard Mollet [mailto:RMollet@publishers.org.uk]
> Sent: 27 March 2014 20:24
> To: [redacted]Ros Lynch
> Cc: susie@allianceforip.co.uk
> Subject: RE: Exceptions to copyright law - Update following Technical Review
>
> [redacted]and Ros, as I should have said earlier, very good to see you

[redacted]

From: [redacted]
Sent: 28 March 2014 17:58
To: 'Richard Mollet'; Ros Lynch
Cc: susie@allianceforip.co.uk
Subject: RE: Exceptions to copyright law - Update following Technical Review

Dear Richard (and Susie, since we're doing parenthetical greetings)

That's a very fair question but not one I'm immediately able to answer as I've not been working on the exceptions. Let me put it to the team and get back to you.

Have a good weekend,

[redacted]

-----Original Message-----
From: Richard Mollet [mailto:RMollet@publishers.org.uk]
Sent: 27 March 2014 20:24
[redacted] Ros Lynch
Cc: susie@allianceforip.co.uk
Subject: RE: Exceptions to copyright law - Update following Technical Review

[redacted] (and Ros, as I should have said earlier, very good to see you today)

I quite agree, we have at least moved from the realm of the hypothetical.

Regarding the confusing language, there are no doubt many more examples and, if this was an area in which the IPO is willing to consider further constructive comment with a view to possibly making changes, we at the Alliance would be delighted to compile a list. But the one that leapt out at me was this:

7.7.1. ["..."]"For example, it will allow an individual to copy a CD they have bought onto their computer, or move an eBook from one type of e-reader to another (and to make further copies of such copies), without risk of copyright infringement."

The lay reader coming across that wording could well get the impression that there was no risk of infringing copyright if they copy an ebook.
However, they would be wrong to think that because as the SI clearly goes on to state (but the explanatory note does not) there very much is a risk of infringement if one subsequently does certain acts with the copy. When in para 7.7.2 the caveats are applied, the wording says only "they cannot give those copies to other people..."; a substantially weaker form of words than those which would more accurately describe the case, i.e. "it will be an infringement of copyright if the copies are given to other people."

Secondly and more worryingly, the explanatory note says that the ebook could be copied from one type of ereader to another. This is a massive distortion of the wording of the SI the logic of which is built around what the private copies are FOR (back up, format-shifting or storage) not WHERE they are going to. It is a vital distinction. The consumer should not believe that they can make a private copy as long as it is going to a different device. This is not the meaning of the legislation.

Also, if you are able to find a single consumer in Britain who does not see a stark contradiction between the wording of 7.7.3 allowing rightsholders to have TPM and 7.7.4 which says that they cannot restrict an exception, or at least who fully understands that after three readings, I will be astonished.

[redacted]

From: [redacted]
Sent: 02 April 2014 16:24
To: 'Richard Mollet'; Ros Lynch
Cc: 'susie@allianceforip.co.uk'
Subject: RE: Exceptions to copyright law - Update following Technical Review

Dear Richard

Having checked back with colleagues, we aren't contemplating any changes to the guidance in the near future but if you want to send some thoughts in writing then of course I'll pass them on for the relevant teams to consider in due course. I've just spoken to Susie to say something to that effect.

[redacted]

-----Original Message-----
From: Richard Mollet [mailto:RMollet@publishers.org.uk]
Sent: 27 March 2014 20:24
[redacted] Ros Lynch
Cc: susie@allianceforip.co.uk
Subject: RE: Exceptions to copyright law - Update following Technical Review

[redacted](and Ros, as I should have said earlier, very good to see you today)

I quite agree, we have at least moved from the realm of the hypothetical.

Regarding the confusing language, there are no doubt many more examples and, if this was an area in which the IPO is willing to consider further constructive comment with a view to possibly making changes, we at the Alliance would be delighted to compile a list. But the one that leapt out at me was this:

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The lay reader coming across that wording could well get the impression that there was no risk of infringing copyright if they copy an ebook.
However, they would be wrong to think that because as the SI clearly goes on to state (but the explanatory note does not) there very much is a risk of infringement if one subsequently does certain acts with the copy. When in para 7.7.2 the caveats are applied, the wording says only "they cannot give those copies to other people..."; a substantially weaker form of words than those which would more accurately describe the case, i.e. "it will be an infringement of copyright if the copies are given to other people."

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Also, if you are able to find a single consumer in Britain who does not see a stark contradiction between the wording of 7.7.3 allowing rightsholders to have TPM and 7.7.4 which says that they cannot restrict an exception, or at least who fully understands that after three readings, I will be astonished.

I do hope you will consider taking representations on the explanatory notes, because this will be where consumers are likely to go to find out what they can do and not do, and the moment it does not adequately reflect the wording of the proposed law.

Kind regards
Richard

Richard Mollet
Chief Executive
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-----Original Message-----
From: [redacted]@ipo.gov.uk]
Sent: 27 March 2014 18:06
To: Richard Mollet; Ros Lynch
Cc: susie@allianceforip.co.uk
Subject: RE: Exceptions to copyright law - Update following Technical Review

Dear Richard

I'm pleased these are now at least something we can talk about properly!

The aim of the guidance is of course to provide additional clarity, but inevitably there are points at which there is going to have to be interpretation. As with existing copyright law, there is a point beyond which neither the text of legislation nor guidance can go - what's permitted will come down to the particular circumstances.

What sort of additional guidance do you think might be helpful?

[redacted]

-----Original Message-----
From: Richard Mollet [mailto:RMollet@publishers.org.uk]
Sent: 27 March 2014 16:40
To: [redacted] Ros Lynch
Cc: susie@allianceforip.co.uk
Subject: FW: Exceptions to copyright law - Update following Technical Review

[redacted]
Good to see these finally see the light of day! When we met earlier in the year you said that the policy guidance would clear up any ambiguity between the SIs' phrasing on lawful access and on contract override.

Could you direct me to that clarity because from what I can read there is still a clear and confusing clash between the two things; and this is true of both the DTM and private copying exceptions

I can't imagine it was the IPO's intention to generate consumer confusion with these SIs, but it is impossible to see how that is now going to be avoided.

Kind regards
Richard

Richard Mollet
Chief Executive
The Publishers Association Limited
29B Montague Street
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-----Original Message-----
From: CopyrightConsultation [mailto:CopyrightConsultation@ipo.gov.uk]
Sent: 27 March 2014 15:06
To: CopyrightConsultation
Subject: Exceptions to copyright law - Update following Technical Review

The Government has today laid before Parliament the final draft of the Exceptions to Copyright regulations. This is an important step forward in the Government's plan to modernise copyright for the digital age. I wanted to take this opportunity to thank you for your response to the technical review and to tell you about the outcome of this process and documents that have been published.

As you will recall, the technical review ran from June to September 2013 and you were invited to review the draft legislation at an early stage and to provide comments on whether it achieved the policy objectives, as set out in Modernising Copyright in December 2012.

We found the technical review to be a particularly valuable process.
Over 140 organisations and individuals made submissions and we engaged with a wide range of stakeholders before and after the formal consultation period. The team at the IPO have also worked closely with Government and Parliamentary lawyers to finalise the regulations.

No policy changes have been made, but as a result of this process we have made several alterations to the format and drafting of the legislation. To explain these changes, and the thinking behind them, the Government has published its response to the technical review alongside the regulations. This document sets out the issues that were raised by you and others, the response and highlights where amendments have been made.

It is common practice for related regulations such as these to be brought forward as a single statutory instrument. However, the Government is committed to enabling the greatest possible scrutiny of these changes and the nine regulations have been laid before parliament in five groups. In deciding how to group the regulations, we have taken

account of several factors, including any relevant legal interconnections and common themes. The rationale behind these groupings is set out in the Explanatory Memorandum.

The Government has also produced a set of eight 'plain English' guides that explain what the changes mean for different sectors. The guides explain the nature of these changes to copyright law and answer key questions, including many raised during the Government's consultation process. The guides cover areas including disability groups, teachers, researchers, librarians, creators, rights-holders and consumers. They also explain what users can and cannot do with copyright material.

The response to the Technical Review and the guidance can be accessed through the IPO's website: www.ipo.gov.uk/copyright-exceptions.htm.
This also provides links to the final draft regulations, explanatory memorandum and associated documents that appear on www.legislation.gov.uk.

It is now for Parliament to consider the regulations, which will be subject to affirmative resolution in both Houses. If Parliament approves the regulations they will come into force on 1 June 2014.

Thank you again for your contribution.

Yours sincerely,

John Alty

[redacted]

From:	Richard Mollet [RMollet@publishers.org.uk]
Sent:	27 March 2014 22:16
To:	[redacted]Ros Lynch
Cc:	susie@allianceforip.co.uk
Subject:	Copyright SIs

Dear [redacted]
Further to my earlier email and as if on cue, the ORG have misunderstood the provisions on TPM....
Kind regards
Richard

https://www.openrightsgroup.org/blog/2014/thanks-to-org-supporters-copyright-takes-a-great-leap-forward-into-the-21st-century

Richard Mollet
Chief Executive
The Publishers Association
[redacted]

[redacted]

From:	Richard Mollet [RMollet@publishers.org.uk]
Sent:	25 April 2014 15:34
To:	John Alty
Cc:	Ros Lynch
Subject:	Letter to the JCSI and House of Lords Secondary Legislation Scrutiny Committee
Attachments:	PA STM to JSCI 25 April 14.pdf
Follow Up Flag:	Follow up
Flag Status:	Completed

Dear John

In our conversation yesterday afternoon I raised with you the De Wolf Study, commissioned by DG Internal Market into Text and Data Mining and noted that it concluded very clearly that the Copyright Directive does not currently support an exception, and explicitly not on the grounds being argued by the UK Government. The study is at the attached link.

http://ec.europa.eu/internal_market/copyright/docs/studies/1403_study2_en.pdf

Our Learned friends on both sides of the Atlantic have studied this carefully and agree that there is clearly a case to answer for the UK government in respect of the De Wolf report's conclusions. Hence members feel it is an issue which deserves to be flagged with the Parliamentary Committees scrutinising the legislation – and we feel it should not be left to chance that they come across the report.

You asked me yesterday what the intent of the Alliance for IP was in raising issues with the Explanatory Memorandum. As I said, it is the agreed strategy of all Alliance members that we work to ensure that if the SIs are to become law they are introduced in as a clear and unambiguous way as possible, so as to reduce consumer confusion and prevent the need for expensive litigation to tease out the actual import and intent of the new law. To that end, as agreed, I will revert to you with further thoughts on the note on SIs we have sent through.

However, as I also noted, there are constituencies both within the Alliance and without, which have more substantive concerns with the SIs, which cannot be ameliorated by tightening up the explanatory language. Members of The PA, and our colleagues in the International Association of STM Publishers are sincerely concerned that the UK should not introduce any measures which are not fully commensurate with European law. To do so would be to open up the potential for litigation as rightsholders and would-be users would find themselves in disagreement about the correct application of the law: the UK version or that of the EU.

The costs of this litigation would no doubt be high and would be borne not by Government, but by the private sector, and our members specifically. So if at all possible, we would rather the debates be had at this juncture – where such issues can be hammered out more easily and less expensively.

Hence we raise these concerns with Government and Parliament in good faith, with the aim that whatever legislation is introduced is compliant with international law.

I was keen that you received a copy of this letter to the Committee directly from me and would be very happy to discuss this issue with you and / or colleagues in further detail.

Kind regards
Richard

Richard Mollet
Chief Executive
The Publishers Association Limited
29B Montague Street
London

stm
INTERNATIONAL ASSOCIATION OF SCIENTIFIC, TECHNICAL & MEDICAL PUBLISHERS
www.stm-assoc.org

THE **PUBLISHERS** ASSOCIATION

The Joint Committee on Statutory Instruments
House of Commons
London SW1A 0AA

Secondary Legislation Scrutiny Committee
House of Lords
London SW1A 0PW

By email:
jcsi@parliament.uk.
seclegscrutiny@parliament.uk
[redacted]@parliament.uk
[redacted]@parliament.uk
john.alty@ipo.gov.uk

25 April 2014

Dear Mr [redacted] et al

RE: EUROPEAN COMMISSION STUDY INTO TEXT AND DATA MINING

Having written to the Committee twice in recent weeks on the subject of the Statutory Instruments pertaining to copyright exceptions we are reluctant to trouble you yet again.

However, one week ago the European Commission Directorate General for the Internal Market published a significant study and report which we believe has major implications for the UK government's legislative proposals. Therefore, we wish to bring this to the attention of both Committees as a matter of urgency, in the hope that Members will have the opportunity to consider it in the course of their deliberations in the coming weeks.

The analysis and report is provided by De Wolf and Partners, and is entitled "A Study on the Legal Framework of Text and Data Mining". The lead author is Jean-Paul Triaille, partner at De Wolf and Partners. It was commissioned by DG Market as part of its on-going review of the copyright acquis and in preparation for the publication of a White Paper anticipated for June 2014. A web-link to the report is at:
http://ec.europa.eu/internal_market/copyright/docs/studies/1403_study2_en.pdf

One of the terms of reference of the study is: *"to assess whether text and data mining activities...could be covered by the current exceptions and limitations to copyright and / or to the sui generis [database] right."*

In short, the report finds that under current European law it is not possible to create an exception for text and data mining, and that in order to make these acts permissible an amendment to the Information Society Directive would be required. It directly follows, therefore, that no Member State can introduce an exception for text and data mining under the scope of the current Directive. However, this is of course precisely what the Government is currently intending to do.

Whilst it is the case that this is merely a report to the Commission and does not have the status of Commission policy let alone a court judgment, it is highly significant for three reasons. First, DG Internal Market commissioned the report with the express intention of assessing whether text and data mining exceptions are currently permissible and finds that they are not. The findings are therefore not incidental or tangential but are aimed at and strike the very heart of the policy matter under consideration in the UK.

stm
INTERNATIONAL ASSOCIATION OF SCIENTIFIC, TECHNICAL & MEDICAL PUBLISHERS
www.stm-assoc.org

THE **PUBLISHERS** ASSOCIATION

Secondly, at no stage in its deliberations – from the Hargreaves Review onwards – has the UK Government commissioned anything approaching as detailed a study as the De Wolf paper. In other words, there is no countervailing expert analysis for the Government to call upon.

Finally, and perhaps most importantly, in the Explanatory Memorandum to the Statutory Instruments the UK Government explicitly states that *"the exception contained in new section 29A is limited to non-commercial research, in accordance with Article 5 (3)(a) [of the Information Society Directive]."* (7.10.1).

However, the De Wolf study very clearly demonstrates how this Article cannot sustain a text and data mining exception. It states: *"the copyright exceptions in the InfoSoc Directive are limited "solely for scientific research" which may be seen as excluding projects where, in addition to a scientific research objective, there may be other ancillary objectives". (p116)*

Also, De Wolf recommends that a new exception provision should clarify that it would not just serve *"to illustrate scientific research"* but would apply more broadly in cases of *"scientific research"* (p116). Due to the differing language versions of the Information Society Directive significant doubt remains whether Article 5(3)(a) can be relied on at all to undertake TDM.

As the Committee will be aware the proposed exception set out in the relevant Statutory Instrument does not stipulate *"scientific research"* but instead says merely *"research"*. It follows that the Government's intent is wider in scope than is permitted by the Information Society Directive.

In the UK, Article 5(3)(a) has been interpreted in a way that limits the requirement *"for illustration"* to *"teaching"* and does not also limit the purposes of copying under the exception solely for scientific research. Significant doubt remains over the correctness of this approach and a clarification through an interpretative document from the Commission or as a result of an CJEU ruling on referral may be necessary to clarify this point.

We acknowledge that the De Wolf study is merely one legal opinion. However, we would also contend that it is a highly expert opinion and one which is bound to carry significant weight within the European Commission, both in terms of its deliberation of developing policy and in its consideration of the behaviour of Member States with respect of existing policy and law.

Again, we hope that the Committee will be able to give full consideration to the implications of this new report and that in its conversations with Government seek the full confidence of Ministers and officials that the UK Government is not standing into danger of acting in breach of its obligations under European law.

Yours sincerely

Richard Mollet
Chief Executive
The Publishers Association
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From:	Richard Mollet [RMollet@publishers.org.uk]
Sent:	02 May 2014 15:18
To:	John Alty
Cc:	susie@allianceforip.co.uk; Ros Lynch
Subject:	Clarification on Explanatory Memorandum and Guidance Notes
Attachments:	Amendments SI EN and Guidance.pdf

Dear John

Further to our conversation, and your suggestion to use the opportunity afforded by the SI debate for the Minister to provide greater clarity on some outstanding issues, below are the areas to which such additional clarity is required. These are based on the fuller note which you already have, and attached again for ease. We did attempt to boil these down to two or three areas, but frankly from an Alliance point-of-view, all of them are seen as equally important and are all areas which in previous months we have repeatedly asked the IPO that the legislation, or the language around it, is made clear.

So rather than reduce the number of areas of clarification, if we were to boil down to the essence of each point, we would request the following clarification:

1. That the private copying exception does not apply to content accessed at a time and place of the consumer's choosing.

2. The Information Society Directive, and therefore this exception, does not permit the resale of digital content.

3. That the contract override provision will not restrict the ability of publishers to manage and control access to their systems, including the throttling or blocking of crawling when necessary.

4. That lawful access means someone who has been authorised to use the work, via a subscription or licence; it should not pertain to someone lawfully coming across a work which has been unlawfully accessed and reproduced by someone else.

5. Examples have been provided as to what would constitute fair dealing in relation to the Research and Private Study exception. It would be useful to have some examples provided with relation to the Parody exception.

6. An acknowledgement that it is already the case that consumers do not have to get permission from rights holders in relation to YouTube (the current wording in the Guidance Note implies that they do).

7. That the contract override provisions only apply to the reproduction right and not to the making available right.

Kind Regards
Richard

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From:	Richard Mollet [RMollet@publishers.org.uk]
Sent:	09 May 2014 17:06
To:	John Alty
Cc:	susie@allianceforip.co.uk; Ros Lynch
Subject:	Parliamentary Debates on Copyright Statutory Instruments

Dear John

We have communicated a number of times on the areas of clarification required in the explanatory memorandum and other guidance notes, and which might be addressed by Ministers as they engage in the debates on the SIs on Monday and Wednesday of next week. As you know I have provided some further thoughts on this.

However, reading the transcript and report of the House of Lords Secondary Legislation Scrutiny Committee another area has arisen (or rather, a development on an existing area) which I would see it as vital to clear up: the retrospection of contract override.

In giving evidence to the Lords Committee [redacted] says categorically that the provisions will not be retrospective (at Q12 of the transcript). However, in the notes published by the IPO accompanying the exceptions "Guidance for creators and copyright owners" it is stated that:

"Where a licence granted under the old law gives wider permissions than the new law the licence will be unaffected. However, where the new law permits more than the licence, the licence holder will be able to rely on the new law. The licence will still be valid, but a licensee cannot be made to comply with any term in so far as it seeks to restrict something that the new law allows. E.g. if an individual purchases a work on terms which prevent the copying of the work for any purpose, it will not be a breach of the licence if the purchaser makes a personal copy."

The only feasible interpretation of this Guidance appears to be that for any existing licence certain terms will no longer be enforceable. This is the direct opposite of the provisions not applying retrospectively: clearly, the IPO guidance envisages precisely that they will apply not just to future licences but to past and present ones as well. I would be very happy to learn why my interpretation of the Guidance is wrong, but I do struggle to see how it could be read any other way.

Another related issue arose in the evidence session. Again it was [redacted] who stated that the contract override provisions have a precedent in section 36 of CDPA with regards to reprography of education materials. However, those provisions are related to the terms of the licencing scheme which operates alongside the exception. The concept is therefore a good deal narrower than that envisaged by the blanket contract override provisions across the SIs. It is hardly a direct comparison to make between a specific licence (which in section 26 can only apply to reprography anyway) and any and all contract terms.

I do think it would be very helpful to all parties if these areas could be cleared up in the course of debates next week.

If at all possible I would welcome the opportunity to discuss this with you or colleagues next week – in fact, as the Alliance is meeting with Ros on Monday perhaps we might discuss it further then?

Kind regards
Richard

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