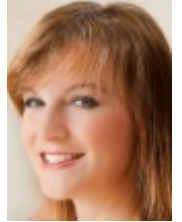


The proposed exceptions to copyright law offer greater flexibility to teaching and research activities

 blogs.lse.ac.uk/impactofsocialsciences/2013/07/02/copyright-in-higher-education/

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Changes are afoot for how copyright laws apply to higher education settings. [Emily Goodhand](#) provides clarification on the recently announced proposed exceptions to copyright law, which are widely welcomed by the user community for bringing copyright law in line with current HE practices. Teaching and research activities such as the use of print extracts, digital text-mining and distance-learning media sharing seek to benefit from copyright clarification and flexibility.



2013 is a momentous year for UK copyright law. This month, [the Intellectual Property Office has released eight draft Statutory Instruments \(SI\) for copyright exceptions](#), among them education, libraries/archives and quotation. These drafts have been produced off the back of the Hargreaves Review of Intellectual Property which recommended changes to copyright law in areas where the current law is confusing or has not kept pace with developments. So what exactly is being proposed and what implications will these exceptions have on the higher education community?

Proposed Education Exceptions: Teaching

The most radical overhaul to the education section of the Copyright, Designs and Patents Act is the section on instruction (teaching) and examination. On the face of it, this exception appears to relate to face-to-face teaching. It would permit any type of copyright work to be used for the purpose of instruction provided that it is done for a non-commercial purpose and the source is appropriately acknowledged. This exception will apply to any type of establishment which provides teaching (for non-commercial purposes). The key to this defence is in how 'fair dealing' is interpreted. According to EU legislation, the use of a copyright work should not interfere with its normal exploitation and should not unreasonably prejudice the legitimate interests of the rights holder. This will continue to be the litmus test for copyright exceptions and teachers/lecturers are encouraged to think about the materials they use and how they use them. For example, a lecturer in Art may need to use a number of digital images on presentation software when lecturing to students; this exception would appear to cover that use.

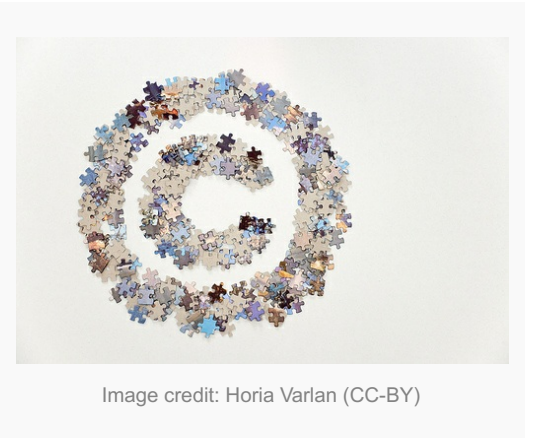


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Distance Learning

Distance learning is covered by a separate exception. This exception only relates to educational establishments and covers the use of extracts of works. However, broadcasts and standalone artistic works are specifically excluded; broadcasts because they are dealt with elsewhere, but there appears to be no good reason to exclude standalone artistic works. Members of staff wishing to use artistic works (images, photographs, diagrams, etc) in Virtual Learning Environments will either have to link to them if they are available on the web, scan them under a licence agreement, get permission, or use them under a different exception, such as for criticism/review. The limitations to this exception are: that no more than 5% of the work may be copied in a 12 month period; that if there is a licence which permits this activity, a licence should be taken (e.g. for literary works, a CLA licence must be held). To put this in proportion: if a lecturer were to use a film clip to illustrate a point to his distance-learning students, he would be able to copy and upload no more than 6 minutes from a 2 hour film (5%) over the course of a year. If he wanted to use several film clips to illustrate his point, he would be able to do the same provided he ensures that no more than 5% of the same film is copied in the space of one year.

Impact?

These exceptions certainly allow for more flexibility in learning styles, content and delivery, but they are unlikely to radically alter current teaching practices. They will be of greatest benefit to distance learning courses, where lecturers are constantly frustrated by non-existent copyright licences and are forced to use technologically-backward means to achieve their ends. However – this exception may be limited in future by licences, so the benefit may be short-lived. And it is also unlikely that these exceptions will be useful for Massively Open Online Courses (MOOCs), currently being designed by a number of universities.

Proposed Research Exceptions

Some of the proposed exceptions will be welcomed by researchers. In particular, the extension of fair dealing for non-commercial research to all types of copyright works, including films, sound recordings and broadcasts. A librarian, archivist or curator would be able to copy a reasonable proportion of a published work (and one article in a journal) for researchers so that they can take them away and study them as part of their research rather than being confined to one geographical location within the UK.

The proposed exception for quotation for purposes such as criticism or review would permit a researcher to include short extracts of works within their research output provided the work has already lawfully been made available to the public (difficult to say whether this would apply to unpublished works) and is accompanied by a sufficient acknowledgement. This exception cannot be overridden by a contractual term, which could mean that third party copyright material acquired from overseas may be able to be used for quotation purposes provided it meets the criteria. This exception brings the UK more in line with the rest of Europe.

Wider Dissemination of Scholarly Work?

Sadly, the above changes to copyright law are unlikely to invoke a sea-change in the world of scholarly works and will have little if any impact on traditional educational publishing. However, there is one more proposed exception to copyright that is likely to have a significant (positive) impact on research, and that is data analysis for non-commercial research. This exception would permit any researcher undertaking non-commercial research to take a copy of copyright works which they have lawful access to (for example under institutional subscription licence) and carry out an electronic analysis of anything recorded in the work. This could greatly open up opportunities to do large scale text and data mining of scholarly content across a whole range of publishers, thereby allowing researchers to gain a holistic overview of their research area. Further information on text mining is [available from JISC](#).

Finally... these proposed exceptions are greatly welcomed by the user community because at long last they bring copyright law in line with current practices. [The draft SIs are open for comment until mid-July and early August](#) respectively –the HE sector is encouraged to respond to the technical review by emailing Copyrightconsultation@ipo.gov.uk.

Note: This article gives the views of the author, and not the position of the Impact of Social Science blog, nor of the London School of Economics.

About the Author

Emily Goodhand is Copyright & Compliance Officer at the University of Reading. She blogs at [Copyright For Education](#) and can be found on Twitter [@copyrightgirl](#).

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