

**TAKING FORWARD THE GOWERS REVIEW OF INTELLECTUAL PROPERTY:  
BRIEF SUMMARY OF RESPONSES**

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## **INTRODUCTION**

In January 2008, the UK Intellectual Property Office launched a consultation document: "Taking forward the Gowers Review of Intellectual Property: Proposed changes to copyright exceptions." The document considered the potential introduction of two new exceptions: for format shifting (a limited form of private copying) and for parody, caricature and pastiche. It also discussed potential changes to other exceptions covering education, libraries and archives, and research and private study.

The consultation period ended on 8 April 2008 and approximately 250 responses were received. The responses were from a wide variety of organisations representing creators such as photographers and journalists, rights holders' representative organisations such as collecting societies, industry and other trade associations, trade unions, and a range of other interests such as legal advisors, educational establishments, museums, broadcasters and internet services providers. Responses were also received from a number of individuals.

The summary which follows is intended to give a broad flavour of the responses. A further report will be incorporated in the second stage of the consultation.

Although most responses commented specifically on the issues raised by the consultation, a large number of comments were received on other matters such as contracts, fair dealing, library privilege, examination issues, orphan works and performers' rights. These fall outside the scope of the current consultation process.

## **RECOMMENDATION 2: AMEND CERTAIN EDUCATIONAL EXCEPTIONS TO INCLUDE DISTANCE LEARNING**

114 respondents commented specifically on the educational exceptions, with the overall majority in favour of extending them to cover distance learning. Most respondents also agreed that it was appropriate for material to be delivered via networks with appropriate security, and that the legal language used to define such networks should avoid using terms which were likely to become obsolete in future.

Rights holders were generally supportive of moves to permit distance learning for both the broadcast exception (section 35), and the 'handout' exception (section 36). They were however concerned that any further extension to include access to content delivered via on demand services could undermine the development of current and future business models, as could an extension of the 'handout' exception to cover all types of copyright protected works.

Users, including those in educational and information fields, welcomed the proposals, and wished to see them widened to encourage the broadest possible access.

## **RECOMMENDATION 8: INTRODUCE A LIMITED PRIVATE COPYING EXCEPTION FOR FORMAT SHIFTING**

105 respondents commented specifically on the format shifting exception. The overall majority of responses were in favour of introducing an exception. The main points of contention surrounded the types of content that should be covered by a format shifting exception, and whether the content holders would suffer significant harm from its introduction and therefore require the introduction of a scheme for fair compensation. (In some jurisdictions such schemes are referred to as 'levies'.)

Rights holders representing music, film, television, publishing and photographic industries generally supported the introduction of a format shifting exception, but thought that it should be strictly limited to music only. It was also felt that a format shifting exception should not over-ride existing digital rights management or content protection mechanisms, as this would damage existing and developing business models, especially in the audio-visual sectors. Rights holders argued that any such exception should be accompanied by the introduction of a fair compensation scheme. Some content holders argued that the number of format shifted copies allowed should be strictly limited so that a copy could only be made from an existing copy when there is an absolute technical requirement.

The user community, including those in the education and research fields, libraries and archives, individuals, legal bodies, IT and software organisations, and museums and galleries were in favour of a broad exception which includes all forms of digital content. Users argued that it should be possible to make unlimited format shifts in order to account for new technologies, therefore future proofing any new exception. The user community were not in favour of fair compensation schemes.

## **RECOMMENDATION 9: AMEND THE RESEARCH AND PRIVATE STUDY EXCEPTION**

121 respondents commented on the research and private study exception. The overall majority of respondents were in favour of introducing such an exception and considered that all types of work and areas of study should be covered.

Those primarily from the user community considered that there should be no distinction between research and private study and that the exception should apply to both. The user community were also keen for the exception to provide for a DRM workaround.

Rights holders including the music and publishing industries were not in favour of extending this exception. They were concerned that including private study could open up the system to abuse and were keen that there should be no DRM workaround. Rights holders were also keen to link this exception to an educational course or establishment.

## **RECOMMENDATION 10 A AND 10B: AMEND THE LIBRARY AND ARCHIVES EXCEPTION FOR PRESERVATION PURPOSES**

194 respondents commented specifically on the libraries and archives exception.

The majority of respondents including rights holders and the user community were in agreement with the proposed exception and agreed that it should cover all works. There was an understanding of the need to preserve items for the UK's cultural heritage. There was also a general appreciation that the ability to make a copy could prove beneficial for insurance purposes, for example if an original item is damaged.

The major point of contention was around the definitions of what constituted a 'museum' or 'gallery'. Rights holders representing music, film, television, publishing and photographic industries were concerned that without some form of monitoring, such as could be offered by accreditation, the exception could potentially be open to misuse.

There were conflicting views on the number of copies that should be allowed, with the user community favouring a 'no limits' approach and the rights holders wanting a limited number and only for preservation.

## **RECOMMENDATION 12: INTRODUCE A NEW EXCEPTION FOR PARODY, CARICATURE AND PASTICHE**

63 respondents commented specifically on the parody exception with a number of other representative bodies indicating that they had no formal position. Overall, the number of responses in favour of introducing a new exception was roughly equal to the number of those who objected.

Those in favour of the exception included libraries, museums, a few individuals, educational establishments and consumer organisations. They cited various reasons including promoting freedom of speech, and protecting the valuable cultural asset that parody, etc represents.

The replies favouring an exception included a minority which incorporated caveats about the extent of the exception. For example, it was suggested that commercial endorsement should be excluded, or that parody should be permitted in only very specific and limited circumstances to overcome problems particular to certain user groups. Such suggestions were linked to a recognition of the potential negative consequences for rights holders should a broad exception be created.

Those against the introduction of a parody exception were, broadly speaking, creators and rights holders. They included groups representing creators, such as musicians, photographers, artists and performers, and others representing the commercial organisations which promote and market creative output. Reasons for not introducing a parody exception included the vibrancy of the current parody scene in the UK under the current system, the lack of evidence supporting change, and the potential financial and reputational damage to creators and rights holders.