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# Reform of UK copyright law and its benefits for libraries

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## Abstract

**Purpose** – The purpose of this paper is to provide an overview of copyright law changes in the UK, especially as they affect interlibrary loan.

**Design/methodology/approach** – Analysis of new legislation were tested against interlibrary needs.

**Findings** – The new laws bring major benefits to libraries and their users by expanding the types of material available and simplifying the management procedures required for document delivery.

**Practical implications** – Libraries and other institutions can now offer a much wider range of services.

**Social implications** – There are considerable benefits to individual users, including those with disabilities, as access is granted to a wider range of materials.

**Originality/value** – New research and analysis relating to laws passed in October 2014.

**Keywords** Copyright, Document delivery, Copyright law, Museums, Interlibrary lending, End users

**Paper type** Technical paper

## The context

Copyright law has been in a state of flux for many years as it attempts to keep up with developments in methods of publishing and distribution methods of information, technological development, changing expectations of both the authors and users and the role of information intermediaries. One of the major issues that has to be tackled is the question of exceptions to the exclusive rights of copyright owners. These exceptions, which allow the use of copyright material within limits by specific groups of users or by specific types of institution, vary from country to country, but usually they include an element of personal/private use, educational use, copying for various reasons by libraries and similar organisations and provision for making material available in specific formats for people with a range of disabilities.

In the European Union (EU), these exceptions are the subject of considerable discussion and analysis (Boulanger *et al.*, 2014). In addition to numerous reports and debates, various judgements of the Court of Justice of the European Union (CJEU) (Court of Justice of the European Union, 2014) have clarified what EU law actually means in some of these areas. Similar discussions are taking place in the USA. One example is the problems associated with orphan works (those works for which either the owner could not be identified or could be identified but not traced) (Knowledge Ecology International, 2014). In addition, the World Intellectual Property Organisation has also addressed many

issues especially relating to libraries but without reaching any conclusions (IFLA, 2014).

In the UK, the latest round of discussions on reform of copyright dates back to a report commissioned by the Labour government in 2006 (HM Treasury, 2006). The subject was taken up by the incoming coalition government under David Cameron, who commissioned a new review focusing on practicalities by Professor Ian Hargreaves and presented to the House of Common in 2012 (House of Commons, 2012). After much consultation, the UK Government introduced a range of changes to the copyright law, covering a range of issues.

## A general overview of changes to UK copyright law

Many of the changes introduced by the UK Government do not relate directly to document supply or, indeed, to libraries and related organisations directly. Major changes in six areas were brought into effect in the latter part of 2014 and covered private copying, disabled people, public administration, orphan works, quotation and parody and libraries and education. This analysis will concentrate on the specific area of libraries.

This type of legislation in the UK is introduced using a mechanism called Statutory Instruments (SIs). These form the secondary legislation, which expands, amends or even nullifies existing Acts of Parliament without the need to go through the long, slow and often politically hazardous process of a full Act. The SIs are scrutinised by a committee of Members of Parliament and placed before members for their approval. The SI discussed here introduces major changes to law, as it affects libraries (UK Government, 2014). The changes will be examined one by one with a description of

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what the law said before 2014 (the “previous law”) and what it says now (the “new law”).

### Which institutions benefit from the exceptions?

Under the previous law, certain libraries, and in some circumstances archives, were given some limited privileges to copy copyright material. Generally, these were libraries which were publicly funded, such as public libraries, or libraries in government departments, universities or schools. There was also a section for libraries privately funded but promoting scholarship. No library could qualify if it was conducted for profit or was owned by an organisation conducted for profit. Under the new law, the scope is extended to any library, archive, museum or gallery which is not owned by an organisation conducted for profit and which is accessible to the public. Therefore, the terms “library” and “librarian” will be used in this article to cover all of these organisations. Neither “accessible” nor “public” is defined, so it requires a broad interpretation of these words so that they can include, for example, a library of a government body which is not open to the general public for security reasons. In addition, extending the provisions to archives, museums and galleries, some libraries in charities which were not promoting scholarship but which were not conducted for profit are also included.

### What materials can be copied?

Under the previous law, individuals could copy textual material (including musical scores) or any graphic work under the concept of fair dealing. This term is intended to indicate that the copying does not seriously infringe the copyright owner’s rights or exploitation of the work. Works in other formats were excluded. In the case of librarians who were asked to copy something on behalf of a reader, only textual material could be copied. So, a map could be copied by an individual but not by a librarian. Under the new law, an individual can copy any type of material, provided that the copying is considered fair dealing. Librarians are also given much more freedom to copy material in any format.

### What librarians can copy for their readers?

These rules apply when the reader asks the librarian to make or obtain a copy on their behalf. It would include material that was in a remote store, was too fragile to be handled by an inexperienced person or material not held by the library in question but which has to be requested from elsewhere. Under the previous law, librarians were allowed to copy only one article from any one issue of a periodical or a reasonable proportion of a non-periodical work. But non-periodical works were limited to printed text in publications such as books and reports. Under the new law, the limitation on copying from periodicals is retained with the irritating situation that an article is defined as “an item of any description”. So, a reader asking for, say, an article from an issue and also the contents page cannot have both! “Reasonable proportion” is not defined. In the case of monographs, this has usually been interpreted as 10 per cent or a chapter, but how do you determine this in the case of sound recording? If it is a complete opera, can you say 10 per

cent of the whole opera, but if it is a CD with 20 pop songs, is one track a reasonable proportion? The situation is worse with films and DVDs. Lawyers may have fun with this.

### Changes in procedure

In addition to the limits on what can be copied, there are other conditions that have to be fulfilled when a librarian copies for a user. Under both the previous and new laws, there are restrictions in terms of purpose and ensuring that multiple copying does not take place. Any user has to declare that they have not had a copy of the work requested from any other library; that they will not supply the copy to anyone else; that the purpose for which they require the copy is non-commercial research or private study; and they are not aware that anyone with whom they work or study has requested or intends to request for substantially the same material for substantially the same purpose. They are also warned that if any of these statements are untrue, they are responsible for copyright infringement. However, under the previous law, the requestor had to sign a declaration form stating all these facts, and the form had to bear the requestor’s actual signature. This caused immense administrative problems, as the requestor had to present the form to the library in a physical format (or perhaps by fax or as a .pdf file), but an electronic signature was not acceptable. For remote users of library services, as in universities with scattered campuses, and users requesting material from other libraries, this was a major problem. Under the new law, the requestor must submit a form that gives their name and the bibliographic details of the work to be copied and includes the statement so as to not having had a copy before and the purpose of the request, but there is no requirement to sign; therefore, such forms can be submitted electronically or on their behalf if the request is sent to another library.

### Interlibrary document supply

The law in the UK deals with the situation when one library wishes to request a copy of something, which it does not hold from another library, so that the copy may be added to its collection. This is technically interlibrary supply. The law in the UK makes special provision for this, although what can be copied in these circumstances is very limited by the law. A library may ask for a copy of a single journal article from any one issue of a periodical or a part of a published work held by another library to add to its collection but, in the second case, only if it is not possible by reasonable inquiry to find out the name and address of the person entitled to authorise the making of the copy. Clearly, if these details can be found, the requesting library should first approach that person to see if they can supply a copy or give permission for a copy to be made. This provision now applies to all formats of works, including sound recordings and films. The journal article exception could apply to a CD-ROM or online journal but not really to sound recordings or films.

However, the majority of interlibrary requests are not for libraries to add copies to their collection, but for copies to be passed on to individual readers. There is actually no direct provision for this in UK law, and the new legislation retains this situation. When a reader asks their local library for a copy

of a work which the library does not hold, then the library may initiate an interlibrary document supply request. To comply with UK law, the reader must complete a declaration form for the material, which their own library (the requesting library) will then forward to another library that holds the material (the supplying library). The supplying library, then, retains the declaration form as justification for making the copy and supplies the copy to the requesting library to pass to the individual reader. The requesting library must not retain the copy in its collection, as it has been supplied for use by an individual reader who has provided a declaration form, as described above in “changes in procedure”. Some libraries that supply considerable numbers of copies through interlibrary supply arrangements delegate the responsibility of keeping the declaration forms to the requesting library to avoid huge numbers of declaration forms piling up in their files. As these can now be submitted electronically, the nightmare of cabinets full of declaration forms now disappears. This makes legitimate a practice which a number of libraries have implemented for some years and which has never actually been challenged.

### Exclusion of copies for disabled people from interlibrary co-operation

Under the previous law, a work consisting of text or graphic images could be transformed into another format, such as large print, braille, Moon (a system of embossed printing using characters similar to the alphabet and helpful for older people) or audio for the benefit of a person with visual impairment. This exception has been extended to all formats, and the persons entitled to benefit from it are no longer limited to those with visual impairment but includes anyone who has a disability which prevents them from enjoying the work in the same way as a person without the disability. Therefore, the scope has been expanded to cover sound recordings, films and broadcasts. However, a fundamental principle is that the disabled person has lawful use of the work to be copied. If the work is held in a remote collection, then the user does not have access to it and thus to use it. However, a copy could be lent to the person’s library, and a suitable copy can be made from that, as they would have lawful use of the work.

### Preservation and replacement

Under the previous legislation, a library could make a copy of a work in its collection for preservation purposes, provided that the work was in the permanent collection and not available for loan, except to other libraries; and this provision applied only to textual material. This has now been extended to cover works in any format with the usual proviso that it is not reasonably practicable to purchase another copy. From a document supply viewpoint, the significance in the change is that if material in a library which would qualify for copying under this provision has been lost, damaged or destroyed, then a replacement copy can be requested from any other library, regardless of the format in which it was originally published.

### Exceptions cannot be overridden by contracts/licences

Perhaps, one of the most significant changes in UK law is the one relating to contracts, licences and exceptions. A repeated complaint from librarians has been that they often acquire material with certain conditions attached to it, which may include a statement that the material may not be copied under any of the exceptions listed above. Similarly, some material is provided under licence with the same kind of restrictions. The law now specifically states that any clause in a contract or licence that imposes these restrictions will be considered invalid. For example, libraries can now transmit an article directly from a licensed journal data base to another library rather than being compelled to print, scan and then transmit the printed copy. Many publishers still include on the verso of the title page of a book or journal a statement that begins “No part of this publication may be reproduced, photocopied and stored in a computer system [ . . . ]”. This statement has often made users and library staff wary of making copies under the exceptions, but it is now absolutely clear that this statement has no validity in law – if it ever did.

### The international dimension

Under the previous law, certain libraries outside the UK were specified as being able to enjoy the privileges mentioned earlier. The new law makes no specific mention of such libraries so it can be implied that requesting or supplying a copy to any library outside the UK which conforms to the criteria set out for UK libraries (not conducted for profit and accessible to the public) that may also benefit from these exceptions. The one vital caveat is that making or receiving such copies would not be an infringement of copyright in the other country. For example, in the UK, a library making a number of copies of the same material for different people may do so legally, but in the USA, such a service would be considered systematic copying, which is outside the permitted acts in the USA.

### Charging

A final change in the law in the UK is much welcomed by librarians. When libraries were first given privileges, a requirement was imposed that the person requesting the copy must pay for it – the money going to the library to defray the costs of making the copy. In many circumstances where readers were remote from their library, this was difficult to administer, especially as the amounts involved were often very small; internationally, it posed huge difficulties. A similar condition applied to copies supplied to other libraries for their collections. Although the International Federation of Library Associations Voucher Scheme goes some way to making international payments less cumbersome to administer, the new law in the UK no longer imposes a requirement to make a charge, but specifies that *if* a charge is made, it must reflect the actual cost of making the transaction.

### Conclusion

The changes introduced by the UK Government represent a seismic shift in the way copyright affects libraries and similar institutions. Many more organisations can now enjoy these



privileges, and the administration of them has been considerably simplified. At the same time, the range of material that can be copied for readers and for other libraries has also been considerably expanded, so that it is no longer essentially text and paper based. Of particular benefit from a document supply point of view is the abolition of the need for a signed declaration form, which posed so many problems for interlibrary transactions.

Other changes are in the pipeline, including regulations for orphan works and how they may be used by libraries, and also expanding the licensing schemes which already exist to encompass these works as well. There are also likely to be changes in how long copyright lasts in some older unpublished works to remove some arcane rules which prevent their use even when they may be several hundred years old!

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**Graham Peter Cornish** worked at the British Library for 33 years, of which, for 18 years he was the BL Copyright Adviser. Subsequently, he established his own training and advice service under the name “©opyright Circle”. He has written a large number of articles on copyright and information delivery and run literally hundreds of workshops on the subject. He was a partner in a number of EU projects on electronic copyright issues. His book *Copyright: interpreting the law for libraries, archives and information services* is in its 6th edition. Graham Peter Cornish can be contacted at: [gp-jm.cornish@virgin.net](mailto:gp-jm.cornish@virgin.net)

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