



FOCAL INTERNATIONAL

FEDERATION OF COMMERCIAL AUDIO VISUAL LIBRARIES

3rd June, 2014

Hargreaves latest

Exceptions to copyright

Some of the Government's long awaited changes to exceptions to UK copyright came into force on 2 June 2014. They cover:

- Data analysis ("data mining")
- Disabled people
- Educational institutions
- Research for non-commercial purposes
- Libraries, archives and museums
- Public administration.

The proposed exceptions covering:

- Quotation
- Parody
- Private copying

have *not* come into force.

What is changed

The changes allow, in brief:

Data analysis

- Data mining can be done for solely non-commercial research, where the analyst has lawful access to the copyright material to be analysed, provided that the copyright material is sufficiently acknowledged unless acknowledgment is impossible.

Disability

- Disability groups and disabled people can make accessible copies of copyright materials (including films) if no commercial alternative is available.

Education

- All kinds of copyright materials (i.e. now including films) can be used for instruction, provided that the use is (in the Government's own words) minimal, non-commercial, and fair to copyright owners. Sufficient acknowledgment is also required unless acknowledgment is impossible.

- Otherwise, as previously, more than minimal amounts of copyright materials can only be used free of charge if no licence for them is available. Until now, the requirement for a Statutory Instrument meant that the content owners (such as archives or broadcasters) and the content users (schools and colleges) were obliged to license through mandated collective organisations such as ERA. That requirement has been removed, so payment will now be required whether a licence is available collectively or from an individual right owner. It will doubtless be administratively convenient for many right owners to continue to use collective licensing arrangements, and for licensing organisations not to have to register their collective licensing schemes in a Statutory Instrument.

Research and private study

- All kinds of copyright material (i.e. now including films) can be used for non-commercial research and private study, which remains subject to “fair dealing” with the copyright material.
- Librarians (of not-for-profit libraries) may provide a single copy of part of a published copyright work (now including a film) to individuals for non-commercial research or private study, subject to stipulated checks and formalities.

Libraries, archives, galleries and museums

- Librarians can also supply copies (now including copies of films) which are not otherwise available to other libraries.
- Films are also included in the kinds of copyright materials which libraries can copy to preserve them, or to replace their existing copies of them – as now can archives, galleries and museums.

Public administration

- Public authorities can provide copies of documents which are available for public inspection but not available commercially, and also make them available online.

“Contract override”

- A common feature of many of these changes is that contract terms which “restrict or prevent the doing of an act which would otherwise be permitted” by the provision are unenforceable.
- Questions which this raises – unanswered by Government – include:
 - Does this exclusion apply to contracts which were entered into in the past, before these new provisions were suggested. If so, some right owners could be obliged to terminate existing contracts (for example, for access to an entire archive, to use content for specific purposes or in agreed quantities) – although worst fears may have been assuaged now that the proposed quotation and parody exceptions have not become law.

- More generally, if right owners' and users' ability to agree access terms is seriously undermined, will this provision lead to content being "locked away" again, undoing many progressive digital access models?

What stays unchanged

The changes *won't* allow wider use of quotations or making of private copies than is currently permitted:

- The UK Copyright, Designs and Patents Act 1988's existing quotation and private copying exceptions (notably "fair dealing" for criticism or review and for reporting current events, and recording off-air broadcasts for time-shifting) continue in force unchanged.

The UK copyright statute continues without a parody exception.

In the proposed form, the quotation and parody exceptions could have impacted many archives' businesses very negatively, so FOCAL is glad that these proposals have not come into force.

The Government may introduce these proposals again, perhaps altered, at a later date: at this point the Government has given no indication of its intentions.

What is still in progress

Government consultations (including with FOCAL) continue about the details of:

- Extended collective licensing
- Licensing of orphan works.

Perhaps some details will have been published in time for an update in the next Archive Zones.

If you would like to learn about the changes in detail, why not come to FOCAL's copyright day on 19th June at IBIS Euston.

You can reserve a place on FOCAL's website at <http://www.focalint.org/events-calendar/event/250/know-your-footage-rights-and-pitching-an-archive-based-programme>

Hubert Best
hubert.best@gmail.com