

BRITISH COPYRIGHT COUNCIL

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Frances Love
Libraries & Archives Team
Culture Directorate
Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH.

Dear Ms Love,

Public consultation on the legal deposit of non-print works - The Legal Deposit (Non-print Publications) Regulations 2011

I write on behalf of the British Copyright Council (BCC) in response to the above consultation. We have not completed the online consultation questionnaire as our comments are limited to certain copyright related issues.

The BCC represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers (see the attached membership list). These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the creative and cultural industries. Our members also include collecting societies which represent right holders and which enable access to works of creativity.

The BCC has considered the draft Regulations in the context of wider debates about possible changes to the scope of copyright exceptions and limitations within the UK.

It is appreciated that the Regulations are intended to develop rules governing the legal deposit of electronic publications pursuant to the Legal Deposit Libraries Act 2003. Nevertheless, the nature of draft Regulations 29 and 30 (facilitating the copying from non-print works for the purposes of non-commercial research and private study) and the wording used to define some works that are protected by copyright in terms of the scope of the Regulations, do raise possible conflicts with the application of copyright exceptions linked under the provisions of the Copyright, Designs and Patents Act 1988 (as amended). The BCC would therefore ask that these be addressed before the Regulations are put into final form.

1. Draft Regulation 2(e)

This defines a "private work" as "an electronic work which is (i) shared by means of the internet using some form of private network, for example an intranet; or (ii) which contains personal data and whose circulation is restricted to a defined group of persons".

It is submitted that this definition will cause confusion because sharing a "work" in the way envisaged by the definition may amount to a "communication to the public" or publication of that work in copyright terms.

If the “work” is a “work” in which copyright subsists – it is surely the means by which the work is “published” or “communicated to the public” that should define whether or not it is subject to application of the Regulations and not whether the work itself can be given a “private” tag?

2. Taking Forward the Gowers Review of Intellectual Property: Second Stage Consultation on Copyright Exceptions

The BCC welcomed the consultation referred to above and run by the Intellectual Property Office in the early part of this year. In the consultation, proposals were laid out in the form of draft Regulations, “*The Copyright (Permitted Acts) (Amendment) Regulations 2010*” under which changes to the scope of sections 37 and 42 Copyright, Designs and Patents Act 1988 (as amended) were laid out.

No Government response has been published concerning the submissions made in response to this Consultation although it appears that the issues remain a matter for debate in the context of the recently announced IP Review. Under the circumstances, an Impact Assessment on the way in which the IPO led proposals for change will link with the changes provided under the draft Legal Deposit Regulations 32 and 33, is a priority.

In addition, it will be important for rights owners to be able to distinguish use of copyright works undertaken by “deposit libraries” when they are not acting as “prescribed libraries” for the purposes of both the proposed Copyright Regulations and the proposed Legal Deposit Regulations.

The cost implications for publishers in being required to provide copies of a computer program and any information (including any tools and data) necessary to access an online publication which is to be legally deposited (under draft Regulation 22) needs assessing against the “benefit” (and additional costs) for deposit libraries of being entitled to adapt relevant material when this comprises or contains a computer program or database, if the adaptation is to be made under the circumstances set out in draft Regulation 33 (2).

Reference to “adaptation” in this draft Regulation raises issues of ownership linked to any permitted adaptation. The provision should clearly apply without prejudice to ownership of any material to be adapted.

I hope the above reply is of some assistance. Should you need any further information or clarification on any of these points, please do not hesitate to contact me.

Kind regards.

Yours sincerely,



Janet Ibbotson
Chief Executive Officer

Members of the British Copyright Council:

Association of Authors' Agents
Association of Illustrators
Association of Learned & Professional Society Publishers
Association of Photographers
Authors' Licensing & Collecting Society
BPI (British Recorded Music Industry)
British Academy of Songwriters, Composers and Authors
British Association of Picture Libraries & Agencies
British Computer Society/Chartered Institute of IT
British Institute of Professional Photography
Broadcast Entertainment Cinematograph & Theatre Union
Chartered Institute of Journalists
Copyright Licensing Agency
Design & Artists' Copyright Society
Directors UK
Educational Recording Agency
Equity
Music Managers Forum
Music Publishers Association
Musicians' Union
National Union of Journalists
Periodical Publishers' Association
Phonographic Performance Limited
PRS for Music (MCPS)
PRS for Music (PRS)
Publishers Association
Publishers Licensing Society
Royal Photographic Society
Society of Authors
Writers' Guild of Great Britain