UK Government Consultation on proposals to change the UK’s copyright system

This submission is made by the International Federation of Reproduction Rights Organisations (IFRRO). IFRRO represents and links Reproduction Rights Organisations (RROs) worldwide. RROs administer reproduction and other relevant rights, including certain forms of digital uses, in copyright text- and image-based works on behalf of publishers and authors, including visual artists. Members of IFRRO include national RROs, and national and international associations of creators and publishers.

We have been made aware of the UK Government Consultation on proposals to change UK’s copyright system by our UK members, The Copyright Licensing Agency Ltd. (CLA), The Authors Licensing and Collecting Society Ltd. (ALCS), Design and Artists Copyright Society Ltd. (DACS), Newspaper Licensing Agency Ltd. (NLA), National Union of Journalists of Great Britain and Ireland (NUJ), Publishers Association (PA) and Publishers Licensing Society (PLS), which we are proud to count amongst our 136 members.

We thank the UK Government for the opportunity to participate in the consultation and would like to comment on some of the questions raised.

Educational exceptions

We submit that ss. 132-141 of the UK CDPA 1988 (as these currently read) serve their purpose in respect of providing appropriate legal access to copyright works in the educational sector, and would strongly urge that its current wording be retained. It is important however that these exceptions, and the ‘fair dealing’ exceptions for private research and study (in both cases for a non-commercial purpose) contained in ss. 29 et seq., are interpreted in accordance with the requirements of the Copyright Directive 2001/29/EC to allow fair compensation to rightholders and/or as appropriate to enable a normal exploitation of the work by the rightholder, as discussed below.

National copyright legislation needs to be in harmony with commonly accepted international and regional norms. Consequently, exceptions and limitations to exclusive
rights may apply only in carefully designed special cases, when the reproduction does not conflict with the normal exploitation of the work and does not prejudice the legitimate interests of the rightholders, in accordance with the “three-step-test” as outlined in Article 5(5) the Copyright Directive 2001/29/EC (EUCD), Article 9(2) of the Berne Convention and Article 13 of the TRIPS Agreement.

The elements of the three-step test are cumulative; they must all apply, and the normal way of exploiting copyright works in educational establishments is through purchase, subscription or licensing. Both within EU Member States and outside the EU, certain types of copying and other forms of access to copyright material by educational institutions, including for teaching and research purposes, are commonly provided under collective licensing schemes with RROs, typically the CLA in the UK. Such licences complement and support the authors’ and publishers’ own licensing and other mechanisms to offer access to their works. As stated also in the submission by our UK-based member CLA, any attempt to limit, or prohibit, these licensing schemes would put the UK out of step with the rest of Europe, as well as with other parts of the world that the UK usually interacts with. Generally, in EU Member States, educational exceptions are allied to some form of licensing mechanisms and/or remuneration schemes that provide payment to rightholders.¹

Currently, publishers all around the world make significant investments in developing textbooks, technical and scientific material, both in analogue and digital formats. Every country wishes its students and other citizens to have access to relevant local material, which reflects the reality of the country. This can only be achieved through a vibrant national text-book publishing sector. Text-book publishing is also the motor of the publishing industry. The UK publishing industry is a major contributor to the national economy and employment and a net exporter of products and services, which makes it important to ensure that nothing is done to harm it or prevent its further development.

We therefore encourage the UK government to support the access to copyright works in education via the well-established system of individual and collective management of rights. In a fast changing world, where technologies move with an unprecedented speed, laws and regulations do not have the ability to offer the required flexibility. Licensing agreements do. RROs contribute to this through offering comprehensive collective licensing of access to scientific and literary works in a number of different ways to support authors’ and publishers’ own activities to meet consumer needs.

Orphan works and out-of-commerce works

IFRRO supports the submissions made by the CLA and other IFRRO members as listed initially, i.e. that orphan works legislation should facilitate administration through

¹ Please see the IFRRO Memorandum, providing an overview of the models of operation of RROs regarding educational activities in Europe and North America (prepared by IFRRO in August 2009 for the researchers commissioned by WIPO to conduct a study on exceptions and limitations to the exclusive rights in relation to education), available here: http://www.ifrro.org/issues_list/1576.
collective management and ensure remuneration to rightholders, which is also the approach that is best designed to allow for inclusion of embedded visual and other material. In addition, we offer the following information:

IFRRO supports initiatives to preserve and make available cumulative knowledge and cultural heritage, and recognise the role of libraries and archives in that respect. Before an orphan or out-of-commerce work can be made available, it must be carefully defined, for instance in line with the definitions agreed by the stakeholders concerned in the European Commission-facilitated Memorandum of Understanding (MoU) on Out-of-Commerce works\(^2\) and the Report from the European Commission’s i2010 Digital Libraries High Level Expert Group\(^3\).

Stakeholders have shown their ability to establish workable solutions for the digitisation and making available of orphan and out-of-commerce works. These comprise definitions, a MoU on large-scale digitisation and making available of out-of-commerce books and journals by libraries and other publicly available cultural institutions, criteria for the search for rightholders, model licensing agreements and mechanisms to facilitate rights clearance through the one-stop service represented by collective management organisations. Also, stakeholders have jointly developed technological means to substantially reduce time, efforts and costs involved in identifying rights, rights status and rightholders: the stakeholder and EC co-funded project ARROW, which has been piloted with success in several countries, including in the UK, where the pilot project with the British Library resulted in a reduction of time and (presumably) costs by 97.5\(^4\), is a result of such collaborative efforts. We further refer to the Wellcome project in the UK described in the submissions of *inter alia* ALCS and PLS.

**People with print disabilities**

Also, on the issue of exceptions for people with print disabilities, while submitting that IFRRO is in favour of appropriately defined and framed exceptions for these user groups in national legislation, we wish to lend our support to the submissions made by CLA and other IFRRO members listed initially, and offer the following additional information: IFRRO is a part of the EU-facilitated stakeholder dialogue, which led to the signing of a Memorandum of Understanding on 14 September 2010\(^5\) on the facilitation of access to copyright works, including across borders, for persons with print disabilities, as well as the ETIN project to implement it.


IFRRO is also an active partner in the WIPO-led stakeholder dialogue on enhanced access to copyright works by persons with print disabilities, and its corresponding TIGAR project\(^6\), to develop practical solutions for cross-border access to copyright works in alternate formats. Several authorised entrusted entities, so-called Trusted Intermediaries (TIs), publishers, including the most significant ones, and RROs, have signed up to the instrument intended to facilitate cross-border access to alternate format copies. Under this pilot project, the transfer of files between TIs is already taking place.

**Efficient and transparent collective rights management**

It is in the interest of both rightholders and users that there is a maximum of transparency around rights management. Against this background, we think that practices and governance of Collective Management Organisations (CMOs) should be publically available, as they normally are.

The IFRRO Board has adopted a Code of Conduct\(^7\), which sets out the standards of service that rightholders and users can expect to receive when dealing with RROs, and an instrument on the relationship between RROs\(^8\), with the objective to promote best practices in the operations between the RROs themselves. All IFRRO members are recommended to observe these instruments, in which transparency and information exchange are key elements.

We kindly ask that the points raised in this submission be considered in the further considerations on modifications of the UK Copyright Act. If required, we will be pleased to expand further on them, including in a personal meeting.

Yours sincerely,

Olav Stokkmo
Chief Executive

Anita Huss
General Counsel

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\(^7\) See: [http://www.ifrro.org/content/ifrro-code-conduct-reproduction-rights-organisations-1](http://www.ifrro.org/content/ifrro-code-conduct-reproduction-rights-organisations-1).

\(^8\) See: [http://www.ifrro.org/content/relationship-between-reproduction-rights-organisations-1](http://www.ifrro.org/content/relationship-between-reproduction-rights-organisations-1).