

# Taking Forward the Gowers Review of Intellectual Property

## Second Stage Consultation on Copyright Exceptions



### PPA Response

29 March 2010

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Periodical Publishers Association Limited, a company limited by guarantee, incorporated in England and Wales  
with registered number 00132310. Registered office: Queens House, 28 Kingsway, London WC2B 6JR.

Telephone +44 (0) 207 404 4166

[www.ppa.co.uk](http://www.ppa.co.uk)

## 1. PPA and its role

PPA is the trade body for UK magazine, journal and business media publishers. A full list of PPA members is available at: <http://www.ppa.co.uk/cgi-bin/go.pl/ppamembers/index.html>.

PPA's membership consists of some 250 publisher members and affiliates who publish consumer, customer and business magazines, journals, data and directories in addition to conducting research, organising conferences and exhibitions.

PPA members offer print, electronic and online publications and services, including websites, online and electronic versions of print publications and publications and data only available online or through electronic transmission.

Publications encompass consumer, customer and business to business journals, magazines and media and increasingly involve the use of new electronic rights management systems to help improve the provision of publications and services to subscribers.

PPA members are significant contributors to the UK creative industries. The total value of the UK magazine and journal industry is estimated at £5.7bn<sup>1</sup>, with consumer magazines contributing around £2.8bn<sup>2</sup>, business media (including magazines and directories) around £2.0bn<sup>3</sup> and customer magazines £900m<sup>4</sup>. This is four times the size of the UK recorded music industry (£1.39bn<sup>5</sup>) and twice the size of the UK film industry (£3.22bn<sup>6</sup>). It is approximately the same size as the UK audiovisual content production sector (£5.5bn - £6bn<sup>7</sup>). The UK magazine and journal industry directly employs 114,000 people<sup>8</sup>.

## 2. Response

### a. Format Shifting and Parody, Caricature and Pastiche

PPA agrees with the proposal not to introduce new UK copyright exceptions for (i) Format Shifting and (ii) Parody, Caricature and Pastiche - and for that reason does not comment further on those proposals in this response. However, PPA believes that any Format Shifting exception discussed at European level must include the requirement for fair compensation to content owners whose content is copied.<sup>9</sup>

### b. Educational Exceptions

- (i) PPA welcomes the proposals not to fundamentally change the way the exceptions in s. 35 and s.36 of the Copyright, Designs and Patents Act 1988 ("CDPA") operate - and, importantly, maintaining the requirement that exceptions only operate where licensing schemes are not available;

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<sup>1</sup> PriceWaterhouseCoopers Global Entertainment and Media Outlook: 2008-2012

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> BPI, 2007

<sup>6</sup> PriceWaterhouseCoopers Global Entertainment and Media Outlook: 2008-2012

<sup>7</sup> Digital Britain, Interim Report page 36

<sup>8</sup> PPA analysis of the Periodicals and Journals Industry based on Annual Business Inquiry

<sup>9</sup> As recognised in the BIS/IPO Copyright Strategy (<http://www.ipo.gov.uk/c-strategy-digitalage.pdf>)

- (ii) PPA welcomes the proposal not to extend s.35 and s.36 of the CDPA beyond "educational establishments" (as defined in the CDPA) and not to extend the definition to include museums and galleries or others. PPA agrees with the reasoning behind this proposal;
- (iii) PPA welcomes the proposal not to bring forward legislation to provide exceptions under s.35 CDPA for access to and recording of on-demand material;
- (iv) PPA welcomes the proposal not to extend exceptions linked to educational use of extracts to broadcasts as works (since the issue is already practically addressed by s 35);
- (v) PPA welcomes the proposal not to extend s.36 to capture artistic works. Similar arguments to those which are expressed in the consultation as the reasoning for this apply to sound recordings and film – for example, it is unlikely that copies of part of a sound recording will be useful and we suspect that the extension to sound recordings and film may result in users seeking to copy entire works under this new extension;
- (vi) For the reasons set out above PPA is concerned about extending s.36 CDPA to capture film and sound recordings other than artistic works;
- (vii) PPA welcomes the proposal to retain the copying limit at 1% per quarter within s.36 but questions the practicalities of policing such use particularly when extracts from sound recordings and films are considered;
- (viii) References to "communicated **to the public**" in this context may be confusing - the exception should consistently refer to "Authorised Person" as defined in proposal 36(1E) (as the "public" is not the beneficiary - the beneficiaries are students at educational institutions);
- (ix) PPA welcomes the proposal that educational establishments be required to use "all reasonable steps" to ensure the security of content which the educational establishment claims a right to utilise under s.35 and s.36 CDPA exceptions;
- (x) PPA does not support the proposal that s.35 and s.36 CDPA exceptions should be applicable to copies of works made available and communicated to the public by UK educational establishments to overseas students. Geographic ID restrictions should be required. The arrangements permitted under s.35 and s.36 (and licence schemes operating under these provisions) are subject to English law and laws adopted within the United Kingdom. Rights applicable in territories outside this jurisdiction must be respected. UK legislation should not promote unlawful copying outside UK jurisdiction;
- (xi) PPA welcomes the proposal to retain the s.35 and s.36 CDPA prohibition on "dealing" with material beyond the acts expressly permitted by these sections - and the prohibition of transmission outside controlled networks.

### **c. Research and Private Study Exceptions**

- (i) PPA does not welcome the proposed wholesale extension of the s.29 CDPA exception for research and private study to cover “all forms of content”;
- (ii) PPA welcomes the important proposal to limit the new exception for sound recordings, films and broadcasts to those who are genuine students or researchers at an accredited educational establishment and where copying is for the purpose of an educational course or research at that establishment;
- (iii) PPA is concerned about how this exception will be limited to "extracts" of works. In relation to films and sound recordings there will be more difficulty extracting the sections to be copied and it will be tempting for users to copy entire works. This is problematic and if use of this exception is not carefully restricted and controlled it will disproportionately damage content owners;
- (iv) PPA welcomes the fact that the existing regime for literary works is unaffected.

### **d. Libraries and Archives**

- (i) PPA supports the exception to allow limited copying of copyright content for *purely preservational* purposes - but PPA would strongly oppose any acts which go beyond preservation;
- (ii) PPA supports the proposal to retain the existing proviso that restricts the making of copies to cases where it is not reasonably practical to purchase another copy - and to extend that proviso to any additional works;
- (iii) While PPA supports the exception to permit format shifting for preservation purposes PPA does not support unlimited copying (even if restricted to preservation purposes and subject to the proviso above);
- (iv) PPA believes that access to multiple copies should be prohibited while supporting the proposal that access to the preserved copy should be strictly restricted and controlled;
- (v) The proposal to extend to museums, galleries and archives is of concern. PPA would welcome a commitment from government to regularly review the operation of the exception to ensure it is not abused. PPA notes the irony of the situation that libraries, museums and galleries will be put in a better position than publishers of magazines and business media who cannot always digitise copies of their extensive archives of historic material for preservation or other purposes;
- (vi) PPA believes that a definition needs to be added to cover when a work is to be treated as part of a libraries' "permanent collection". It will be important that any prescribed conditions recognise that agreements providing for the supply of works to libraries, archives, museums and galleries on commercial terms are not supplied for inclusion within permanent collections and s.42 CDPA would not be expected to apply;

- (vii) With regard to s.175 CDPA and the proposed new definition of "publication", it is undesirable to have two different definitions of "publication" within the same piece of legislation (the CDPA). It seems overly complex to have tests for whether a film or sound recording has been "published" for the purposes of defining the duration of copyright in a sound recording or film under s 13A and s 13B CDPA on the one hand - and for dictating whether a work is "unpublished" (and therefore open to copying in whole by libraries as opposed to only copying "in part" following recognition of "publication") under s 175 CDPA on the other. It would seem preferable to have a single test for "publication" linked to both fixing duration of copyright and "publication" for any subsequent library use.

David Hyams  
PPA Legal Director  
[david.hyams@ppa.co.uk](mailto:david.hyams@ppa.co.uk)  
0207 404 4166