
UK-IPO: Taking forward the Gowers Review of Intellectual Property – Proposed changes to copyright exceptions**Response by the Wellcome Trust**

April 2008

Introduction

1. The Wellcome Trust is pleased to have this opportunity to comment on the proposed changes to copyright exceptions. The Wellcome Trust is the largest charity in the UK. It funds innovative biomedical research, in the UK and internationally, spending around £650 million each year to support the brightest scientists with the best ideas. The Wellcome Trust supports public debate about biomedical research and its impact on health and wellbeing.
2. The Wellcome Library, part of the Wellcome Trust, is one of the world's major resources for the study of the history of medicine. It holds around 2.5 million items, including 600,000 books and journals, an extensive range of manuscripts, and more than 100,000 paintings, prints and drawings.
3. Our response concentrates on the proposed changes to copyright exceptions for research and private study and for library privilege. The exclusive rights provided by copyright provide important incentives to creators, but carefully defined exceptions are essential to ensure that society can investigate and build upon existing works. Our key points are as follows:

Application of exceptions to digital materials

- We believe that the full range of copyright exceptions should apply equally to all categories of copyrighted materials, including digital materials. As the proportion of materials in digital format increases, failure to extend copyright exceptions accordingly will result in a gradual phasing-out of the essential balance that exceptions provide.
- Contracts and digital rights management systems should not be able to override the statutory exceptions to copyright. As the British Library and other research libraries have emphasised in their responses to this consultation, many digital resources are offered to libraries only under terms that undermine a variety of statutory exceptions.

Research and private study exceptions:

- We agree that the exception for research and private study should be expanded to cover all forms of content, including sound and film recordings, broadcasts, on-demand communications and digital materials.
- The full exception for research and private study must apply equally to researchers and students in all fields, including the sciences. Scientists use copyrighted materials – including sound and film recordings – for research in ways not represented in the UK-IPO consultation document, as described further in paragraphs 6 and 7 below.
- Whether an activity is eligible for the research and private study exception should depend upon the character and intent of the activity, rather than where it takes place or affiliations of the researcher. Limiting eligibility to researchers and students registered with an academic institution could exclude important research taking place in other

contexts. For example, medical researchers may have affiliations with independent research institutions or the NHS, rather than academic institutions.

- There is no clear distinction between research and private study. The exception should continue to apply to both, to the extent that there is any difference between them.

Library privilege exceptions:

- Library privilege exceptions must be updated to allow the production of multiple copies of items for preservation, particularly to preserve materials as formats become obsolete.
- For the expanded research and private study exception covering sound recordings, films and other materials to operate in practice, library staff must be able to make copies of these materials on behalf of researchers. Researchers could not normally operate the necessary equipment themselves. The involvement of trained library staff would also add an extra layer of protection for rights holders.

4. The following sections elaborate on some of these issues in greater detail.

Research and private study exceptions

5. We strongly support the extension of copyright exceptions for research and private study to cover sound, film, broadcasts and on-demand communications. Copyright law should be format-independent and should not discriminate between different modes of presenting information. We would envision the research exception being used in two types of situations:

- When researchers possess an authorised copy of a copyrighted work, and need to copy a portion of it in the course of conducting research; and
- When researchers do not have their own copies of a copyrighted work and need to obtain an extract held by a library or archive in order to study it.

6. As noted above, eligibility for the research exception should depend on the character and intent of the activity, rather than the affiliation or location of the researchers, or the format of the material. The expanded exception definitely must cover all fields of study, and must not exclude fields such as law, economics, medicine or science. Researchers in all fields would benefit from the assurance that 'fair use' for research applied to audio-visual material. In the course of medical studies in disciplines such as neuroscience, psychology, audiology and other disciplines investigating human perception, it is sometimes necessary to expose study participants to audio or visual stimuli taken from copyrighted material. In most cases, such material could be purchased commercially, but researchers might need to copy it into a different format in order to present it to study participants (e.g., a short clip from a DVD may need to be copied onto a computer hard drive so its display can be synchronised with the recording of a participant's response). If a study were examining participants' reactions to particular features of a stimulus, the work might need to be analysed by a computer programme, which could also result in all or parts of it being copied – albeit fleetingly.

7. In the course of Wellcome Trust funded neuroscience and mental health projects, researchers have needed to use:

- Virtual reality simulations – The Trust has funded researchers who use simulations to study memory and brain activity as people navigate large-scale spaces, such as cities. MRI techniques require subjects to lie in a brain scanner, so virtual reality simulation is the only way to investigate many research questions in this context. Simulations may require naturalistic settings including copyrighted work – for example, background music. A recording would need to be copied into a different format to incorporate it into the virtual reality environment.

- Artistic works – To advance the understanding of the neural and biological basis for beauty, the Trust recently awarded a major grant in neuroaesthetics which will involve investigation of brain responses to pictures, music and other materials.
 - Sound recordings – Trust funded researchers have studied people who fail to appreciate music, looking at sound processing. This involves delivering auditory stimuli to research participants.
8. Rights holders would be unlikely to pursue biomedical researchers for using material as described here, since research uses are not competing with their normal exploitation of the material. Nonetheless, one could imagine a situation in which a rights holder might find it convenient to use copyright infringement as an excuse to halt research activity that cast a particular work or category of works in a negative light, e.g., if research found that a particular type of film induced violent thoughts in people.
 9. Imposing different restrictions on researchers designated as being in arts/ humanities versus science could make interdisciplinary collaborations more difficult. The Wellcome Trust regularly supports productive collaborations between scientists and artists through our Arts Awards and Public Engagement funding schemes.
 10. Another consideration in designing the research exception is that digital video and sound recordings may come to constitute important components of scholarly publications in biomedical or other sciences. Scientific journals are increasingly able to place supplementary materials on their websites. These materials often include additional data, figures or illustrations, but in the future may also include more video or audio materials – perhaps including some types of primary data. Researchers should be able to build upon these materials to advance research in the same way that they might use a portion of text or a graph.

Library privilege exceptions

11. Libraries, archives and museums must have the freedom under copyright law to make multiple copies of all works in their possession for archiving and preservation. This should include the freedom to make digital copies of all classes of works and, where necessary, the ability to format shift and circumvent any technical protection measures. We strongly support the proposal to amend s. 42 of the Copyright, Designs and Patents Act (1988) to enable libraries, archives and museums to do this. These institutions have a vital role to play in ensuring the preservation of the cultural and educational heritage of the UK in hard copy as well as digital form.
12. Archival materials entrusted to the Wellcome Library are increasingly provided as electronic documents. For organisations that have moved to 'paperless' working environments, archival material deposited in libraries will consist solely of electronic documents. Libraries must be able to make successive copies of these types of materials as format standards progress, and to retain backup copies. Some digital material has already become inaccessible due to formats becoming obsolete and unreadable. Well known examples include data gathered during early space missions in the 20th century, and some US Census data. Historical sea temperature recordings going back hundreds of years, which are now being used to study climate change, are a good example of archival data whose importance has only recently been recognised.
13. We see no reason to place an arbitrary limit on the number of copies that libraries may make for preservation. As long as the exception specifies the purposes to which the copies may be put, the precise number of copies made should not affect the rights holder. We cannot predict how many times format standards will change in the future, and therefore how many times materials will need to be copied to new formats to preserve their accessibility. Likewise, it is difficult to make a general statement about how many simultaneous digital copies of a work should be held, given advances in best practice and electronic storage technology. It is

important to note that digital preservation is not the same as providing an access copy. As other libraries have noted, rights holders themselves will benefit from the preservation of their work digitally, in perpetuity.

14. Web archiving, the preservation of copies of web pages available at a given point in time, should also be considered as the exceptions are modified. Much information is published only on the web, but as web pages are edited, older pages disappear without a trace. The British Library will have the right to archive such digital material, including the UK web domain, but specialist institutions may need to be involved as well. Format shifting will be needed to maintain web archives, like other digital archives.