

Copyright and Research in the Humanities and Social Sciences: a British Academy Review

Through its series of research-related reviews, the British Academy seeks to examine issues crucial to the condition and health of its areas of interest. Professor John Kay FBA, Chairman of the British Academy's Copyright Working Group, reports on the main findings and recommendations of the Review.

The Review of copyright and research in the humanities and social sciences was set up because the Academy was concerned that recent developments in technology, legislation and practice had meant that the various copyright exemptions, designed to enable creative and scholarly work to advance, were not always achieving the intended purpose, and that as a result research was being hindered.

We received evidence that the concerns were justified. This led the Working Group to make some firm recommendations to government and to scholars, and to issue draft guidelines to guide academics in this complex and uncertain legal area.

Creative activity requires protection of the moral and economic rights of the creators of

original material on the one hand, and the opportunity to use and develop existing material in new and original forms on the other hand. The maintenance of that balance is a difficult and delicate task, and the Review's findings show that in recent years that balance has swung too far in the direction of protecting existing material at the expense of facilitating the development of original material.

The Review reached the following conclusions:

- The fair dealing exemptions provided by copyright law should normally be sufficient for academic and scholarly use.
- Many problems lie in narrow interpretation of these exemptions, both by rights holders and by publishers of new works that refer to existing copyright material. These problems are acute in some subjects, particularly music, and history and film studies.
- Copyright holders have become more sensitive in defence of their rights as a result of the development of new media, and are more aggressive in seeking to

maximise revenue from the rights, even if the legal basis of their claims is weak.

- Risk-averse publishers, who are often themselves rights holders, demand that unnecessary permissions be obtained, and such permissions may be refused or granted on unreasonable terms
- There is an absence of case law, because the financial stakes involved in each individual case are small relative to the costs of litigation.
- Publishers and authors are uncertain as to the true position, and misapprehensions are widespread.
- There are well-founded concerns that new database rights and the development of digital rights management systems may enable rights holders to circumvent the effects of the copyright exemptions designed to facilitate research and scholarship.

These findings led us to make ten recommendations which are detailed in the main report, published in September 2006, and available on the Academy's web site at www.britac.ac.uk/reports/copyright. Five key recommendations are listed below.

- Authors and producers of original creative material should understand that their interests in copyright are not necessarily identical with those of publishers and should not rely on publishers to protect them
- Copyright must therefore provide reasonably broad and practically effective exemptions for research and private study and for criticism or review. The lively development of new cultural material is a principal objective of copyright protection.
- The law should be clarified – statutorily if necessary – to make clear that the use of copyright material in the normal course of scholarly research in universities and other public research institutions is covered by exemptions from the Copyright Act.
- Publishers should not be able to use legal or technological protection through digital rights management systems to circumvent copyright exemptions
- The growth of digital databases should be monitored to ensure that ready access continues to be available for the purposes of scholarship

To help address the current uncertainties and confusions about the scope of copyright exemptions, the Working Group produced a

new set of guidelines based on the general principles outlined in the report. The guidelines cannot represent a statement of the law, but they aim to clarify the current situation and it is hoped will have considerable moral force in the event of dispute. The guidelines are available on the Academy's web site at

www.britac.ac.uk/reports/copyright

In December 2005, the government set up the Gowers Review to address concerns that the UK's intellectual property regime was not keeping pace with changes resulting from globalisation and technological developments. The Academy's Working Group responded to its call for evidence, and seems to have been influential as many of the Academy's recommendations were reiterated by the government's Gowers Report (published December 2006). While Gowers undoubtedly moved the debate on and marked a welcome stop to the gradual extension of copyright that we have seen in recent years, it did not fully address the Academy's primary concern about the need for clarification of the UK's 'fair use' exceptions. The Working Group is therefore looking at ways in which it might exert influence on national and international debate and policy-making in this area.

As part of this work, the Academy held a follow-up conference on 30 March 2007

in association with the AHRC Centre for the Study of Intellectual Property and Technology Law at the University of Edinburgh. The discussion was lively, exploring the issues from two contrasting perspectives – copyright owners (those who generate, own, and administer copyrights) and copyright users (those who wish to use copyright material as the foundation for the development of new knowledge). The conference assessed the Academy's report in the wider context of the reform agenda provided by the Gowers Report, and gave the Academy's Working Group a useful steer on the ways in which its recommendations should best be taken forward in order to have maximum impact. The Working Group is excited by the prospect of following up many of these leads in the months to come.

The report and guidelines are available from the Academy's web site at
www.britac.ac.uk/reports/copyright

The members of the Academy Working Group are: Professor John Kay (Chairman); Professor Bob Bennett (Chairman, Research Committee); Professor David Cannadine; Professor Nick Cook; Professor Bill Cornish; Professor Hector MacQueen; Professor Mike Murphy; and Professor John Stallworthy.
