

UK Intellectual Property Office  
Consultation on Copyright Exceptions

- A submission by the UK Film Council

April 2008

## Executive Summary

1. The UK Film Council welcomes the opportunity to make this submission to UK Intellectual Property Office consultation on Proposed Changes to the Copyright Exceptions.
2. The UK Film Council is the Government backed lead agency for film in the UK ensuring that the economic, cultural and educational aspects of film are effectively represented at home and abroad. Our goal is to help make the UK a global hub for film in the digital age, with the world's most imaginative, diverse and vibrant film culture, underpinned by a flourishing, competitive film industry.
3. The UK Film Council adheres to its view set out in its response to the Gowers Review that:

“the foundation of the UK's IP regime in the digital age should essentially be founded upon an appropriate balance between the need to incentivise creation and innovation on the one hand, and the need to maximize the social and cultural benefits of such creativity and innovation on the other. The economic gains which accrue from the exploitation of IP are crucial to the development of the UK's film sector and its creative industries more generally, most especially to SMEs. But these economic gains should not be made at the expense of restricting the ability to legitimately enhance access to creative material which is made possible by digital technology.”<sup>1</sup>
4. Most of the exceptions which are being consulted upon in this consultation relate to educational or archival issues, with the exception of Recommendation 8 on Format Shifting and Recommendation 12 on Caricature, Parody or Pastiche.
5. The British Film Institute is funded by the UK Film Council to deliver cultural and educational objectives around film and the moving image. It has made its own submission to the UK-IPO on the current consultation. With the exception of Recommendations 8 and 12 therefore, the UK Film Council has made general comments of principle on the Recommendations at hand but we would wish to endorse the detailed comments made by the BFI in respect of these Recommendations. Like the BFI, the UK Film Council welcomes the general thrust of the proposed exceptions as they will help our joint cultural and educational policies to be delivered more effectively, particularly in a digital age. They will also contribute to media literacy

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<sup>1</sup> [http://www.hm-treasury.gov.uk/media/9/A/uk\\_film\\_council\\_497\\_43kb.pdf](http://www.hm-treasury.gov.uk/media/9/A/uk_film_council_497_43kb.pdf)

in an age when to be literate means to be as familiar with images on a screen as with text on a page, and to be as confident with a camera or a keyboard as with a pen.<sup>2</sup>

6. With respect to Recommendation 8 in particular however, the UK Film Council wishes to reserve its position until after its Board meeting on April 29 at which this matter will be discussed.
7. We note the definition of film as contained in Section 5 of the Copyright, Designs and Patents Act (1988 as amended) and assume that this applies throughout the consultation wherever the word "film" is used even though this is not explicitly stated
8. "'film' means a recording on any medium from which a moving image may by any means be produced."<sup>3</sup>
9. We assume therefore that the term "film" for the purposes of the present consultation on exceptions includes user-generated content distributed via the internet via services such as YouTube. But equally we assume that it does not include material distributed either physically or electronically which infringes copyright. Thus, the exceptions would not apply to infringing material even though it might qualify as "film" under the CPDA definition.

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<sup>2</sup> The UK Film Council is a founding member of the Media Literacy Task Force:  
<http://www.medialiteracy.org.uk/taskforce/>

<sup>3</sup> [http://www.legislation.gov.uk/acts/acts1988/ukpga\\_19880048\\_en\\_1](http://www.legislation.gov.uk/acts/acts1988/ukpga_19880048_en_1), Section 5.

## **EXTENSION TO EDUCATIONAL EXCEPTIONS TO INCLUDE DISTANCE LEARNING RECOMMENDATION 2**

1. What impact would the expansion of the educational exceptions have? What costs or benefits would accrue to right holders and users of copyright?

**We believe that the general expansion of educational exceptions is to generally very much welcomed. The UK Film Council recognises that in a digital age, the way in which people learn, and the “place” in which they learn is changing. Moving images of all kinds are, increasingly, a central feature of the way in which people learn. Lifelong learning outside traditional educational establishments and distance learning are now widespread. These exceptions will help to ensure an effective expansion of learning.**

### **Section 35 (Recording by educational establishments of broadcasts)**

2. Should section 35 be extended to allow educational establishments to record on-demand communications in addition to traditional broadcasts?
3. If so, should the recording of an on-demand service be permitted only where the work in question was subject to an original broadcast? Would this restriction be practical?

**We do not see the necessity of, nor the logic for, an extension to this exception to on-demand communications where there is no restriction on the amount of time for which the material may be available. Where such a restriction exists, for example in relation to “catch-up” services content where material is made available for a specified period of time we believe that the exception should be extended to ensure that educational establishments are able to record the material even if it is no longer available through the specified service.**

### **Secure Environments**

4. Do you agree that access should be subject to security measures, such as the requirement to enter a secure password in order to access a recording? What other security measures might be appropriate?
5. Who should be able to view recordings made by an educational establishment in a VLE? Is the reference to “teacher and pupils at an educational establishment and other persons directly connected with the activities of the establishment” in section 34 sufficient or too widely cast?

6. What level of responsibility should an educational establishment have for maintaining the security of a password protected VLE?
7. How should onward communication beyond a secure environment be prevented?

**As set out in response to Question 1, the way in which learning takes place is fundamentally changing. It is logical therefore that as Gowers proposed Section 35 should be expanded to enable a copy of a broadcast to be communicated to students who are not located within an educational establishment.**

**We believe that it is imperative that educational establishments should put in place, and be responsible for, maintaining, effective security measures to prevent unauthorised access to material. This is to prevent excessive harm from copyright theft and infringement.**

**With regard to the definition of an “educational establishment” we strongly support the BFI’s view that the UK-IPO should consider extending the definition to nominated educational bodies possibly enabled and validated through relevant Government departments.**

#### **Section 36 (Reprographic copying by educational establishments of passages from published works)**

8. Should limits be placed on the form of communication used by educational establishments to communicate extracts to distance learners?
9. Should the expanded exception be limited to communication inside a VLE?
10. Should communication by email outside a VLE be permitted?

**If the scope of Section 36 is extended to cover film, as the consultation proposes, we would wish to make a number of points in relation to the above questions. We believe that there needs to be a clear, unambiguous definition of a VLE. This definition should be flexible enough to ensure that students who are engaged in lifelong learning and/or distance learning within educational establishments are able to access the material needed for their studies. As suggested above (after Q.7) we would see merit in a possible extension of the definition of educational establishments to other nominated educational bodies beyond those currently within scope so that they too could operate VLEs.**

However, the communication of material outside VLEs thus defined should not be permitted. This is to prevent excessive harm from copyright theft and infringement.

### Secure Environments

11. Do you agree that access should be subject to security measures, such as a requirement to enter a secure password in order to access the recording? What other security measures might be appropriate?
12. Who should be able to access extracts made available by an educational establishment in a VLE? Is the reference to “teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment” in section 34 sufficient or too widely cast?
13. What level of responsibility should an educational establishment have for maintaining the security of a password protected VLE?
14. How should onward communication beyond a secure environment be prevented?

### Classes of Work

15. Should section 36 be expanded to include classes of work other than short extracts from published literary, dramatic and musical works? If so, what classes of work should be included?
16. What consequences would such an amendment have on rights holders?
17. What benefits would there be for educators?
18. If the exception is expanded to other works, what limits should be placed on the size of extracts? Would the application of existing limits to other works be desirable or practical?

**We believe that Section 36 should be expanded to include film given the increasing importance of moving images within education as previously mentioned. We endorse the BFI’s detailed remarks on the remaining questions in this section.**

## EXTENDING THE EXCEPTION FOR COPYING FOR RESEARCH AND PRIVATE STUDY RECOMMENDATION 9

General questions:

30. What impact would the expansion of the exception for research and private study have?
31. What benefits can the expanded exception be expected to deliver?
32. What might be the impact of the expanded exception on rights holders and other affected parties?
33. Should the expanded exception cover both research and private study?
34. Should all types of work be covered?
35. Should the expanded exception cover all fields of study or just specific areas?
36. What action, if any, should be taken to address possible concerns about misuse of the expanded exception?

**As the BFI notes in its submission, a distinction needs to be drawn between research and private study. Bona-fide "research" is a category that could be defined in a clear and transparent fashion. "Private study" is a vague term. The UK Film Council supports the BFI's view that the wording in relation to these definitions will need to be tightly-drawn to protect the interests of rights-holders and to be compatible with the Three Step Test.**

The benefits of an expanded exception

37. Do researchers and students experience difficulties getting permission to make copies today?
38. Are areas of research and study not being pursued as a result of issues regarding permissions for film, sound recordings and broadcasts?
39. What benefits might an expanded exception deliver for researchers and students, for educational establishments and research institutions and for society overall?

**We endorse the detailed comments within the BFI submission on these questions.**

Scope of the expanded exception: research and private study

40. Are there reasons why the expanded exception should be limited to 'research' rather than covering both research and private study?
41. If the expanded exception is limited to 'research' is it necessary to set a clear boundary between research and private study in order to avoid confusion?

**We endorse the detailed comments within the BFI submission on these questions.**

Scope of the expanded exception: classes of works to be covered

42. Are there reasons why the expanded exception should not apply to all works i.e. including films sound recordings and broadcasts?

**We endorse the detailed comments within the BFI submission on these questions.**

Scope of the expanded exception: fields of study

43. Is there a pressing need for action in particular areas of research or fields of study where current progress is being constrained by the current exception?
44. Should the expanded exception apply to all areas of research and study?

**We endorse the detailed comments within the BFI submission on these questions.**

The scope for misuse of the expanded exception

45. Is it necessary to limit the scope of the expanded exception to prevent intentional misuse? If so how should it be limited? For example, would guidance on fair dealing be useful? Should there be a formal link to a course of study or research establishment?
46. Are steps needed to make the boundaries of the expanded exception clear to researchers and students so as to prevent misunderstanding? If so, what steps should be taken?

**We endorse the detailed comments within the BFI submission on these questions.**

Digital Rights Management

47. Should a DRM workaround be provided for all copying under the expanded exception or should the workaround just be limited to scientific research in line with EU law requirements?
48. What impact might a broad DRM workaround have on rights holders?
49. If a narrower approach is adopted, is it necessary to adjust the current arrangements for literary and other works to ensure consistency in this area?

While we believe that a DRM workaround should apply to works within the expanded exception, we recognise that rights holders will have considerable concerns about such a workaround and its impact. As the BFI suggests, a trusted third party provider could have an important role to play in ensuring that the exception operated in the way intended without harming the interests of rights holders.

#### AMENDMENT OF LIBRARY PRIVILEGE EXCEPTIONS TO EXTEND PERMITTED ACTS FOR THE PURPOSES OF PRESERVATION RECOMMENDATIONS 10A AND 10B

50. What impact would the expansion of the exception for libraries and archives have? What costs or benefits would accrue to right holders and users of copyright?

#### Classes of work

51. What are the consequences, for rights holders and beneficiaries, of extending section 42 to cover all classes of works?

#### Number of Copies

52. Is it necessary to restrict the number of copies made for preservation purposes?
53. If so, why, and how many copies should be permitted?

#### Scope of organisation covered

54. What would be the impact on rights holders if section 42 was extended to cover museums and galleries?
55. What types of museums and galleries should be included? What criteria should they meet to qualify?

**We strongly support this exception. The BFI National Archive and other National, regional and private archives in the UK have an**

increasingly important role to play in making material available to the public for purpose of enjoyment and learning. As the BFI make clear in their submission the lack of such an exception has been an obstacle to it conducting its essential preservation work. This, in turn, inhibits access to useable copies of material both now and in the future. We endorse the detailed comments on this exception made in the BFI's submission.

## CARICATURE, PARODY OR PASTICHE EXCEPTION RECOMMENDATION 12

56. What impact would the introduction of an exception for parody have? What costs or benefits would accrue to right holders and users of copyright?

### Fair dealing

57. Could an unlimited exception undermine the interests of owners of copyright in the underlying work by allowing advertising or the endorsement of products which are contrary to their commercial interests?
58. If so, would framing the exception as a 'fair dealing' exception address the problem adequately?

### Acknowledgement

59. Should the exemption for parody include a requirement to acknowledge the underlying work and its author?

### Definitions

60. Is the ordinary meaning of the terms caricature, parody and pastiche sufficient?

### Classes of work

61. Is there any reason for excluding particular classes of work from the exception?

### The rights affected

62. Should the exception only apply to certain exclusive rights of a copyright owner or to all such rights? If the exemption is to be limited, how should it be limited and why?

### Work publicly available?

63. Should the exception explicitly state that it only applies where the underlying work has been made available to the public?

Parody only of the underlying work?

64. Should the exception only apply where the parody relates specifically to the underlying work?

Moral rights

65. Is there any reason why section 79(4) should not be extended to exempt parodies from the right of attribution?

66. Is there any reason why sect

**The UK Film Council has not seen any evidence that such an exception is required in respect of film. We cannot therefore support the case for introducing such an exception.**

30<sup>th</sup> April 2008

Gowers Copyright Consultation  
Copyright and Intellectual Property Enforcement Directorate  
UK Intellectual Property Office  
Concept House  
Cardiff Road  
Newport  
NP10 8QQ

Dear Sir or Madam,

**Proposed Changes to Copyright Exceptions – Recommendation 8 Format Shifting**

Thank you for allowing the UK Film Council more time to consider the specific Recommendation on format shifting in relation to the above consultation, subsequent to the submission we have made on the other Recommendations.

After detailed discussion at a Board meeting yesterday, we wish to reserve our position on the merits or otherwise of introducing a format shifting exception which would include film.

We take the view that there is currently insufficient evidence to determine the clear benefits, or indeed the confusion, which might be brought about by introducing such an exception. In the context of film, this is a time when business models are going through a period of accelerating change, and therefore it would be premature for us to support this Recommendation.

We believe that there are other, more pressing issues currently facing the film industry in relation to intellectual property rights including matters relating to education, access, copyright theft and infringement on which the evidence base is much clearer.

Some of these issues are being addressed in the context of the current consultation and in the overall work which is being done by Government to take forward the recommendations of the Gowers Review. We very much welcome the proposed Government interventions in these areas, as we have indicated in our submission and in discussion with officials.

Yours sincerely,

John Woodward  
Chief Executive Officer  
UK Film Council.

cc David Humphries, UK IPO.