

# Changes to Copyright Law: Guidance for USW Staff and Students

## June 2014

On 1<sup>st</sup> June 2014 a number of significant amendments to the Copyright, Designs and Patents Act 1988 (CDPA) came into force in UK law. Three Statutory Instruments have been used to amend the law. These may have an impact on you if you are copying for any of the following purposes:

- for non-commercial research and private study;
- for education/instruction purposes;
- copying for persons with disabilities; or
- you are a librarian or archivist.

We are also expecting some additional changes to copyright law later in the year. These changes are part of the government's attempts to modernise copyright laws and make them fit for the digital age. This guidance attempts to set out the key changes and how they might impact on your work at USW. Please note that this guidance does not constitute legal advice.

## Be aware:

Before describing the new legal changes there are a number of caveats to consider:

- While the changes are generally of benefit for education and research, they do need consideration on a case by case basis.
- a number of the exceptions need to be understood against the backdrop of available University licences
- the 'fair dealing' test becomes even more important and this will involve judgements by those doing the copying/communication.

## Copying for non-commercial research

*If you are a researcher or student at USW, this change to copyright is significant to you.*

Section 29 of the CDPA permits a researcher or student to make single copies of small amounts of a copyright work, e.g. photocopying a book chapter or a journal article for private non-commercial research or private study. This part of the Act has been extended to allow you to copy all categories of copyright works (not just

## Changes to Copyright Law: Guidance for USW Staff and Students

literary works but sound recordings, films, etc.) but only for private study or non-commercial research.

Additionally the exception is now not subject to a contract override which means that you can copy without needing to check a licence agreement.

A new section 29A: Text and Data Analysis has been added to the CDPA. This now allows text and data mining technologies to be used for the purposes of non-commercial research. A proviso is that you must have lawful access to the resource, e.g. via a personal or University subscription.

### Copying for the purposes of education

#### *Copying for instruction*

*If you are a lecturer at USW this change to copyright is significant to you.*

Section 32 of the CDPA relates to copying for the purposes of instruction and this exception has been widened. The law previously said that you could copy for the purposes of instruction *provided a reprographic process was not used* e.g. photocopying or scanning. This restriction has now been removed from the law, so now you can use films, sound recordings and broadcasts.

You can display material on interactive whiteboards, in PowerPoint, or on the VLE but you must include a sufficient acknowledgment.

However, **please be aware** that this exception is subject to 'fair dealing' so it is restricted to a small proportion of the work and must be illustrative of a subject you are teaching. This exception cannot be overwritten by contract so you do not need to check a licence before copying. You will need to judge what constitutes 'fair' and it has been suggested that this might mean displaying low resolution images or making material available for a limited amount of time.

We would still recommend that you use copyright free images or those licensed under Creative Commons for use in teaching wherever possible.

#### Examinations

The amendment to Section 32 has removed the *examination exception* from the law (which permitted any copyright material apart from sheet music to be copied for the purposes of setting an examination or communicating the results. This means you will need to rely on the copying for instruction exception for copying for examinations, and the amount of copying must be fair.

# Changes to Copyright Law: Guidance for USW Staff and Students

## ***Multiple copying for teaching purposes***

If you wish to include extracts of published content on the VLE or distribute course packs or photocopies to students, staff will still need to comply with the University's Copyright Licensing Agency (CLA) Licence. This means the procedures for scanning still need to be undertaken by library staff to ensure material is covered by the licence and is reported to the CLA.

Section 36 of the CDPA covers copying and use of extracts of works by educational establishments and this now allows 5% of a work to be copied in a year across an institution. However, this section states that where a licensing scheme exists that it will take precedence over the exception, which means most photocopying and scanning of published material must still be undertaken under the CLA Licence. It might be possible to copy content excluded from the CLA Licence under this exception, but because the limit applies across the institution teaching staff should not rely on this exception to include extracts of copyright works on The VLE and should still contact the Copyright Officer who can advise.

## **Copying of broadcasts**

Section 35 of the CDPA covers the recording of broadcasts by educational establishments and this now permits the recordings to be communicated off the premises via a secure electronic network. This means recordings can be placed on the VLE and delivered off-campus (within the UK only). This exception is trumped by a licensing scheme and so staff wishing to use recorded broadcasts will need to comply with the University's existing Educational Recording Agency (ERA) Licence when recording of broadcasts from ERA members (BBC, ITV, Channel 4, Channel 5). Please seek advice from Media Services for assistance in using broadcast media for educational purposes.

## **Copying for persons with disabilities**

*This section relates to copies that USW might wish to make for students or staff with a disability to allow them to access material in a suitable format.*

Previously, copying to make an accessible version of copyright material was permitted only for persons with a visual impairment however this has been extended to cover all types of disabilities, including dyslexia.

It also covers all formats of works including films and sound recordings and contract terms will not override the exception. However this exception will only apply where an accessible copy is not available commercially at a reasonable cost.

## Changes to Copyright Law: Guidance for USW Staff and Students

For example you can now subtitle a work for disabled learners. However if there is an accessible version available to purchase you must do this. If you wish to prepare copies for staff or students with disability please contact the University's Disability & Dyslexia Service.

### **Copying by libraries and archives**

*There are a number of amendments to the CDPA in respect of the copying that can be undertaken by libraries and archives. This guidance is intended for staff in USW's libraries as it governs the copying they can do of their collection and for users.*

Sections 41 & 42 which are known as Library Privilege, covers the single copies of works that libraries are permitted to make for other libraries (usually for inter-library loan purposes). From 1<sup>st</sup> June the declaration form and requirement to charge for these copies will be dropped. The form will be less prescriptive allowing for it to be signed digitally. Copies of any published work can also now be made.

Section 43 covers the copying of unpublished works by libraries and copies of all types of copyright works can now be made for the purposes of non-commercial research or private study. Again there must be some form of declaration signed by the user, but this can now be in a digital format.

### *Copying for preservation*

Section 42 is the exception that allows libraries and archives to copy works for archival and/or preservation purposes. This has been extended to now cover all categories of copyright works (including film and sound recordings), provided the item is in the permanent collection and it is not practical to purchase a replacement. There is also no contractual override permitted.

A new exception has been introduced, Section 40B, which permits libraries and archives to make digitised in-copyright works available through 'dedicated terminals.' This will allow digitised collections to be viewed on site for research and private study. The exception is limited to educational establishments and it is subject to any licence pertaining to the work.

Finally folksongs and broadcasts can now be recorded by the Library, whereas previously this could only be undertaken by specially designated libraries and archives.