



British Universities Film & Video Council (BUFVC)

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The British Universities Film & Video Council (BUFVC), which was established in 1948, is a national representative body which is part-funded by the Joint Information Systems Committee of the Higher Education Funding Councils. The BUFVC promotes the production, study and use of moving image and related media for degree-level teaching and research in the UK and, in the process, offers a range of specialist services to staff working in subscribing member institutions. Increasingly the BUFVC is arranging for the delivery of specialist moving image and sound content and associated metadata online to staff and students in UK higher education.

Background – recorded moving image and sound and scholarly access

It is important to understand that, although there have been more than 100 years of recorded moving image and sound, there are still no statutory arrangements in the UK for the deposit of copies of works in national libraries or archives alongside print publications. While certain arrangements have been made for deposit and retention of content under broadcasting legislation, these arrangements are piecemeal and do not match the coherent policies applied to printed text.

As a result, for film and broadcasts there is (i) no unified national catalogue, (ii) no co-ordinated research access, (iii) no inter-library loan and (iv) no efficient licensing arrangement which would allow the copying and use of content to support scholarship. In consequence, the media of recorded moving image and sound remain immature as scholarly assets and are not embedded systematically in academic study and teaching.

If we permit this to continue into the 21st Century, a great deal more audio-visual content and its context will be lost to future generations, for it is necessary to encourage a culture of access, evaluation and reuse to justify the ongoing storage and curation of content with public monies.

Moving image and sound content is therefore currently less accessible and more vulnerable to complete loss than printed text counterparts. This is because relatively few storable copies are created in the publishing process – and this is especially true for broadcast works. Legitimate copying of broadcasts by a devolved network of libraries for the purposes of storage and scholarly access is not possible without an appropriate blanket copyright exception for ‘designated archive status’, as described in **Section 75** of the CDPA 1988. Unfortunately, this Section has not operated in the most efficient manner during the last five

years because the process of designation by government has tended to be side-lined by the Copyright Directorate of The Patent Office. Following an earlier application in 2004, which did not receive a formal response, in 2005 the BUFVC made a joint approach for 'designated status' with a group of other organisations. At the time of writing, at least seven bodies have requests outstanding to be considered for designated archive status under Section 75.

These are:

The British Universities Film & Video Council (BUFVC)

The National Museum of Science and Industry (NMSI)

The North West Film Archive (NWFA)

The Royal Anthropological Institute (RAI)

The Tate

The Theatre Museum

The Wellcome Trust

A letter of 24th February 2006, received from Mark Bryant of The Patent Office, has explained that the process is on hold pending the outcome of the Gowers Review.

We urge the Gowers Review to ensure that the process for obtaining 'designated archive status' under Section 75 of the CDPA 1988 is sustained and used to support the development of a larger network of trusted bodies to record, store, catalogue, contextualise and provide access to formally broadcast content for the purposes of non-commercial viewing and research. The benefit of such a move will be to ensure greater resilience of and devolved access to the national audio-visual collection.

The BUFVC's interest, on behalf of its members in UK higher education, lies in securing long-term access to and use of time-based media for scholarship, research and teaching. These interests were partly addressed in the CDPA 1988 with the inclusion of **Sections 34 and 35** supporting copying and re-use of formerly broadcast content by educational establishments. As a result, during a period of more than 15 years, there has been greater freedom than hitherto to build and retain collections of broadcast television and radio for learning, teaching and research. The 1988 legislation placed responsibility on the shoulders of the broadcasters and rights owners to arrange appropriate licences which would be suitable to support the needs of education. The Educational Recording Agency licence was then born. It was an elegant solution to a difficult problem and has operated successfully since 1990. The BUFVC has operated with the agreement of the ERA to record and retain copies of broadcasts as a 'back-up service' on behalf of licensed institutions. There is now significant pressure by licensed institutions to deliver remote online access to content from these collections for bona fide students and staff under secure authentication to support teaching and research. The majority of broadcast rights owners and their representatives recognise the merit of developing such licensed access as an extension of the existing

agreement. However without an underlying regulatory framework which is supportive of such a move this may be only partially achieved.

We urge the Gowers Review to explore the operation of Sections 34 and 35 of the CDPA 1988 with a view to encouraging an extension of the current licensing arrangements to provide for secure 'off the premises' access to formerly broadcast content by bona fide staff and students of licensed UK educational establishments.

In 2003, with the implementation of Statutory Instrument 2003 No 2498, education was excluded from copying and retaining for teaching purposes copies of content from 'cable services' and 'on demand' services – although broadcasts, under a new definition, could still be retained. This change, which was not subject to regulatory impact assessment, created a fog of misunderstanding which persists. 'Listen again' services, for instance, may no longer be recorded for subsequent use under licence whereas the original broadcast, if recorded at the time of transmission, may be recorded and retained under section 35 of the CDPA 1988.

The effects of the implementation of SI 2498 on established exceptions to copyright should be assessed and any anomalies which have been created should be addressed through an underlying legal framework which would support the extension of efficient licensing arrangements for copying and re-use in education.

Licensing of broadcast news content for re-use in education

Certain genres of broadcast content, by their very nature, are transient, not repeated and of low commercial value. Some, indeed, are created using the Section 30 copyright exception in the process of 'criticism, review or news reporting'. A significant difficulty is presented here by news output which is generally collated fast, on the fly, from a wide range of sources for immediate use. Close inspection of news content as transmitted reveals a patchwork of ownership which is barely catalogued and this is an almost insoluble problem from the point of view of rights clearance for consistent post-transmission access and use in education. While Section 35 of the CDPA 1988 has been helpful in overcoming some of these problems for recording under licence since 1989, the development of secure online services to support education using broadcast news content has been severely hindered. Paradoxically, the old cinema newsreel companies have been able to proceed with providing access to their content which is predominantly owned by them. It is the underlying 'granularity' of ownership of third party content in broadcast television news output which should be addressed from a licensing perspective to unlock the resource for greater educational access and re-use.

We would encourage the Gowers Review to examine closely the possible options for providing a legal framework which would support the development of pragmatic and elegant licensing arrangements (to support distributed educational and research access) to all broadcast news including third party content. Such a framework should be capable of being applied retrospectively as well as for future broadcasts.

As a post-script, the BUFVC wishes to endorse the detailed points raised in the response to the Gowers Review which has been delivered on behalf of Universities UK and the Standing Conference of Principals by their advisor Professor Sol Picciotto of Lancaster University Law School. Their proposal is in line with the views expressed above and we would encourage the Gowers Review to give full consideration to reform of the licensing framework for educational and research access.

MJW

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