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## **Gowers Review of Intellectual Property: Call for Evidence**

### **Response from Cambridge Assessment**

Cambridge Assessment is a department of the University of Cambridge and is a not-for-profit organisation. UCLES was established in 1858 with the vision of promoting the public good by regulating and raising assessment standards. Cambridge Assessment is the modern face of this ambition, contributing to the future by building on the University's educational and scientific heritage.

Effective assessment offers guidance – to individuals, companies and nations. It enriches lives and influences decisions, broadens horizons and shapes futures. Qualifications are an international currency of opportunity, and assessment gives them value.

As Europe's largest assessment agency, Cambridge Assessment plays a leading role in developing and delivering assessment across the globe, by offering qualifications through three examination boards: Cambridge ESOL, University of Cambridge International Examinations and OCR.

### **GENERAL QUESTIONS**

#### **1. How IP is awarded**

*(a) Are there barriers to obtaining IP rights due to system complexity? What can be done to improve this situation?*

Yes. The system automatically provides total protection for works, where owners may be more interested in protecting some rights. This creates a barrier to IP consumers who assume that an IP license will be denied.

The emphasis of an IPR system should be on *granting* rights, not protecting them. A simple tiered system like Creative Commons allows IP owners to protect their work as it needs to be, rather than as much as it can be.

*(b) How easy is it to find out about obtaining IP rights? What could be done awareness for businesses and innovators? Is there sufficient awareness protect IP internationally?*

Not very easy. Few people know about the group/industry licensing companies, many copyright owners (notably private individuals or SMEs) don't know their own rights as a copyright owner, or fully understand the rights they are giving, or what limitations can be included.

The need to protect IP is well known, but what IP is and how to license it are not and government supported awareness programmes focusing on these areas would help both in business and privately. (e.g. PC users get to understand the laws they are breaking as they download MP3s)

NB: Licensing companies should have provision made for them in legislation. Currently, they operate just outside legislation (as far as I am aware) which is dangerous because they can (and many are) exploiting the lack of regulation of their industry.

*(c) Are there barriers to obtaining UK IP rights on grounds of cost? What costs?*

I have not encountered an operation using its IP as an income source. In some cases costs can be high, in which case an attempt is made to negotiate the fee or an alternative is sought, if possible.

#### **2. How IP is used**

*(a) What types of IP does your organisation use and why?*

- Text
- Images
- Musical scores
- Video/digital video of performances

The principal use of such IP by Cambridge Assessment is as stimulus material in examination question papers. In addition, use is made of IP for the following purposes:

- Publications to support teachers delivering Cambridge Assessment specifications/syllabuses
- Training materials/resources for teachers

- Research papers.

*(d) How does your company value its IP? Are there problems with raising finance against intangible assets based on IP? What improvements could be made in this area?*

Not relevant as we do not need to raise capital.

*(j) Have you encountered patents or other IP rights being used defensively, i.e. obtained not to develop products, but only to prevent others from doing so? Under what circumstances do you consider this acceptable?*

This is never acceptable.

### **3. How IP is licensed and exchanged**

*(a) How easy is it to negotiate licences to use others' IP for commercial or non-profit purposes?*

It isn't, there are too many variables to describe them all. The circumstances vary, depending on the copyright holder. Some have straightforward and clear licensing agreements and are flexible regarding fees when they understand the educational context. Others are less easy to negotiate with, especially regarding fees for electronic publication of material contained in past examination papers.

*(d) Are there specific barriers to licensing in the main forms of IP currently used: patents, copyright, trade marks, and designs?*

Cost and complexity

*(e) Are there barriers to licensing IP on grounds of cost? What drives these costs?*

Suppliers have variable costs which aren't always transparent. Electronic publication of material seems to drive up costs, which can become a barrier. The complexity of clearing permissions to use certain materials (e.g. those owned/licensed by certain publishers or copyright holders) can also be a barrier.

*(f) Are there specific barriers to licensing IP in your sector?*

The time frame that we need to work in is not always appreciated by those granting copyright

*(g) Does your organisation use methods to facilitate exchange of IP - such as cross licensing or pooling IP rights with other firms or organisations?*

No, but this would be an initiative worth exploring.

*(i) Are there barriers to trade and exchange of IP internationally?*

VAT legislation is difficult to understand.

#### **4. How IP is challenged and enforced**

*(a) Are there specific problems with enforcing the main different forms of IP: patents, copyright, trade marks, and designs?*

Piracy of past papers in certain countries (e.g. Pakistan) is difficult to police and enforce. We are dependent to a large extent on others informing us of mis-use of Cambridge Assessment material. Reliant on goodwill of the 'offending' party to enforce copyright; this is not ideal. Piracy is common both in printed and electronic format.

'Spidering' of websites difficult to detect and almost impossible to impose stop. IP is increasingly pirated in this way.

*(b) Are there barriers to challenging infringement and enforcing your IP rights on grounds of cost? What drives these costs?*

When trying to enforce copyright internationally cost and rules for each country may vary and it is hard to know where to start. The legal costs of enforcing IP rights around the world are a significant barrier.

Technology is advancing quickly with respect of the forms that media may be copied into, and technology to detect breach of copyright isn't keeping pace.

*(h) What are the principal barriers to efficient and successful challenge and enforcement internationally?*

Detection of infringement and cost of enforcement.

#### **SPECIFIC ISSUES**

##### ***Current term of protection on sound recordings and performers' rights***

Background: The Review will fulfil the Government's commitment to examine whether the current 50 year term of protection on sound recordings and performers' rights in sound recordings is appropriate, in the light of its extension to 95 years in a number of other jurisdictions.

*(a) What are your views on this issue?*

The most important element to be borne in mind is that the rules should be clear and precise. This might best be served by a standardised period of time for all media forms.

*(d) Are there alternative arrangements that could accompany an extension of term (e.g. licence of right for any extended term)?*

The rules need to be relaxed to include use after an examination has been taken (e.g. for training purposes and past paper use). This would give awarding bodies more flexibility of use of IP for educational purposes.

*(e) If term were to be extended, should it be extended retrospectively (for existing works) or solely for new creations?*

Copyright needs to be clearer and more transparent for copyright consumers, whether retrospective or not.

##### ***Copyright exceptions – fair use/fair dealing***

Background: There are a number of exceptions to copyright that allow limited use of copyright works without the permission of the copyright holder.

*(a) What are your views on the current exceptions in copyright law?*

Section 32 of the Copyright Act 1988: this part of the act is outdated when it comes to examinations: most examination boards use their papers for the activities outlined below in part (b) of this question. The Act reads: 'And provided that the instruction is for a non-commercial purpose'.

Publishers often charge high permission fees and possibly do not understand the use awarding bodies make of third-party material: they may treat it as all other requests. The extracts we use are often short, yet we have to pay significant print and electronic permission fees (in relation to the length of passages we use), especially from American publishers.

The Act offers very little in protection/support for awarding bodies who are merely producing examination papers. The process of tracing hundreds of extracts and their various rights holders is time consuming.

*(b) Could more be done to clarify the various exceptions?*

Yes: Educational usage is more than just for a specific exam and these other forms of use need to be specified. Often material containing third party copyright is made available to teachers to use for classroom practice, training and mock examinations in electronic format.

What is an extract? This needs to be much more clearly defined so that there is less uncertainty about situations in which copyright permissions need to be cleared before extract is used in an exam question paper or other publication. Who owns the copyright of an examination candidate's work? Asking awarding bodies to apply for individual copyright for the use of scripts in training and the setting of standards is not sustainable.

'Fair use' could be used to apply for use of third-party material in examination papers, where the extract must exceed a certain length before permission needs to be applied for, even if it is to be used for commercial use. For example, 'fair use' could be applied to a passage of fewer than 300 words in the context of exam papers and could be used in tandem with the print run. At the moment we are paying for extracts that are vastly under this amount of words. This grey area of Fair Use must be clarified.

*(c) Are there other areas where copyright exceptions should apply?*

Small print runs.

Past exam papers.

Candidates' work for use in training.

*(d) Are the current exceptions adequate or in need of updating to reflect technological change? For example copyright law in the UK does not currently have a private "fair use" exception. Such an exception might allow individuals to copy music CDs onto their PC and MP3 player for their personal use. Should UK law include a statutory exception for "fair use"?*

Yes, we should have fair use (see section (b)).

Where the responsibility for ensuring material shared online is in accordance with copyright law needs to be clarified. For example, if an online course is run in which the participants share resources, and the organisation running the course has made it a requirement that resources are not subject to third-party copyright but has no way of checking this, who is liable if third-party copyright material is used - the organisation or the individual? Clarification is needed.

*(e) How would you see content owners being compensated for such use?*

Standard fees.

Acknowledgements - All work must be acknowledged.

*(f) To what extent has technological change presented difficulties in use of copyrighted material in the field of education?*

Ease and availability of web-based searches of media which removes it from the context of its copyright make it difficult for some to trace original owner of copyright, and so the majority don't bother. If we had standard rules/procedures this wouldn't be so much of a problem. Also, some perceive that all content provided on the internet is copyright-free. There is also the possibility that candidates use material from the internet in their coursework and do not acknowledge the source. This has implications for samples of coursework used for training and development purposes.

*(g) Are there issues concerning the archiving of material covered by copyright?*

Item banks (databases of questions and material associated with questions) - Items are therefore occasionally live, sometimes attracting a further round of IP payments. Awarding bodies need to be able to store media which may be used in an exam in an item bank with a single payment/permission.

### **Copyright – digital rights management**

*(a) Do you have a view on how the use of digital rights management technologies should be regulated?*

Now is too early in the development of the technology. The industry is developing it and it is very trial and error. It is therefore too early for government to start deciding what to do. The industry will probably develop a range of solutions. Then, that future technology can be used as a framework to develop regulation.

### **Copyright – orphan works**

*(a) Have you experienced any difficulties in identifying the owners of copyright content when seeking permission to use that content?*

Yes. One recent example is tracing owner of material published in an anthology of poetry.

*(b) Do you have any suggestions on how this problem could be overcome?*

A specification of what constitutes 'reasonable effort'. For example, if a website like WATCH (Writers, Artists and their Copyright Holders) could be counted as the baseline test of reasonable-ness.

Also, an industry requirement to provide certain information about the source and copyright owner of third party material.

Better provision of copyright information by publishers.

Orphan works = work where the copyright holder is difficult to find. It is a continuous problem and one where the Copyright Act should take account of how difficult and time consuming it is to find certain copyright holders. Not all copyright holders can be traced therefore, guidance is needed as above.

### **Copyright – licensing of public performances**

*(a) Have you encountered problems with the system of licensing and paying royalties to collecting societies for public performance of music and/or sound recordings?*

We have an agreement with Music Publishers Association (MPA) and working in partnership with them is helpful. MCPS, on the other hand, is not helpful regarding use of music recordings. Clarification and simplification is needed.