

Dear Andrew Gowers

I appreciate that you will have many different aspects of rights management to consider for your review and that some, like iPod legislation, may have far-reaching economic effects. However, I hope you will forgive me raising what may be a lower profile concern, but one that really matters to those involved with providing education.

As you know, digitisation raises the possibility of increasing access to limited resources by making them available online. Libraries are making use of this service, and concern is rightly being expressed by librarians because companies carrying out the digitisation and making the results available online are threatening to restrict access in line with current legislation. For example, you could read the whole of an 18th century book (itself out of copyright) by travelling to the library and asking for it, but online you are only supposed to download a small proportion of the book if the digitisers claim their current rights, and spending hours reading directly from a computer screen is understood to be bad for your health. The book itself, of course, will benefit by digitisation from a conservation point of view by not being directly handled so much.

An extension of this problem already exists in relation to images. I assemble learning support materials for use by university students in humanities subjects, and these are improved by making wide use of contemporary images. When I wish to use an image that theoretically should be out of copyright (i.e. one where the artist who created it died more than 70 years ago) I make a courtesy call to whoever holds the original to ask if I can have permission to use it on a password-protected intranet, and then I ask if they will waive charges because we have no means of recovering production costs from students.

Usually the holders agree, but a few weeks ago I approached the public art gallery in Cheltenham for the use of one of the pictures held by them, and they referred me to the Bridgeman Art Library who have been assigned all the gallery's rights for marketing purposes. Bridgeman tried to charge me £100 to use the picture in the context I have outlined above.

Of course we are unable to use any picture on those terms and this type of aggressive marketing is increasing. We have no means of charging students to access their learning support materials. They are already incurring serious amounts of debt just to attend university. Were we to levy charges, a few would be able to pay but most would not, and we would have instituted a 'them and us' situation which would be unacceptable to all concerned. The upshot is that British students are unable to make use of British Heritage for learning purposes. The requirement to sometimes pay a fee to a photographer who has copied a painting has a similarly restrictive effect because they appear to be able to charge whatever they like.

In the hope that a Review at government level may allow a more than incremental approach, I hope you will feel able to consider this problem.

Michael Steele

24.02.06.

This specifically addresses item F in the section on Copyright exceptions – fair use / fair dealing: Difficulties that technological change have presented in the use of copyrighted material in the field of education. Issues involved in implementation of Digital Rights Management (DRM) may also be addressed.

First I wish to endorse concerns already expressed from the library sector about access for legitimate research and information to digitisations of books that are out of copyright by the 70-year rule, but to which access has been limited by a digital provider. If a learner needs to read an 18th century text in its entirety, then a small section of the book alone is useless, and we are reliably informed that it is not good for our health to have to spend hours poring over a computer screen to read the electronic text in its entirety. A single complete analogue hard copy downloaded for research purposes will fulfil requirements and should not be of sufficiently high quality to allow the mass production of copies that could compromise the provider's source of income. It is hoped that such use may be deemed fair dealing in relation to implementation of digital rights management (DRM) technology.

In a learning situation, restricting access to visual images is similar to restricting access to images of out-of-copyright book pages, from the point of view of the learner.

As the various realistic media have been discovered and developed (photography, film, television) educators have pressed them into service to bring the authentic past and the outside world to life in the learning environment. Introduction of digital technology holds out excellent prospects for continuation of that process, however access for educational use seems to be becoming ever less achievable as opportunities to make money from digitisation are exploited by entrepreneurs.

By way of relevant example, a few weeks ago an approach was made to the municipal art gallery in Cheltenham for password-protected online educational use of an 18th century British picture exhibiting unique teaching points held by them. (Laboratory charges for production of an analogue hard copy were not in question.) They referred us to the Bridgeman Art Library who have recently been assigned all the gallery's rights for marketing purposes. Bridgeman at first tried to charge £100 for educational use of the picture, and after considerable discussion eventually offered to reduce their fee to £50.

Educational institutions do not have the resources to afford such fees, and this type of aggressive marketing is increasing. It is not feasible for institutions to recover production costs by levying additional charges from learners for access to learning support materials: students are already incurring serious amounts of debt just to attend university. Were such charges to be imposed, a few would be able to pay but most would not, and a 'them and us' situation would be created in the community that would be unacceptable to all concerned.

A similarly restrictive effect is achieved by photographers who copy out-of-copyright works of art and who seek to charge broadcast-level fees for educational use.

In both cases the outcome is that British students are precluded from making use of relevant British Heritage artefacts for learning purposes.

As there is no possibility for educational institutions to comply with charges required, the income of owners, custodians and photographers will not be affected if access to out-of-copyright images for password-protected educational use may be deemed fair use and fair dealing.