

Gowers Review of Intellectual Property

Response from the Joint Information Systems Committee

Background

The Joint Information Systems Committee (JISC)¹ supports UK higher and further education by providing strategic guidance, advice and opportunities to use information and communication technologies to support teaching, learning, research and administration. The JISC is funded by the UK Higher and Further Education funding bodies.

JISCs strategic aims are:

- To develop solutions that help enable the United Kingdom education and research communities to keep their activities world class through the innovative use of ICT
- To provide advice to institutions enabling them to make economic, efficient and legally compliant use of ICT, respecting individual and corporate rights and responsibilities
- To help the sector provide positive, personalised user learning experiences and aid student progression
- To develop mutually advantageous partnerships with organisations in the United Kingdom and abroad
- To advise, inform and help implement the strategies of government, funding councils and Research Councils.

JISC is committed to ensuring that access to JISC-funded resources and projects is free to the community and in accordance with internationally recognised open standards. To this end, it encourages the use of Open Access models and Creative Commons licences, and, where appropriate, Open Source solutions.

1. How IP is Awarded?

JISC is committed to the development of Open Access models. Open Access is desirable because it leads to greater engagement with the research outputs from UK HE and FE. Open Access depends on a clear understanding of who owns copyright in research outputs, and also the need to educate the HE and FE communities not to routinely assign copyright to publishers. However, HE and FE institutions are finding it difficult to devise suitable internal IP policies for staff which balance the institution's requirements to secure IP in outputs for repurposing material and long-term sustainability through various business models, whilst at the same time ensuring that staff can retain certain types of IP in a way that is fair to them, motivates them and is not detrimental to the long-term goals of the institution. Since the question of ownership of IP can be controversial with staff many universities and colleges have yet to devise policies which are acceptable to their staff.

2. How IP is Used?

The use of IP is at the heart of research, teaching and learning activities within HE and FE and so at the core of JISC funded activities. The breadth and variety of content protected by IP (namely: copyrights, patents, trademarks, database rights and design rights), means that the use, repurposing and sharing of most digital and analogue content will require specific rights-related procedures and robust licences to ensure access within a controlled environment. This is crucial to

¹ Further information about the JISC can be found at <http://www.jisc.ac.uk>

ensure compliance with the copyright legislation, permit the free flow of educational resources within and between institutions as well as the broader community and create a framework for the exploitation of IP, in particular trademarks and patents. These are very valuable assets to the sector as a source of income, a means to sustain projects and the mechanism to protect the fruits of research and innovation.

3. How IP is Licensed and Exchanged

The costs of clearing digital rights on a transactional basis for JISC funded projects (such clearance costs, staff time, administration and tracing rights holders) can be expensive and time consuming. JISC therefore supports proposals for blanket licensing schemes for the educational use and reuse of copyright material whilst also taking into account the reasonable remuneration of legitimate commercial interests. However, JISC believes that the framework for blanket licensing needs some strengthening to make it adequate for digital publishing, and would support the more specific proposals on this point being submitted on behalf of UUK-SCOP.

JISC is also supportive of the philosophy behind the use of Creative Commons Licences (www.creativecommons.org) to help staff and students easily find content that may not be restricted for repurposing and incorporation into other works. The ethos of providing enhanced accessibility to content, has also encouraged many organizations to consider licensing out their own content under the Creative Commons Licences. But there are concerns raised about the relationship between Creative Commons Licences and the role of other licensing schemes in the public sector, such as the Click-Use Licence used by the Office for Public Sector Information (OPSI) and incompatibilities between the Creative Commons Licences and the needs of HE and FE. JISC is therefore keen to explore the feasibility of using Creative Commons Licences within the education sector and the viability of creating an educational version of the Creative Commons Licence.

4. How IP is Challenged and Enforced

The main area of legal development in patents is the potential expansion of software patenting. Although currently on hold, this is a matter that could have significant detrimental impact on HE and FE, both as rights holders and as large-scale users of software.

SPECIFIC ISSUES

Current term of protection on sound recordings and performers' rights

As many universities and colleges may own the rights in sound recordings that they create from lecturers' talks etc., there will also be implications for repositories, activities and research involving third party rights and in particular, digitisation programmes as well as any activities involving preservation such as moving recordings to different formats. Such an extension would also have significant impact on those organisations in the education sector wishing to make use of sound recordings currently about to go out of copyright for both research and teaching, because they will need to ensure that time and resources are met to cover the extra costs of rights clearances. Many subject areas, including history, sociology, music studies, English language and literature, are potentially affected by any changes in the term for such recordings. For these reasons, JISC believes that any extension of term for sound recordings would be detrimental to educational and research activities in Further and Higher Education.

Copyright exception – fair use/ fair dealing

Unlike in the USA where its fair use exception to copyright includes educational purposes, the UK fair dealing exceptions do not. What exceptions there are for educational purposes in UK law are extremely limited and do not reflect the reality of the digital age. JISC therefore believes that fair dealing should be extended to include educational purposes as the present situation severely restricts the ability of staff in Further and Higher Education to undertake their teaching or research

Copyright - Digital Rights Management (DRM)

DRM systems have increasingly been used by rights holders to block access to content and the effect of this is to over-ride the exceptions to copyright which rights users have traditionally enjoyed. Consequently, many HE and FE staff and students may in the future be restricted from accessing content to which they legally have the right to access or for which copyright no longer even exists. Furthermore, the law as currently implemented in the UK makes it virtually impossible for an individual or institution to gain redress if a DRM prevents access to material that is required for a bona fide purpose under an exception to copyright. It is vital that the interests of HE and FE are represented in any discussion about the future regulatory environment within which DRMs operate.

Copyright – orphan works

The amount and effort spent by staff in Further and Higher Education in tracing owners of orphan works in order to get clearance to copy them is considerable. JISC would therefore support initiatives whereby an efficient workable solution which is fair to both rights holders and users were developed.

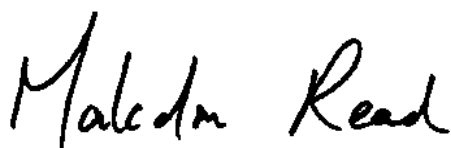
JISC's approach to IP and DRM Issues

JISC is working at various levels to monitor the IP and DRM issues raised by e learning and other digital materials, and, offer support to its projects. Specific measures that it has adopted include: actively co-ordinating its own policies and concerns by appointing two IP consultants; and commissioning several reports, studies and policy documents examining specific issues relating to IPR and DRM for the HE and FE communities (such as the management of IP issues for HE institutions within eLearning programmes intended for launch in April 2006, an extensive study on DRM (www.intralect.com/drm-study/DRMFinalReportv2.pdf) and an open source policy and guidance document (www.jisc.ac.uk/printer_friedly.cfm?name=about_opensourcepolicy)).

JISC is also working directly with the UK HE and FE community to provide consultation and advice through the services offered by JISC Legal Information Service (<http://www.jisclegal.ac.uk/index.html>) and by OSS-Watch (<http://www.oss-watch.ac.uk/>).

On an international basis, JISC is currently involved in collaboration on IPR issues with the Dutch based organization – SURF and in particular working with the Zwolle Group which is an international committee including publishers, authors, librarians and academics. JISC and SURF have co-funded copyright-related studies, including: publishers agreements, university copyright policies, the development of a copyright knowledge bank, and the development of advocacy materials relevant to open access. Other recent SURF initiatives such as the Cream of Science are being closely studied by JISC to see if a UK equivalent might be established. JISC continues to develop a good relationship with SURF, which acts as a model for relationships with other countries (http://www.jisc.ac.uk/index.cfm?name=programme_jiscsurfIP).

Yours faithfully



Dr Malcolm Read
JISC Executive Secretary