

# Submission to the Gowers Review from the Technical Advisory Service for Images (TASI)

---

---

## Document Notes

---

Author	Karla Youngs and Grant Young
Date	19 April 2006
Version	Final
Document Name	Gowers_TASI.doc

---

## Summary

---

---

## Contents

---

<b>1.</b>	<b>Introduction and Background</b> .....	<b>2</b>
<b>2.</b>	<b>Specific Issues</b> .....	<b>2</b>
2.1	Copyright exceptions – fair use / fair dealing .....	2
2.1.1	Response to “(a) What are your views on the current exceptions in copyright law?” .....	2
2.1.2	Response to “(f) To what extent has technological change presented difficulties in use of copyrighted material in the field of education?” .....	3
2.2	Copyright – orphan works .....	3
2.2.1	Response to “(a) Have you experienced any difficulties in identifying the owners of copyright content when seeking permission to use that content?” .....	3
<b>3.</b>	<b>Conclusion</b> .....	<b>4</b>

---

## 1. Introduction and Background

---

This submission is from the Technical Advisory Service for Images (TASI, <http://www.tasi.ac.uk/>). Based at the Institute for Learning and Research Technology at the University of Bristol, TASI provides advisory services on the creation and use of digital images within UK Further and Higher education. These services include online information, training provision, and an enquiry helpdesk. TASI is a service of the Joint Information Systems Committee (JISC, <http://www.jisc.ac.uk/>), which is funded by the UK's further and higher education funding councils and is in partnership with the UK research councils.

IP, and in particular copyright, is an important issue for the community we serve. We are in close touch with those creating copyright works and with those seeking to exploit such works within educational and research contexts. Our training course on copyright and digital rights management is often oversubscribed. The copyright documents provided on our Web site are among the most often requested pages, and our helpdesk frequently receives questions about IP.

TASI does not include any legal representation, so we provide general information about IPRs as they relate to digital images and refer our users to others where necessary. The points made in this submission arise from our experience of working within a particular community (digital image creators and users within UK FE and HE) and concentrate on issues relating to digital images and their use. We make several observations based on this experience along with some recommendations for change.

---

## 2. Specific Issues

---

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

#### 2.1.1 Response to “(a) What are your views on the current exceptions in copyright law?”

We have observed a great deal of confusion and misconception about copyright exceptions within further and higher education. Students and academics are familiar with viewing US academic Web sites and will often assume that UK “fair dealing” is the equivalent to US “fair use”. TASI is aware of several UK academic Web sites that refer their users to US sites for an explanation of copyright.

The currently available educational licenses add a further layer of complication: academics and students are often unclear of the distinction between copying under a license (e.g. the Copyright Licensing Agency's photocopy license) and copying under the research and private study exception.

Many academics work closely with colleagues in the US and Europe and the Internet now plays a vital role in scholarly communication. The different national approaches to fair use/fair dealing within education combined with a general lack of awareness and clarity mean that UK academics are often inadvertently infringing copyright when sharing materials with overseas colleagues.

Academic institutions are increasingly entering into research partnerships with industry, or trying to commercially exploit their research outputs. The narrowing of fair dealing for the purposes of research to “research for a non-commercial purpose” (SI 2003/2498) has created difficulties, since it is now sometimes difficult to judge whether a particular purpose is “non-commercial” or not.

TASI would like to see an enlarged and simplified definition of fair dealing for education or the introduction of a “fair use” exception. We would like the law to enable easier use of images

within UK education and better facilitate scholarly communication with overseas colleagues. TASI would also like to see more resources put into providing education about IP, so that academics and students have an obvious place to turn to for information, rather than relying on multiple sources/interpretations and turning to inappropriate US sources.

### **2.1.2 Response to “(f) To what extent has technological change presented difficulties in use of copyrighted material in the field of education?”**

In the absence of generous exceptions for UK education, there have developed a number of different licensing agencies and regimes. These have not kept up with the shift to digital delivery and the multiplicity of licenses and agencies can lead to confusion and anomalies.

A slide license provided by the Design and Artists Copyright Society (DACS), for example, has facilitated the building of substantial slide collections for teaching over many years. However, DACS has yet to develop any license that covers the creation of digital images. Recently the Copyright Licensing Agency (CLA) has produced a license to enable the digital copying of images for teaching. However, these can only be made from printed sources (not slides) and are not allowed be aggregated to form a shared image collection. In the absence of a suitable DACS license, the CLA license will enable some digital production of images for teaching. However, in the process it will side-line existing slide collections and lead to fragmented digital collections, with all the inefficiencies, quality issues, inability for resource sharing and digital preservation challenges that will entail.

Unless there is some change in this situation, the result will be the continued decline and eventual disappearance of valuable slide collections. These will be replaced with: (1) personal digital collections (of varying quality and likely to contain a high proportion of infringing copies); (2) pockets of images created under the new CLA license; and (3) a greater reliance on commercially available collections (with very uneven coverage). The difficulty in making or obtaining suitable digital images will inevitably have an impact on the quality of teaching.

TASI would like to see a rationalisation of licensing for education or, preferably, an enlargement of the educational exception to enable digital images to be more easily made and shared by staff and students within teaching and learning contexts.

## **2.2 Copyright – orphan works**

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

In addition to supporting those wanting to use copyright content for learning and teaching, TASI supports those undertaking the digitisation of cultural or historical collections. Such digitisation activity might be undertaken to provide a teaching or research resource or for public enjoyment. Owners of these physical collections often have to undertake lengthy and expensive research to locate rights owners and are frequently unable to identify or locate owners. Depending on their attitude to risk, those failing to identify or locate a copyright owner may decide to: (1) digitise the resource anyway; (2) digitise the work but restrict access in some way; or (3) not digitise the resource at all. The result is that a great deal of effort is expended (and often duplicated by others), and many valuable resources are not made available because copyright owners cannot be found.

Mandatory copyright registration or declaration would clearly not be desirable, though TASI would like to see a means of voluntary registration and for third parties to record information they have discovered about rights owners. Even a central directory to sources of rights owner information would be an improvement over the current situation. For newly created digital materials, approaches like the Creative Commons (<http://creativecommons.org/>) and the Open

Digital Rights Language (ODRL) Initiative are important in enabling users to understand the rights and licenses in works they encounter. Initiatives such as these should be encouraged.

---

### **3. Conclusion**

---

We would be willing to provide further evidence or clarification to the Gowers Review if requested. We are also happy to help facilitate any research the review may wish to undertake within our community (for example, help circulate surveys, recommend participants for focus groups).