



Submission to the Gowers Review of Intellectual Property

General Comments:

1 The Association of Scotland's Colleges is the policy and representative organisation of Scotland's Colleges of Further and Higher Education.

2 Approaching 1 in 10 of Scotland's people are involved in education or training through one of ASC's 43 member Colleges during the course of a year. Scotland's Colleges teach more than a quarter of Scotland's Higher Education and act as a major bridge transferring new knowledge and skills particularly to the small, medium and micro enterprises that make up the major part of Scotland's economy.

3 The College Sector in Scotland is dynamic. It responds to government policy and both reacts to and helps shape community and national demand for high quality education and training. Colleges innovate in course design, delivery mechanisms and assessment methodologies and create both their own qualifications and a major part of those in the Scottish Qualifications Authority's catalogue.

4. Scotland's Colleges believe that as recipients of some £0.5 billion of public funding they have an obligation to make material produced with that support as widely available as possible, wherever possible without charge within the UK. Colleges therefore aim to work in fair and inclusive partnerships ideally in a "shareware context" for material that they produce themselves. This is the basis on which the Colleges Open Learning Exchange Group (COLEG) which provides top quality learning materials for use by Scotland's Colleges works.

5. (Abroad Scotland's Colleges are working with the Scottish Qualifications Authority to develop a more commercial approach which will produce a financial return to Scotland for the IP that has been invested in the qualifications that are now being sold overseas.)

6. Scotland's Colleges want to expand their use of the emerging technologies to make their teaching and their students' learning experiences effective and productive. However, our ability to innovate is restricted by both the number of copyright licensors and their lack of flexibility, particularly with respect to novel technological approaches whether used to "repurpose" existing material or for newly created resources.

7. Colleges respect copyright and are prepared to pay a fairly negotiated fee for the use of third party material. (Scotland's Colleges currently pay more than £1 million per annum for copyright licensing.) They understand the distinction between "commercial" and "non-commercial" activities and are content to abide by the "non-commercial" rules for education. If Colleges require copyright licensing for business development purposes, then they are prepared to take out the appropriate "commercial" licences.

8. Colleges are not only hindered by current legislation but also by the complex licensing resulting from it. Many Scottish colleges have 10 or more copyright licences to administer and maintain. The proliferation of licensing and contractual obligations to individual rights holders contradicts government policy which is disposed to the removal of barriers to the smooth acquisition and delivery of education.

9 As technology develops, not all intermediary or blanket licensors are able to deliver the digital permissions which are required. Many rights holders are using digital technology to package their rights themselves and there are complex subscription formulae in place; some of which negate the statutory exceptions permitted to education under the Copyright Designs and Patents Act 1988. Fair educational use of "born digital" materials is essential.

10 As a result, the Association of Scotland's Colleges supports UUKs proposal for a licensing authority, the Education Licensing Agency (ELA), overseeing copyright licensing and assisting the Copyright Tribunal, especially in the ability to vary licence terms. We support our colleagues in HE in their full submission. We are supplementing that submission with views that are particular to Scotland's Colleges

Responses to Particular Questions

In reply to those General Questions outlined in the call for evidence which apply to Scotland's colleges –

1 How IP is awarded

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

Yes – there are considerable barriers to obtaining IP – in our case, copyright. Scotland's Colleges are likely to be dealing, on a regular basis, with the following licensors –

CLA	Copyright Licensing Agency
ERA	Educational Recording Agency
NLA	Newspaper Licensing Agency
OS	Ordnance Survey
OU	Open University
BSI	British Standards Institute

DACS	Design and Artists Copyright Society
PRS	Performing Rights Society
PPL	Phonographic Performance Limited
MCPS	Mechanical Copyright Protection Society

Of these, CLA, NLA, OS, BSI and DACS all deal with print formats – one licensing scheme could deal with this

ERA and OU both deal with broadcast recordings – one licensing scheme could deal with this

PRS, PPL and MCPS all deal with music licensing – one licensing scheme could deal with this.

Additionally there are other licensors in the market place – VPL – Video Performance Limited and MPLC - the Motion Picture Licensing Company, both of whom are trying to make inroads to education, and both of whose licensed activities are covered under the CDPA s 34.

Another example of unnecessary complexity relates to the NLA. Prior to their creation, colleges had to obtain permission on a case-by-case basis with the major newspaper and periodical publishers. This caused considerable administration and record keeping. The introduction of NLA, although it is an organisation which does not negotiate, was welcomed by colleges since it is a blanket licence and there was no longer a need to apply on an individual basis.

Now, much of the newspaper material which is required for teaching and learning is available on the newspaper and periodical publishers' on-line services – but these are not covered by the NLA since the publishers appear to be reluctant to give this mandate to their licensing body.

The publishers are prepared to give colleges permission to copy – but we are back to the case-by-case scenario at worst, and a publisher by publisher scenario at best – and there can be considerable fees to be paid.

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

Although Scotland's colleges are prepared to pay a fair, negotiated price for the use of third party copyright material, we would ask that there is an investigation into the basis for calculation of fees.

CLA, ERA and PRS base their prices on historical FTEs – Full Time Equivalent numbers – returns are made to the Scottish Executive and a figure is produced which purports to be a fair basis for recompense to the licensor's rights holders. The method of calculation in England, Wales and Northern Ireland is different and there is no indication that comparable uses of licensed materials in Scotland equates to a similar sized and configured establishment in the other home countries.

NLA base their prices on either the number of staff or the college's financial turnover.

The other licensors operate an arbitrary fee structure.

Consistency across the licensors would allow transparency, value for money and an easier approach to budgeting.

The other barrier relating to cost is that the licensors operate in monopoly positions – we have no one else we can go to for copyright licensing. We have choice in all other aspects of college financial life and we are actively encouraged to tender for services to seek both quality of service and best value – this opportunity is denied in copyright licensing.

(g) Are there specific barriers to obtaining IP rights in your sector?

See paragraph 9 above.

2. How is IP used?

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

Scotland's Colleges use a huge range of types of intellectual property (see answer 1a above generally as part of an educational or training activity. In some cases, however, this may be for commercial gain either in the UK or increasingly abroad.

(b) To what extent do you seek multiple or overlapping forms of protection?

See answer 1a above.

3. How is IP licensed and exchanged?

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

It is more simple to negotiate licences to use others IP for both non-profit and commercial purposes in conventional media. This is generally done through the intermediary agencies such as the ERA or CLA. However, there are frequently very significant difficulties in obtaining permission to use born-digital or repurposed material (see paragraph 9 above).

Conclusion

Scotland's Colleges welcome this review of Intellectual Property and, although our submission relates to a relatively small aspect of the wider IP picture, it is nonetheless of extreme importance to us.

We are particularly concerned about the fragmentation of the licensing market – the same technology which we wish to exploit for teaching and learning purposes allows the rights holders to package their rights into very specific groups. Scotland's Colleges do not have the resource to deal with copyright

licensing in this manner. Blanket licensing has to remain – preferably under the control of one body which will introduce fairness of terms and price structure.

We respectfully submit the above comments for your consideration and would be happy to provide further information on any of the points made above.

ASC
21 April 2006.