

**Response to the Gowers Review from the Association of Learned and Professional Society Publishers (ALPSP)**

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## Introduction

ALPSP is the international trade association for not-for-profit publishers (e.g. learned and professional societies, university presses, charities and foundations, intergovernmental organisations) and those who work with them to disseminate scholarly and professional information. 64% of our 341 members are based in the UK.

Almost all ALPSP's member publishers are involved in journal publishing; in total, they produce some 9,500 journals, which is over 40% of the generally accepted worldwide figure. Many also produce books, databases and other information products and services. We estimate our members' total publishing turnover to be approximately £1.1bn p.a., of which £890m pertains to UK-based companies; in scholarly publishing in particular, export sales represent a high proportion (65-80%) of turnover. This gives some indication of the value to UK plc of the industry, which could be impacted by any weakening of copyright and related protections.

Bibliographic databases and scholarly journals have been in the forefront of the move to online publication; in a recent survey, we found that 90% of journals are now available in an online version (most, but not all, still also have a print version) – the proportion is much higher in science, technology and medicine. However, the ease with which electronic materials can be perfectly replicated and widely distributed presents publishers with threats as well as opportunities.

The ability to acquire copyright (or to license from the copyright owner the exclusive right to publish) is fundamental to publishers' ability to operate their businesses; without exclusivity (at least for a period), they would be unable to justify the investments necessary to create and operate their publications and the often complex online systems by means of which these are presented to the public.

As representatives of a business that is totally dependent on the existence of copyright, and very conscious of the challenges and need for clarification presented by the digital world, ALPSP heartily welcomes the opportunity to respond to this consultation; we would be happy to facilitate a meeting with interested member publishers to enable broader discussion of the issues.

## Copyright-related issues for publishers in the digital age

### 1. *Open Access/self-archiving*

Open Access (the provision of free online access for all to scholarly research articles) is an aim which is closely aligned with the objectives of many of our members, particularly learned societies. For example, the

mission of the Royal Society of Chemistry is 'to foster and encourage the growth and application of [chemical] science by the dissemination of chemical knowledge' (see <http://www.rsc.org/members/aboutus2.htm#charter>); that of the British Ecological Society is 'to advance and support the science of ecology and publicise the outcome of research, in order to advance knowledge, education and their application' (see [www.britishecologicalsociety.org/articles/about/thebes/](http://www.britishecologicalsociety.org/articles/about/thebes/)); and that of the Society for Endocrinology is 'the advancement of public education in endocrinology' (see <http://www.endocrinology.org/sfe/memart.pdf>).

There are essentially two ways of achieving the aim of Open Access (OA) – OA publishing, and self-archiving. If all or part of a journal's content is published under an OA model, some alternative source of funding must be found to cover the costs of publication; in most cases, this is either a subsidy (e.g. from the publication's parent organisation, or a third-party grant) or an author-side payment (usually covered out of either research or institutional funds). In a recent survey, we found that over 20% of publishers were experimenting with OA journals; increasingly, we see this as an alternative business model worthy of exploration, although in some fields it may not be realistic to expect authors to have access to sufficient funds. An interesting variant is 'Delayed Open Access', whereby the back content of a journal is made freely available to all after a short period, often a year or even less; the delay serves to protect subscription income, and varies according to the characteristics of the journal (e.g. how rapidly the subject area moves, how frequently issues are published). It is estimated that some 2m articles are currently freely available under this model.

The alternative means of achieving OA is for the article (often in a pre-publication form) to be deposited in a freely accessible archive; these archives may be either subject-based (such as ArXiv in high-energy physics and related areas – the first such archive to be established, in 1991, or the US National Library of Medicine's PubMed Central), or institution-based – the latter are a more recent development and as yet are relatively thinly populated with content. Until now, publishers have generally been relaxed about permitting (or even helping) authors to self-archive prepublication versions of their work; some have even allowed them to deposit a PDF version of the final published article. However, as the number of archives increases, the systems for cross-searching them become more developed, and research funders begin to insist on self-archiving, some publishers are becoming concerned. Some of our members have found that, where all or most of a journal's content can be found in an archive, users appear content to use that version rather than the one on the publisher's website, despite the fact that the latter has undergone peer review and editing, and has additional functionality such as reference linking. Since a recent survey of librarians also shows that usage is an important factor in deciding to cancel a journal, we are worried that self-archiving may result in damage to journals' viability.

Open Access enthusiasts tend to confuse retention of copyright with the ability to self-archive; however, this is inaccurate and publishers may

explicitly permit, limit or even forbid self-archiving whether or not the author has transferred copyright – ALPSP has produced model agreements for both circumstances (see [http://www.alpssp.org/htp\\_grantli.htm](http://www.alpssp.org/htp_grantli.htm)). Publishers are increasingly introducing some limitations on authors' ability to self-archive, including a time delay to protect subscription income. However, we are concerned that authors do not always observe these conditions, and archive managers are abdicating any responsibility for removing wrongly posted items.

We would be very concerned at any move which limited or removed publishers' ability to control the manner and timing of self-archiving, as we believe this could ultimately damage or even destroy the viability of journals. If journals are lost, the valuable functions they perform for the scientific community – not only managing the process of peer review, but also selecting and gathering together in one convenient place a manageable quantity of relevant information for a particular community, as well as developing new features and indeed new journals – will be lost. In addition, those learned society activities (such as conferences, bursaries and research grants, as well as public education) which are partially supported by journal income will also suffer.

## 2. Mass digitisation

Online access to content brings enormous benefits, enabling users easily to search a vast corpus and retrieve relevant items; publishers have observed that when they provide digital versions of their older content, it is well used and cited. Many publishers, including learned societies, have invested huge amounts in digitising complete back runs of their journals, many going back to the 19<sup>th</sup> century and some much earlier; others have benefited from grant funding (e.g. from the Wellcome Foundation), which may carry a condition that the digitised content is made freely available.

We are concerned, however, at the growth of initiatives, by both commercial organisations and national libraries, to digitise back content without regard for publishers' legitimate interests. Some commercial players are digitising the entire content of some libraries, irrespective of copyright status – claiming that this is permitted under copyright exceptions because only a small 'snippet' of the digitised in-copyright content is made available to the viewer. However, the company is not only retaining (and claiming rights to) a complete digital file, but is also providing a copy of this to the participating library. Publishers urgently need clarification that such digitisation of large numbers of copyright works in their entirety is not permitted under any copyright exception.

Even in the case of out-of-copyright works, publishers may have invested huge sums in digitising complete back files; their ability to recoup this investment may be completely destroyed when national libraries digitise the same material and provide access to it free of charge. We believe that it would be more reasonable to require that any such digitisation programmes first check that a digitised version of the same content is not already commercially available.

### 3. Plagiarism and piracy

The Internet makes it extremely easy to 'cut and paste' someone else's content. With alarming frequency, such content is being incorporated without acknowledgement in others' work. Pirated copies of complete books are also being created, and either given away or sold. While Internet tools are being developed to assist the detection of plagiarised or pirated content, these rely on a database of content against which to search; measures which encouraged publishers to open their content to inclusion in such databases would be welcomed.

Publishers are becoming aware of an alarming number of cases where electronic (or print) content is purchased at a price appropriate for individual use, and then either resold at the much higher institutional price, or made available to a large community (such as the members of a society) or even to the world at large. There are also cases where organisations are selling bulk reprints without authorisation, and without reimbursing the publisher.

In other instances, users may download large amounts of content (or even whole journals) and either transfer it to another, unlicensed, institution or post it freely on the Internet. Fortunately, web logs usually make such mass downloading evident. Librarians have also been known (probably more out of naïveté than evil intent) to reveal on the open Internet the password for institutional access to licensed content.

The penalties for both plagiarism and piracy need to be clarified, and if necessary strengthened, to protect both authors and publishers.

### 4. Document supply

There are a number of commercial organisations which license from publishers the right to sell individual or even multiple copies of journal articles and other content; generally, these charge a copyright fee set by the publisher in addition to their own fees. There are a few rogue operators who do not obtain licences from or pay fees to publishers; publishers take legal action against these when necessary. Ideally, publishers would operate the same copyright fee across the board (although they do not always do so); this could be facilitated by the development of a database (or network of databases) giving publishers' copyright fee rates – this might be a function which collective licensing agencies could usefully undertake.

In addition, libraries are entitled under S38 of the Copyright, Designs and Patents Act 1988 to provide print copies under certain circumstances without paying a copyright fee. However, following the implementation of the Copyright Directive and the introduction of the right of communication to the public, UK (and other) legislative library exceptions do not appear to us to permit electronic deliveries, although fax (which is increasingly becoming indistinguishable from electronic copying) is generally considered acceptable. Electronic deliveries are by their nature potentially much more damaging to a publisher's primary business than

paper copies (which take time to make, and time to send). UK copyright legislation is silent on the question of whether electronic delivery is permitted under these exceptions, and it would benefit all concerned if the legislation were to make explicit the situation with regard (a) to electronic delivery of scanned copies of print material and (b) use of electronic originals. UK publishers are currently working with the British Library to arrive at a mutually agreed solution, but legislative clarification on this issue would be welcomed; any extension from print to electronic delivery would require extremely careful wording to ensure that libraries did not effectively compete with publishers' own sales of individual articles, without having to pay a fee to the rights-holder.

#### 5. *Copyright versus contract in the digital age*

Transactions between publishers and authors, and between publishers and their customers, in relation to online content tend to be governed by contract (licences); a useful range of model agreements has been developed, both for author agreements (see above) and for customer licences (see [http://www.alpsp.org/http\\_licens.htm](http://www.alpsp.org/http_licens.htm)). There is some resistance among librarians to the idea that contract may override copyright; however, if it does not, the variations between national laws (and the relative lack of clarity with regard to interpretation in the digital context) can lead to confusion, since scholarly publishers almost invariably operate internationally.

There is a worrying trend away from the idea of 'exceptions to copyright' and towards 'rights of access to information'; unless the limitations of the Berne 3-step test are kept firmly in mind, such 'rights' could damage the interests of both authors and publishers and, ultimately, the production of value-added information products of all kinds.

#### 6. *The role of collective licensing*

Collective licensing developed in the print world, to address specific market failures where it was impractical or impossible to seek permissions from individual rights-owners. In the digital world, the situation changes – publishers tend to include in their direct licences some of the rights previously covered by collective licences, such as providing copies for class use, for 'electronic reserve', or even for document supply to other libraries.

This does not necessarily mean, however, that there is no role for collective licensing – there are still circumstances where it is unfeasible to seek individual permissions for acts not covered by primary licences. However, publishers are concerned that they should be able both to choose to participate in such licences (rather than having to 'opt out'), and to set their own rates for specific uses. We appreciate that this situation must be managed carefully to ensure that licensing does not become administratively and technically over-cumbersome, and thus both objectionable to the user and excessively expensive to administer.

## Specific questions

### 1. How IP is awarded

In the context of publications, IP attaches automatically to an author's work so this is not problematical. Areas of discussion are as follows:

- i) Copyright ownership in academic authors' work. It seems to be generally accepted that, in law, works written as part of an academic's job belong to the employer; however, in practice many universities seem to waive this, either explicitly or otherwise. Clarification of this point could be helpful
- ii) Authors (and their employers) are sometimes – and perhaps increasingly – reluctant to transfer copyright to publishers. For single-author books, copyright generally remains with the author, but for multi-author books and journals, it is customary to request a copyright transfer from each contributor for ease of administration. However, many publishers believe that the absence of a copyright transfer need not constrain them provided a carefully crafted 'licence to publish' (e.g. [http://www.alpsp.org/http\\_grantli.htm](http://www.alpsp.org/http_grantli.htm)) is used instead. One important benefit (to both parties) of transferring copyright is that the publisher is unambiguously empowered to act in defence of that copyright should it be infringed – such situations can require very rapid responses; a licence therefore has specifically to grant the publisher the right to act in defence of the author's copyright. It might be helpful to all parties if the publisher had that right automatically.

### 2. How IP is used

Publishers use Copyright (or, in its absence, a licence to publish) in order to publish and sell authors' works; without it, they have little or no ability to protect and profit from their own investment in bringing the work to market. While there is a short-term and limited protection for the 'typographic rights' (see below) in printed works, it is unclear what protection if any this offers for online publications.

Publishers are frequently confronted by a situation of 'nested copyrights', where an author has incorporated in her work extracts from other authors' works, illustrations, etc which are in themselves sufficiently substantial to require copyright clearance. Obtaining (at a reasonable cost) clearances which are sufficient for all the potential uses of the work by the publisher and its subsequent licensees can be extremely problematical. This is particularly the case when the publisher wishes to create an online version of a print work, as not all rights owners fully appreciate the nature of the rights required for online publication; in the case of scholarly works, this does not represent a dramatic new revenue stream; and time-limited rights are at odds with the expectation that online works will be permanently available.

### 3. How IP is licensed and exchanged

In the case of journal articles, the author is usually expected either to transfer copyright to the publisher, or to grant a licence to publish;

copyright transfer is still the more common model (61% in our latest survey, compared with 83% in 2003), but 17% offered a licence and 21% initially requested copyright, but would accept a licence on request. A worrying 3% do not have any written agreement with authors. In the case of books, a licence to publish is more common, although with multi-author books a copyright transfer may be used for administrative convenience.

Primary use of online copyright content is generally explicitly authorised through a licence (see above), which may include various rights not considered part of a primary print purchase.

Use of whole works by third parties (for example, the production of translated or adapted versions) is authorised under carefully negotiated licences, in exactly the same way as for print; however, there is less need for regional licensing since the Internet has international reach. Payment models may need to differ, since the number of copies printed or sold may no longer be a meaningful measure.

Individual journal articles, particularly in medicine and related areas, are frequently licensed for bulk reprinting; how the electronic equivalent should be licensed and priced is still a matter for considerable discussion, although ALPSP has worked with other organisations to produce some guidelines (see <http://www.alpsp.org/news/guide.pdf>).

The processing of individual requests for permission either to copy extracts or to incorporate them in other publications tends to be a time-consuming and unprofitable task for publishers, and the use of commercial brokers can be costly; as a result, users frequently experience delays. There is considerable potential to make greater use of the Internet to automate and speed up the process; there may also be scope for Reproduction Rights Organisations to develop their role.

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

This is a very difficult area. When plagiarism is suspected, the law is rarely if ever invoked. Journal editors and their publishers tend to rely on peer pressure, where necessary involving the offender's institution to take disciplinary measures. However, it is not always easy to convince members of the academic community to take appropriate action.

In cases of piracy or other unlicensed use, either for resale or for online posting, the issue is more clear-cut; legal action may be threatened, and in some cases this is sufficient to persuade the offender to remove the pirated work from the market and pay compensation. However, it is not always easy to put pirates out of business, particularly in parts of the world where copyright is less well developed or respected; they may simply reappear elsewhere.

When authors themselves contravene the terms of their agreement with publishers, it is extremely difficult to pursue the matter. Publishers do not wish to oppose the interests of the academic community and indeed their

agreements with authors are evolving rapidly to accommodate what authors want to do. When these terms are exceeded, damage, though strongly suspected, may be hard to quantify and academic authors may in any case not have the funds to make any payments. The solution may be more a matter of copyright education than of enforcement.

### Specific Issues

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

Not applicable

#### B. Copyright exceptions – fair use/fair dealing

The Publishers Association used to provide specific quantity guidelines on the amount of content which may be used under fair dealing, but has been advised to withdraw these; we feel this is a pity, as they were extremely useful. Disputes about whether or not certain types of copying fall under fair dealing (for example, where students individually make copies of substantially the same work) have bedevilled the Copyright Licensing Agency's licence with universities. Greater clarification would be helpful.

A related area is that of library exceptions, where there appears to us to be a lack of clarity in distinguishing between those exceptions which are intended to cover the supply of copies from one library to a patron of another library for personal use, and those which relate to copies supplied from one library to another for its own preservation purposes. As we understand it, S38 of the Act permits a librarian of a UK prescribed (i.e. non-commercial) library, under certain conditions, to make and supply a copy of an article to a user. S41 permits a librarian of a prescribed library, under certain (different) conditions, to make and supply a copy of an article to another prescribed library. S37(6) says that references to a librarian can include a person acting on his behalf. Publishers would welcome clarification of what a person acting on behalf of a librarian can do – can they only make the copy, or can they supply it to the end-user and/or other library too? If the latter, does it follow that the 'person' should also be a prescribed (non-commercial) library in order to avoid widening this right through the use of third-party agents?

Following the implementation of the Copyright Directive, and in the context of the Three-Step Test, it would also be helpful to clarify the extent to which electronic delivery is permitted for either or both; it is our understanding that it is not.

We believe that the Legal Deposit Libraries Act 2003 makes a valuable step forward in enabling deposit and, thus, preservation of non-print content; we are confident that its provisions adequately enable the types

of copying which will be required for such purposes. However, other provisions such as access will require very careful attention if they are not to damage publishers' legitimate business interests. We also urge that the Regulations should not move too fast, attempting to incorporate publication types with complex features and complications before procedural and technical arrangements have been adequately sorted out; we favour a more granular approach to Regulations, even though it may take some time before all publication types can be covered (if indeed they ever can).

### C. Copyright – digital rights management

Digital rights management (DRM) can mean several things. It can mean the use of digital means (such as databases and online and offline computer systems) to manage rights in both printed and digital content; it can also mean the management of rights in digital content. Furthermore, in the latter case that management may either be carried out by the provision of relevant rights metadata, or enforced by technological means – the latter sense is often assumed. Technological enforcement tends to be cumbersome and user-unfriendly (although the technology is improving rapidly); it also presents difficulties when the enforcement needs to be broken either to allow a legitimate use, or for the purposes of long-term preservation.

However, legitimate access control – allowing access to digital content for those who have licensed the appropriate rights, and denying it to those who do not – might be seen as the simplest form of technological DRM. Care must be taken not to weaken copyright owners' right to exclude from access those who have not paid for it; although in the print world libraries provide access for those who do not own a work, the electronic equivalent needs to be restricted. If a library were to provide unlimited online access for all (as the technology allows), publishers' market would of course be destroyed.

Associating sophisticated rights metadata with a work – specifying which users may carry out what acts under what circumstances and under what conditions – seems a much more promising way forward. ALPSP is associated with the ONIX initiative, which is now developing standards for the expression of licensing terms (see [http://www.editeur.org/onix\\_licensing.html](http://www.editeur.org/onix_licensing.html)).

This metadata-based approach to digital management of rights in digital content should, in our view, be encouraged; demands for limits to be placed on DRM usually assume that this means technical enforcement, and should be understood accordingly.

### D. Copyright – orphan works

Publishers are very familiar with the problem of copyright works whose owner cannot be traced, or does not respond to enquiries. They frequently need to clear permission to include third-party content, such as illustrations or extracts from other works, in their own publications; they may also need to clear additional rights in order to place existing works

online. Publishers are always advised to make all reasonable efforts to contact the copyright owner, and if they are unsuccessful, to place a notice in the publication inviting any copyright owners to contact them.

It would be extremely helpful to have specific legislation dealing with this issue. We see two possibilities; one is a licensing scheme like that adopted in Canada, and the other is a limitation on penalties as currently proposed in the USA. ALPSP favours the administrative simplicity of the latter.

It would also be extremely helpful for such legislation both to give guidelines as to the 'reasonable efforts' which should be made, and to make clear (as the US document does) that the limitations do not apply to uses which lead to direct or indirect commercial gain.

Publishers are keen to assist those who wish to make appropriate efforts to trace copyright owners; ALPSP is currently engaged in discussions with various Reproduction Rights Agencies about ways of identifying, and making accessible, all known sources of relevant information as well as creating a streamlined system for requesting permission once the owner has been traced. We believe very strongly that the fact that it is difficult and time-consuming to trace copyright owners should not be used to justify making no efforts to do so.

*E. Copyright – licensing of public performances*

Not applicable

*F. Patents – utility models*

Not applicable

*G. Trade Marks – international issues*

Not applicable

*H. Designs – registered designs and unregistered design rights*

Not applicable

*I. Legal sanctions on IP infringement*

We believe that it is appropriate for there to be criminal as well as civil sanctions for major acts of piracy or other IP infringement. However, damage, in the form of lost sales, may be difficult to quantify, particularly where content has illegally been made freely available. Furthermore, many publishers are small and may be unable to undertake the costs of legal action. Time is of the essence in limiting the harm done; the ability to require a service provider or host to take down potentially infringing material immediately upon notification is essential. The system for doing

this – along the lines of the Publishers Association’s pilot project – needs to be simple and inexpensive to use.

#### J. Coherence between competition policy and IP policy

Publishers have tended to seek exclusive publication rights in the intellectual property they acquire – it makes no sense for the market to replicate all the functions involved in publishing scholarly content, such as journal articles, or to make them available in more than one place so that it becomes unclear which is the version of record. Furthermore, no article or journal, or monograph, is directly substitutable for another (although this is less true of other types of books), so in a sense each is a monopoly; competition as traditionally understood does not really apply in the IP industries.

#### K. Parallel Imports/International Exhaustion

ALPSP members are primarily publishers of scholarly journals, which are very rarely subject to territorial rights; indeed, when they are provided online (as more than 90% are, according to our most recent survey) territorial rights have no meaning.

Most members do also publish some books, but these are predominantly scholarly monographs and reference books. These issues are of much more concern to publishers of textbooks and trade books, who will undoubtedly address the matter in detail in their response.

### Other issues

#### A. Typographic right

Under UK law, publishers have a 25-year copyright in the ‘typographic arrangement’ of a printed work. This is a very valuable protection of the publisher’s investment in bringing a work to market whether or not it owns the copyright in the content. However, since what the right appears to protect is the composition and typesetting of the printed page, it fails to provide clear protection in the case of an online publication (whose visual appearance it may – depending on file format – be possible for the user to change at will). It would be helpful if this could be reviewed (possibly making it more similar to the sui generis database right) so as explicitly to protect the publisher’s investment as a whole, and not just its investment in typesetting.

#### B. Copyright in Abstracts

There is a curious situation under current copyright legislation, whereby abstracts in Science and Technology (but not in other subjects, including

medicine) may be freely reused unless there is a licensing scheme in place. This seems to us to be anomalous; it would be more logical for the same copyright position to apply to all abstracts. We see no justification for removing the normal copyright protection from abstracts; in reality most publishers do make their abstracts freely available to all online, but would wish to reserve the right to make a charge for their commercial re-use (e.g. by Abstracting and Indexing organisations or search engines).

### C. Creative Commons

The Creative Commons (CC) movement, led by Professor Laurence Lessig in the USA, is developing a range of licences to be used by authors. Some permit any kind of re-use without charge; others only allow non-commercial re-use. We welcome the fact that these licences reinforce awareness of the importance of copyright (re-use is generally subject to appropriate acknowledgement of the original author). We also welcome the fact that CC has developed machine-readable (and human-readable!) versions of the licences in addition to the legal language; we see this as another step towards metadata-based digital rights management.

However, it is important that authors understand the potential consequences to publishers of adopting such licences; if publishers are unable to recoup their costs and make an adequate profit or surplus, they will be unable to continue to operate. Thus, Creative Commons licences could undermine or indeed be incompatible with traditional publishing models; they may be more appropriate for 'Open Access' publishing models, where costs are recovered in other ways than from readers or their proxies, librarians. Once again, copyright education is very necessary.

### D. Definition of country of publication

In the print world, it is easy to determine where a work is published; there is a physical object, and (if formally published) it will contain bibliographic information including the location of the publisher. This information is crucial to determining not only what laws apply, but also whether the work is subject to legal deposit and if so where.

In the digital world, a far wider range of works are 'published' (i.e. made available to the public) and it is far more difficult to determine where the act of making available actually took place. Clear guidelines are needed – this is particularly pressing as the implementation of the Legal Deposit Libraries Act begins. Our own recommendation would be to use the definition given by J.S. Mackenzie Owen and J.v.d. Walle in 'Deposit Collections of Electronic Publications' (European Commission, 1996):

... where the publisher or distributor is based in the UK, or has a UK address (either physical or electronic) from which they publish or distribute the publications. In cases of on-line publications where the publisher of a document cannot be identified, the distributor on

the network, as identified through the home page address of the server through which the material is made available, should be regarded as the publishing source.

#### E. Rights in freely available content

An interesting issue arises with regard to content which is made freely available online by (traditional and other) publishers, although it is nevertheless protected by copyright – for example, the content of publicly accessible websites.

It is of course highly desirable that such content should not be reused, whether for commercial or non-commercial purposes, without permission and acknowledgement (and indeed, if required, payment). However, it seems to be generally accepted that if the publisher has not incorporated software to prevent this, search engines may crawl and index such content without asking permission. It would be helpful to clarify the legal position here.

When it comes to legal deposit, there is also an issue in relation to freely available online content. As the web archiving project has found, identifying the appropriate rights-owner and obtaining permission to harvest their website is extremely difficult; some kind of 'orphan works' provision will be necessary to address this problem, but may not adequately solve the question of rights-owners who simply do not reply (the US recommendation is that absence of reply must be taken as refusal). It would also seem illogical for legal deposit copies of material which was freely available in its original form to be subject to any access restrictions.

#### F. Consolidation of Copyright Act

The Copyright, Designs and Patents Act 1988 has undergone many subsequent changes and revisions. The publication of an official consolidated version is very much needed by all those who work with copyright.