Private copying

1. As described in ‘Modernising Copyright’ the Government intends to introduce a narrow private copying exception which will allow an individual to copy content they own, and which they acquired lawfully, to another medium or device for their own personal use.

2. For example, it would allow people to copy a CD from their music collection onto their mp3 player or phone. However it would not allow them to make copies of their CDs and give them to other people. The exception aims to align the law with behaviour most people consider to be reasonable, to remove unnecessary regulation, and to help build confidence in and respect for copyright.

3. Private copying exceptions are permitted by Article 5(2)(b) of the Copyright Directive. The exception applies only to copies lawfully acquired by the copier, who may not transfer copies to other people. Constraining the exception in this way allows for appropriate compensation to be paid at the point of sale, and ensures the exception will cause minimal harm to copyright owners.

Commentary on the Draft Legislation

4. The exception is drafted as Section 28A of the Copyright, Designs and Patents Act. Subsection (1) defines who is permitted to make copies and under what conditions. These conditions include:
   - The copier must be an individual, not a body corporate
   - The individual must have lawfully acquired, on a permanent basis, the copy from which further copies are made
   - The further copy must be made for the individual’s private use, for non-commercial ends.

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Q: Are these provisions an effective implementation of the Government’s policy?

5. Subsection (1)(c) provides that, if technological copy protection measures are applied to a copy, the exception does not permit an individual to circumvent those measures in order to make copies.

Q: Is it necessary to provide subsection (1)(c), or is Section 296ZA, which already prohibits circumvention of technological measures, sufficient?

6. Subsection (2) is intended to ensure the exception does not allow the making of copies for multiple people – either by transferring a copy made under the exception, or by transferring the original and retaining the further copy.

Q: Does this provision meet this objective?

7. Subsection (4) aims to clarify that an individual who makes a copy under this exception is permitted to store that copy in any private place, including a private cloud or other remote electronic storage.

Q: Does this provision meet this objective?

8. Subsection (5) aims to prevent contract terms restricting use of this exception.

9. Amendments to Schedule 2 to the Act apply this exception to rights in performances to the same extent as it applies to rights in copyright works.

10. Amendments to Schedule 5A to the Act apply the Section 296ZE complaints mechanism to this exception. Under this mechanism, individuals who are unable to access the exception as a result of technological copy protection measures applied to a work can complain to the Secretary of State.

Q: Do these provisions meet these objectives?
Annex A: Draft private copying exception

Private copying

(1) After section 28A insert:

“28B Private copying

(1) Copyright is not infringed where an individual uses a copy of a copyright work lawfully acquired by him to make a further copy of that work provided that:

(a) the further copy is made for that individual’s private use for ends that are neither directly nor indirectly commercial;

(b) the copy from which the further copy is made is held by the individual on a permanent basis (for example it is not a copy that is rented to the individual for a specified period or borrowed from a library); and

[(c) the making of the further copy does not involve the circumvention of effective technological measures applied to the copy from which it is made.]

(2) Copyright is infringed where an individual who has made a further copy of a copyright work pursuant to subsection (1):

(a) permanently transfers the copy to another person; or

(b) permanently transfers the copy from which it is made without destroying the further copy

and the further copy shall in those circumstances be treated as an infringing copy.

(3) Nothing in subsection (2) prevents an individual from storing a further copy made pursuant to subsection (1) in an electronic storage facility accessed by means of the internet or similar means, where that facility is provided for his sole private use.

(4) To the extent that the term of any contract purports to restrict or prevent the doing of any act which would otherwise be permitted by this section, that term is unenforceable.”.

(2) In Schedule 2 to the Act, after paragraph 1A insert:

“Private copying

1B.—(1) Where copyright in a copyright work is not infringed by the making of a copy of that work in the circumstances set out in section 28A, the making of such a copy does not infringe any rights in the work conferred by this Chapter.

(2) A copy of a copyright work which is treated as an infringing copy for the purposes of section 28A, shall, if it contains a recording of a performance, also be treated as an illicit recording for the purposes of the rights conferred by this Chapter.

(3) To the extent that the term of a contract purports to restrict or prevent the doing of any act which would otherwise be permitted by this paragraph, that term is unenforceable.”.
Amendments to Schedule 5A

[ ] Schedule 5A is amended as follows:

(a) In Part 1, before the entry relating to section 29 insert:
  “section 28B (private copying)”;

(b) In Part 2, before the entry relating to paragraph 4 of Schedule 2 insert:
  “paragraph 1B of Schedule 2 (private copying).