

Learning the copyright lessons

Consumer Focus and NEN reproduction of Pinsent Masons LLP report for Becta on the UK copyright licensing schemes in the education sector



About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and for postal consumers in Northern Ireland. We operate across the whole of the economy, persuading businesses, public service and policy-makers to put consumers at the heart of what they do.

Consumer Focus works on copyright exceptions, licensing and enforcement to build competitive markets where consumer demand is effectively met through innovative products and services. And we want to see a copyright system that supports this by balancing the interest of consumers, copyright owners, investors and creators.

For more information see: <http://www.consumerfocus.org.uk>

About the National Education Network

The National Education Network (NEN) is a dedicated, educationally focused resource for teaching and learning without constraints of time or location. Harnessing our unique expertise, we enable a safe, secure, collaborative and creative learning experience for pupils, teachers and parents.

The NEN provides schools with a secure network designed and maintained by experts within the educational community. It harnesses the power of broadband technology to deliver unique content and services, enabling users to share learning resources at every level, to deliver a personalised learning experience in the classroom.

Optimised for data-intensive applications (including video conferencing), the NEN offers a number of unique advantages for schools, offering a secure and safe environment where issues such as copyright are managed and where teachers, pupils and parents can work confidently together.

For more information see: <http://www.nen.gov.uk/aboutus>

About Becta

Becta (formerly known as the British Educational Communications and Technology Agency) was a government agency funded by the Department for Children, Schools and Families. It was a charity and a company limited by guarantee. In the post-election spending review in May 2010, it was announced that Becta was to be abolished. The organisation closed in April 2011.

Becta was the Government's lead agency for information and communications technology (ICT) in education, covering the United Kingdom. It was established in 1998 through the reconstitution of the National Council for Educational Technology (NCET).

For more information on the transfer of Becta's work see:

<http://www.education.gov.uk/popularquestions/a00192537/becta>

About Pinsent Masons LLP

Pinsent Masons LLP is an international law firm recognised as one of the major legal providers to the UK public sector with deep sector knowledge and expertise in the education sector. Pinsent Masons LLP's large team of intellectual property lawyers are experts in copyright law and have particular expertise in advising the education sector in relation to all aspects of copyright and other intellectual property protection, exploitation, use and enforcement.

Pinsent Masons LLP is delighted to be involved in this project and would like to thank all of those who have contributed to the information contained in this report, including contacts at the copyright licensing agencies and local authorities. We hope that the report proves useful and facilitates discussion and co-operation on this important issue for the future of our schools.

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Pinsent Masons LLP report for Becta on the UK copyright licensing schemes in the education sector prepared May 2010, published by the National Education Network and Consumer Focus in November 2011.

The original report as provided by Pinsent Masons LLP to Becta in May 2010 is also subject to an Open Government Licence.

Abbreviations

CCLI – Christian Copyright Licensing International

CDPA – Copyright, Designs and Patents Act 1988

CEFM – Centre for Educational Finance Management

CLA – Copyright Licensing Agency

DACS – Designs and Artists Copyright Society

ERA – Educational Recording Agency

JISC – now the organisation's name (historically the Joint Information Systems Committee)

MPA – Music Publishers Association

MPLC – Motion Picture Licensing Corporation

NLA – Newspaper Licensing Agency

OS – Ordnance Survey

OU – Open University

PLASC – Pupil Level Annual School Census

PPL – Phonographic Performance Limited

PRS – PRS for Music

PVSL – Public Video Screening Licence from Filmbank

IPO – UK Intellectual Property Office

Preface

Schools and other education establishments depend on licences from collecting societies, or copyright licensing agencies, to enable their use of copyrighted material. The use of copyright protected material, especially digital, is central to the delivery of a 21st century curriculum and to provide effective learning and teaching. The report maps the current system of collective copyright licensing for schools, the cost of these licensing schemes, and sets out different options for reform.

The report was commissioned by Becta in 2009, but as Becta closed in March 2011 it was not widely distributed. Becta was the government agency charged with leading the national drive to ensure the effective and innovative use of technology throughout learning. The law firm Pinsent Masons LLP prepared the report for Becta on the basis of discussions with local authorities, who frequently manage the purchase of licences for schools, and some of the licensing agencies.

The report was completed by Pinsent Masons LLP in May 2010 under the title 'The UK Copyright Licensing Schemes in the Education Sector'. Subsequently Becta provided the report to the National Education Network (NEN) and Consumer Focus under a non-exclusive Open Government Licence to enable and encourage the free use of government information covered by Crown copyright.

The NEN and Consumer Focus submitted the report to the call for evidence of the Independent Review of Intellectual Property and Growth, announced by the Prime Minister in November 2010. This report was directly referenced by the review as 'Pinsent Masons LLP report for Becta' and we have decided to republish it now to stimulate the ongoing debate on how to update copyright licensing.

Where the use is not covered by an exception, copyright licensing enables schools to use copyright materials, including newspaper articles, performances of plays, broadcast and films, and recorded music within the scope of the licence. We believe that this report comes at a critical time, as digital technologies have increased the opportunities for the use of copyright material for teaching and learning. There is an urgent need to make the licensing system fit for the digital age, so as not to inhibit teachers' ability to deliver a modern curriculum to a generation of digital natives.

Today young people are not only recipients and consumers of digital resources and other people's copyrighted materials but creators themselves. Tomorrow it is they who will drive the economy. This report, although focused on a particular element of education provision, will help develop our understanding of how to develop a better copyright licensing regime for copyright owners, users and creatives of all ages.

Since the report was completed in May 2010 there have been changes in the services offered by some licensing agencies, as well as changes to the policy directing schools education and the role of local authorities. However these changes have not diminished the relevance of the main findings within the report or the challenge offered by its recommendations for the debate today. The recommendations set out improvements to the licensing system to bring better value and meet the needs of education today more fully. We will distribute the report within the education sector and to other interested parties in the continuing debate on copyright licensing.

The NEN and Consumer Focus, using the flexibility provided by the Open Government Licence, are publishing this report with only minor editorial amendments. To make the report more accessible we have added a list of abbreviations, summaries (in grey boxes), images and have published the two schedules separately.

The report refers to Becta on several occasions and we have not changed these references, though Becta's functions have now transferred to the Department for Education, the Department for Business, Innovation and Skills, and the Learning & Skills Improvement Service. The report was completed more than a year ago and where it refers to events which have since happened, we have added explanatory footnotes. The report as submitted by Pinsent Masons LLP to Becta in May 2010 can be found at <http://bit.ly/r83Pos>.

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Summary

'I am so pleased that someone is looking to simplify copyright in schools, as it really is a nightmare. I am sure some schools are not even aware what licences they hold, how they are covered and think once covered by a blanket licence they can do anything they like, which is not the case'

Quote from the E-Communications Officer at a local authority.

'A large amount of officer time is spent advising schools after they are contacted directly by some of the companies involved. Dealing with licences is not formally part of any person's job description.'

Quote from Support Services Assistant at a local authority

These quotes capture the essence of the problem with the existing copyright licensing regimes in the UK. For educational establishments and their local authorities, the current licensing systems are costly, complex, time consuming, and confusing. There are a number of difficulties with the existing system, such as:

- Different licences are required for different types of copyright material, with some overlap, for example two different licences are required to play a recorded song in a public place;
- The existing licences do not cover all of the activities undertaken in schools and fail adequately to deal with developing technologies; and
- Copyright owners, through their licensing agencies are effectively free to dictate their own licensing terms and fees, with little control;

Some of the licensing agencies are specifically set up for the education sector or have developed bespoke licensing models to assist schools, whether through discounted blanket licensing for local authorities to cover all schools – e.g. the Educational Recording Agency (ERA) and Copyright Licensing Agency (CLA) – or by outsourcing the administration of their licences through one centralised body – e.g. the Performance Rights Society (PRS), Phonographic Performance Limited (PPL) and Public Video Screening Licence (PVSL) administered through the Centre for Educational Finance Management (CEFM).

From our research it appears that local authorities generally appear to arrange certain of the core licences for the schools in their area (in particular the CLA, ERA, PRS and PPL licences), but many leave it up to schools to assess their specific licensing needs for other licences. It is clear that schools and local authorities are not adequately equipped to deal with the complexities of the licensing systems and there is no assistance available to them.



Summary of the current system and scope for reform

Under the current system activities by educational establishments are covered by copyright licences from 12 or more different licensing agencies. Schools may be covered by a blanket licence obtained by their local authority, or obtain an individual licence from the relevant licensing agency. The current system is costly and confusing. It does not protect educational establishments adequately from liability for copyright infringement and inhibits their ability to deliver their curriculum.

The following problems have been identified:

- The more than 12 licences available for use of different types of copyright material in educational establishments do not cover all uses. These gaps mean schools are wary of using copyright material to deliver their curriculum and at risk of liability for copyright infringement.
- There are no standard licensing terms, meaning educational establishments have to comply with potentially 12 or more different sets of licence term when delivering their curriculum.
- A number of the existing 12 or more licences appear to overlap with each other, for example the use of recorded music requires a licence from PRS and PPL.
- Licensing agencies can only license the copyright material owned by their members. No central database is available to educational establishments to ascertain from which licensing agency they require a licence when they want to use a particular work.
- The existing licences do not adequately take account of increasing use of digital technology and copyright material. CLA and ERA have issued licences for digital copyright material, leading to increased licensing fees for schools which are unregulated cost for schools.
- The conduct of the licensing agencies is not regulated, allowing them to impose their own licensing terms and fees. The cost of bringing a case to the Copyright Tribunal to challenge licensing terms or fees means that educational establishments can only realistically hope to bring a case through representative bodies.
- Little information or advice is available for educational establishments on copyright licensing and the advice provided by the licensing agency may not be impartial.
- There is significant ambiguity about the interpretation of Section 34 of the Copyright, Designs and Patents Act 1988, which provides exceptions for educational establishments. It allows them to perform music or show films without a licence if it is in 'the course of the activities of the establishment' or 'for the purposes of instruction'. No guidance is available on the interpretation of in 'the course of the activities of the establishment'. PRS and PPL, which license music, and PVSL, which licenses recorded music and film, issue licences for 'curricular' and 'non-curricular' activities, requiring educational establishments to pay 'non-curricular' licences for activities which may fall under the exception as in 'the course of activities of the establishment'.
- The administrative cost to schools and local authorities from licensing is not known. In the calendar year of 2009, the CLA collected £10.8 million from schools for copyright licences, the ERA collected £2.5 million, with the PRS and PPL collecting £2.8 million each.

An effective licensing system should reduce the administrative burden and cost on educational establishments. The system should give teachers the freedom to operate within the scope of the law and relevant licensing schemes. Considering the problems with the current licensing system there are several options for reform.

The advantages and disadvantages of the various options are discussed in the report. A summary of the options for reform is set out in the table below. This table is colour coded from green, which represents the simplest options for reform, through to red which require significant reform.

- **Blanket licensing:** Increased use of blanket licences obtained by local authorities. The CLA and ERA apply a discount to blanket licences and they reduce the administrative burden on schools. However some local authorities do not purchase blanket licences, and the PRS, PVSL and PPL only offer block-licensing to local authorities, which don't reduce the cost per school, but still reduce the administrative burden on schools.
- **Accessible information:** Currently schools do not have access to adequate information on copyright licensing, with www.licensing-copyright.org, an information resource established by licensing agencies being among the few resources available online. Schools often turn to local authorities for advice, which in some cases provide information and in turn rely on licensing agencies for advice. Local authorities could formalise their role and provide a main point of contact for educational establishments, along with standardised information on local authority websites. Educational establishments would also benefit from information on the blanket licences held by local authorities, and a database to establish from which licensing agency a licence is required if educational establishments want to use a particular work.
- **Use of Technology:** In order to assist teachers in navigating around the gaps left by the current licences, particularly with regards to digital material, technology could be developed to flag up copyright material covered by licences or a searchable database could be established.
- **Centralised Administration:** Licensing at local authority level is more efficient than licensing at school level, reducing administrative cost for schools and licensing agencies, who may pass on administrative cost through an administrative fee. The Centre for Educational Finance Management (CEFM) was set up in 1990 by the Department of Education and Science to, among other things, provide central administration of licences for grant maintained schools by the PRS, PPL and PVSL by Filmbank. It reduces the administrative burden on the schools requiring licences and for licensing agencies. The role of the CEFM, now privatised, could be expanded to administer the licences for public schools and of other licensing agencies. Alternatively a new centralised body could be established to administer the licences of all licensing agencies.
- **Bespoke licensing models for schools:** While some licensing agencies have blanket licensing or specific education tariffs for schools, the current system could be improved if all licensing agencies would offer blanket licences to local authorities. Currently only the CLA and ERA provide blanket licences. The current system could also be improved through the implementation of model licence terms across all types of copyright material and licensing agencies. Licensing terms could better reflect the activities undertaken in schools, reducing the number of restrictions imposed. Licensing agencies currently only make annual licences available to schools, the implementation of a 'pay as you go' tariff for the sporadic or one off use of copyright material by schools could reduce licensing cost where educational establishments make very limited use of copyright materials.

- Tighter controls on licensing agencies:
Licensing by licensing agencies to schools could be more tightly regulated, through for example the establishment of a body which reviews and oversees licensing practices, or by expanding the powers and accessibility of the Copyright Tribunal, for example by giving it pro-active investigative powers.
- Legislative change – educational use of copyright: Copyright legislation could be amended in a number of areas, providing copyright exceptions for the benefit of educational establishments. Educational establishments could be exempt from requiring a licence for the use of copyright material, taking into account technological developments such as interactive whiteboard and distant learning. Legislation could in particular address gaps in the coverage of existing licences. For broadcast, copyright law provides educational establishments with an exception in the absence of a licensing scheme, this approach could be extended to all types of copyright work. This approach would protect educational establishments from liability for copyright infringement in the absence of a licensing scheme. The definition of 'activities relating to an educational establishment', which is subject to an existing exception, could be defined in statute to provide certainty for licensing agencies and educational establishments.
- A single licensing agency for schools: Creating a single licensing agency for schools, licensing all types of copyright material would require significant legislative change. Alternatively a single licensing agency could be established for copyright works most frequently used by educational establishments, which are currently licensed by the CLA, ERA, PRS, PPL and PVSL.
- The Copyright Tribunal powers and practice: Existing licences could be referred to the Copyright Tribunal by schools or their representative organisations if it can be established that the terms of the licences to and/or the licence fees payable by schools are unreasonable.

Summary table



Solution	Explanation	Advantages	Disadvantages	Implementation	Areas it would impact
Blanket Licensing	Local authorities have the power to deduct licence fees from their educational budgets on behalf of schools. The CLA and ERA offer substantial discounts to local authorities that take out blanket licences for their schools. The PRS, PPL and PVSL offer block licences to local authorities to cover the schools that require these licences, which saves administration costs and time.	If local authorities arrange blanket or block copyright licences on behalf of schools, they can benefit from substantial discounts and/or save schools administration time and costs.	Some local authorities do not wish to incur these additional costs and may choose to devolve this responsibility to their schools. However, some local authority models show that local authorities recharge the schools for these fees, while retaining the blanket discount.	Local authorities need to be made aware of the benefits of blanket and block licensing. Internal reform may be required if the local authority's governance prevents them from procuring blanket licences for schools. The ability to deduct licence fees from the education budget is currently discretionary. Could this be made compulsory through legislation?	Costs. Administration time.
Accessible Information	There is no impartial central information or advisory service for schools or local authorities to contact with licensing questions. Very few of the local authorities are set up to assist schools in deciding what licences they require. Becta could assist the licensing agencies in setting up a central information/advisory service for schools (or building on the existing licensing-copyright.org site). Alternatively, Becta could assist local authorities to set up their own portals/hubs for schools to access and get the information they require.	Clearer and more impartial advice for schools and local authorities. Relatively simple approach. The licensing agencies have already formed a committee to run the existing website. The CLA has expressed an interest in working with Becta to help educate teachers and pupils.	Funding would be required to set these initiatives up and run them. The potential savings may not be enough to offset the budgets required to set up this sort of project/operation. If the local authority information hub route was taken, this would create more work for the authorities, who are already stretched in their current roles. Ideally a copyright officer would be appointed for each local authority to run the licensing procurement and advisory services.	Becta could approach the existing licensing-copyright.org committee to discuss a future collaboration to improve the site and service. The local authority option would require their buy in. Becta could supply the relevant materials for the local authority portals to ease the burden on local authorities and ensure consistent advice across the board. The CLA has expressed interest in assisting Becta in the education of teachers and pupils. Becta could consider a jointly run programme with the CLA. An E-Learning product may be a good solution to the time/availability issues in relation to training teachers.	Understanding. Confidence to use materials. Costs. Time.

Solution	Explanation	Advantages	Disadvantages	Implementation	Areas it would impact
Use of technology	<p>Technology could be used to help teachers identify which materials they are entitled to use under their licence.</p> <p>This could be done by way of a warning/indication system on websites or as a portal which schools could access and search the title of the materials they wish to use to see if it falls within the licences held by the school.</p>	<p>This would give teachers more confidence in their ability to use copyright protected materials in the classroom without having to check lists of included materials or licence terms.</p>	<p>This approach is likely to require significant investment both time and financially to set up and maintain. This may be an area that the licensing agencies would be willing to assist.</p>	<p>The CLA has expressed an interest in working with Becta to understand the existing technology in schools to see how this can be developed to tie in with copyright licensing.</p> <p>Becta would need to work with the various licensing agencies to create a searchable database of copyright works for use by schools.</p>	<p>Confidence to use materials.</p> <p>Time.</p>
Centralised system	<p>The CEFM currently acts as a collection agent on behalf of the PRS, PPL and Filmbank. The CEFM generally deals with local authorities and issues the relevant licences on behalf of these licensing agencies. This saves administrative time and costs for schools.</p> <p>Ideally all of the licensing agencies would administer their licences through one centralised body. This could be achieved by expanding the scope of the CEFM or by setting up an independent body that could negotiate licences with the licensing agencies and then administer them to schools on their behalf.</p>	<p>This would save administrative time and money for local authorities and schools and make the system simpler.</p>	<p>This would require the buy in from all of or the majority of the licensing agencies. If the agencies were required to pay an agency fee to the centralised body, this may put them off, although the system would substantially reduce their own administrative costs.</p>	<p>The CEFM has expressed an interest in expanding its remit. Becta would need to approach the individual licensing agencies to determine whether this is a viable option.</p> <p>If the licensing agencies refused to join up to a centralised system, legislative changes may be required to set this up as a compulsory system.</p> <p>Becta could look into the independent sector to determine how they use licensing agencies for licensing to see if the model would be transferable to the public sector schools.</p>	<p>Costs.</p> <p>Administration.</p> <p>Reduce complexity.</p>

Solution	Explanation	Advantages	Disadvantages	Implementation	Areas it would impact
Bespoke licensing models for schools	<p>Each licensing agency's licensing model for schools could be improved to benefit schools, for example by:</p> <ul style="list-style-type: none"> ● Offering blanket/block licensing ● Introducing model licence terms across the board ● Ensuring that the licences reflect the current practices in schools ● Pay as you go tariffs 	<p>These uniform changes would hopefully make the administration of, and compliance with, copyright licences easier for schools and local authorities and may save costs.</p>	<p>Not all schools will require all copyright licences. Therefore, a blanket licence, even at a discounted rate may work out more expensive for local authorities and/or schools than the existing regime. The licensing agencies may be reluctant to provide blanket licences for the education sector, for financial reasons and for fear that they would have to start offering similar deals to other sectors.</p> <p>It may be difficult to achieve these measures for all types of copyright, in particular the model licence terms.</p>	<p>Implementation of the above suggestions would have to be through negotiations and discussions directly with the licensing agencies.</p> <p>JISC have implemented a model licence agreement for their publishers and so it may be worth approaching JISC for advice and assistance in this respect.</p>	<p>Costs.</p> <p>Understanding.</p> <p>Reduce complexity.</p>

Solution	Explanation	Advantages	Disadvantages	Implementation	Areas it would impact
<p>Tighter controls on agencies</p>	<p>There is very little regulation relating to the operation and administration of the licensing agencies. They are controlled and regulated by their constitution and their members. The licensing agencies are essentially free to dictate their own licence terms and fees within the scope of the CDPA.</p> <p>Licensees or a representative body can make applications to the Copyright Tribunal if the Licensees are refused a licence or if the licence is offered on unreasonable terms.</p> <p>Legislative changes would be required to tighten up control over the licensing agencies, for example by the appointment of a body to oversee licensing agency practices or to expand the remit of and accessibility to the Copyright Tribunal.</p>	<p>This would provide a more uniform approach to copyright licensing across the various licensing agencies, with controls over the costs and scope of the licences.</p>	<p>Legislative reform would be required to create a regulatory system for collective licensing agencies.</p>	<p>Legislative reform would be required.</p>	<p>Costs. Certainty.</p>

Solution	Explanation	Advantages	Disadvantages	Implementation	Areas it would impact
Legislative Changes	There are areas where copyright legislation could be tightened to provide more protection and freedom for schools to use copyright materials, for example by dealing with the gaps in the licensing schemes.	Greater protection/freedom for schools.	This would require legislative reform which the recent consultation on the Gower's review has shown to be unpopular and the IPO is not prepared to embrace radical reform.	Legislative reform would be required.	Costs. Confidence to use materials.
Single Licensing Agency	The ideal position for schools would be a single licensing agency to Licence all copyright materials to schools or local authorities.	This would provide a clearer, simpler system for schools and local authorities.	This would require radical legislative overhaul. Not all schools would require a licence to use all forms of copyright materials and so the single licence fee may be more than they or the local authorities currently pay.	Radical legislative reform would be required.	Costs. Certainty. Reduce complexity. Administration.

Methodology

We (Pinsent Masons LLP) were instructed by Becta to investigate and report on:

- The cost of the current copyright licensing system, including:
 - A breakdown of how much is paid to each licensing agency by the education sector in a financial year and a comparison with each licensing agency's total income; and
 - A breakdown of how much is being spent on average by each local authority on behalf of educational establishments for one financial year.
- Ideas and suggestions to create savings for educational establishments and to streamline the existing copyright licensing regimes.

Becta identified twelve copyright licensing agencies that are particularly relevant for schools and colleges in the UK, the licensing agencies thereafter. We have contacted these licensing agencies (other than OS, which Becta was to contact directly) and the Centre for Educational Finance Management (which administers licences on behalf of three of the licensing agencies) and provided them with a briefing paper explaining the project and requesting information.

We found the licensing agencies have generally been slow to respond and/ or reluctant to speak with us or to provide the information requested. Information about the licensing models of these licensing agencies included in this Report has been collated from public information available on the internet and from information provided by local authorities and the licensing agencies themselves, where they have been prepared to speak with us. We spoke with Matt Pflieger and Martin Delaney at the CLA who provided a very useful insight into the CLA's approach to copyright licensing in schools and their suggestions for simplifying and streamlining the system. We also managed to speak with senior personnel at the ERA, MPA and CEFM (who represent the PRS, PPL and Filmbank).

We received emails from the MPLC and CCLI stating that they do not give out the information requested and DACS to say that they rarely licence schools and so do not consider they can provide useful information for this Report.

We have also sent the local authority briefing paper to all of the 150 local authorities in England. We tried to target our surveys to those local authorities that had personal or more specific email contact details, rather than sending emails to general enquiry addresses. We have received 17 full responses from local authorities (survey local authorities) and have spoken to one of these local authorities. We received a number of responses from local authorities that did not provide the details or breakdown of the costs requested, despite follow up contact to request this additional information.

Some local authorities classified our request as a Freedom of Information Act (FOIA) request, stating that they would respond within the statutory timescales. As instructed, we have not pursued the FOIA route with the local authorities where they have not responded or responded without the full information required. Although we did not receive the level of responses Becta and we had hoped for, we consider that the responses received built a clear, consistent and expected picture of the licensing arrangements for schools. We would not expect the results to have differed greatly, had we received more responses.

We did not have access to any schools and so could not survey them directly. We consider it would be a useful exercise to speak with a sample of schools to understand the issues faced by teachers on the ground in relation to copyright use and licensing.

We have set out in this Report, details of the current licensing models for each licensing agency, some of the key issues in the existing licensing models and suggestions for improving and/or reforming the current licensing regime.

Overview of copyright

Copyright arises automatically in literary, artistic, musical or dramatic works; sound recordings, films and broadcasts and typographical editions. Examples of materials in which copyright may subsist are books, newspapers, magazines, songs, music, recordings, television programmes, films, photographs, sculptures, paintings, websites and software.

Copyright arises automatically and there is no requirement to register copyright in order to obtain copyright protection for a work.

Copyright gives the author of the material the right to control the use or commercial exploitation of the work that he/she created. This right of control includes rights to authorise or prohibit the copying, issuing of copies, renting or lending, performing, showing, playing, broadcasting or adaptation of the copyright material.

Subject to the educational exemptions applicable to schools, if a teacher or school carries out any of the acts listed above without the permission of or licence from the relevant copyright owner, this will infringe the rights of the copyright owner, who would be entitled to bring action against the school for copyright infringement claiming damages for loss suffered, an injunction to stop further use and costs.

There are certain exemptions from copyright infringement for educational establishments under the Copyright Designs and Patents Act 1988 (the CDPA).

- Copying a literary (written), dramatic (theatrical performance), musical or artistic work (paintings, drawings, photographs, etc) in the course of teaching as long as a reprographic process is not used (reprographic process means using a fax machine, photocopier or any appliance which makes multiple copies). Therefore, this exception could cover teachers writing material on the board or an overhead projector and students making their own copies by writing, painting, typing, etc.

- Anything done for setting or answering examination questions (this does not include photocopying music that is to be performed in an exam)
- Performing, playing or showing copyright works in a school, university or other educational establishment for educational purposes. However, it only applies if the audience is limited to teachers, pupils and others directly connected with the activities of the establishment. It will not generally apply if parents are in the audience. Examples of this are showing a video for English or drama lessons and the teaching of music. It is unlikely to include the playing of a video during a wet playtime purely to amuse the children.
- Recording a TV programme or radio broadcast for non-commercial educational purposes in an educational establishment where there is no licensing scheme in existence. Generally a licence will be required from the Educational Recording Agency (as detailed below).

Copyright owners can authorise or licence schools to use their works on whatever terms they choose. However, it is not practicable for schools to go to each individual copyright owner to request permission to use the relevant materials, nor is it desirable for rights holders to have to negotiate licence terms with each prospective licensee. Under the CDPA, collective licensing agencies can be established in the UK to represent copyright rights holders on a collective basis.

A number of different licensing agencies have been formed to represent the rights holders of different types of copyright, e.g. an agency for music, an agency for newspapers and an agency for films, as discussed in more detail below. There are also cross jurisdictional agreements between various licensing agencies to include works owned by rights holders outside of the UK in the various licensing schemes.

Part a – the current system

Summary: Under the current system activities by educational establishments are covered by copyright licences from 12 or more different copyright licensing agencies. Schools may be covered by a blanket licence obtained by the relevant local authority, or obtain an individual licence from the relevant licensing agency. The current system is costly and confusing. Because of gaps in the uses covered by existing licences the current system does not protect educational establishments adequately from liability for copyright infringement and inhibits their ability to deliver their curriculum. In particular, existing licences do not adequately cover the use of digital technology and copyright material in schools. Where they exist they come at additional cost.

At the same time some of the existing licences overlap and educational establishments have to comply with potentially 12 or more licensing terms. No central database is available to establish from which agency an educational establishment requires a licence and little information and advice is available to educational establishments on copyright licensing. The licensing agencies are not regulated and can impose their own licensing terms and fees on educational establishments. While copyright law allows educational establishments the use of copyright material without a licence if in 'the course of the activities of the establishment', three Copyright Agencies require a licence for 'non-curricular' use of recorded music and film.

Copyright agency licensing models

We have set out details of each licensing agency's licensing model, fees and related issues in Schedule 1. A summary of the key points for each Licensing Agency is set out below.

Copyright Licensing Agency (CLA)

The CLA represents authors and publishers of certain materials. The CLA licence provides the right to photocopy, scan, or retype from certain books, journals and magazines owned by the educational establishment. This includes the right to make digital copies. The CLA licence does not cover newspaper articles.

The CLA offers a blanket licence for local authorities to cover all schools and colleges in their area at a discounted rate of 35 percent. The CLA issues licences to independent schools through various licensing agencies set up for this purpose. The fee is calculated on a per pupil basis based on Pupil Level Annual School Census (PLASC) data. There are a number of limitations on the use of these materials in the CLA licence.

The CLA is replacing its current form of licence from 1 April 2010 with a new CLA Schools licence that includes enhanced rights for schools. In addition to the photocopying and scanning permissions in the existing licence, this new licence will provide schools with the permission to re-use digital and website content that has been opted in to the licence. The CLA will provide a List of Participating Digital Material Publishers that have opted into the scheme later in the year. Schools will have to check this list to ensure the digital material they intend to use is covered by the licence.

From 1 April to 30 September, schools will be covered by the existing scope of the CLA licence and the new enhanced rights will become available to schools from 1 October 2010. Therefore from 1 October 2010, schools will be entitled to:

- Photocopy from licenced printed materials;
- Scan or re-type licenced printed materials to make digital copies;
- Make digital copies from licenced digital material; and
- Photocopy and scan printouts from licenced digital material.

The content of digital materials such as websites will be protected by copyright under the CDPA in the same way as hard copy materials such as books. If the owner/author of the content is a member of the CLA, then the CLA has the right to licence the copyright in these digital materials in addition to the copyright in the hard copy materials owned by its members. The difference with digital materials is that they are not currently properly dealt with under the educational exemptions in the CPDA. If the digital materials were not included in the CLA licence, then schools would have to procure a licence from the individual owners of the copyright in each digital material.

This new schools licence came about as a result of market research carried out by the CLA in schools. The CLA involved 12 or 13 local authorities in the survey and asked each to send a questionnaire out to the schools in their area in relation to use of digital materials. Interestingly, only 9 percent of schools surveyed responded to the survey. The CLA also surveyed attendees of education fairs and exhibitions. An overwhelming majority of the schools surveyed use digital subscription and/or free to use websites (i.e. websites that can be accessed without payment but are not 'free to copy') in the classroom.

The CLA recognised that the permissions on many of the free to use websites were unclear and difficult to find and hopes that the new licence will help address this issue, by licensing certain uses of these websites.

In addition to this limited survey, the CLA used its experience from its longer standing (2008) Higher Education digital licence and looked overseas to see how copyright licensing agencies in other jurisdictions licence the use of digital materials in schools. As set out above, only the digital materials of rights holders that have 'opted in' to the new licence will be included in the new Schools licence.

The CLA told us that the buy in from rights holders for the higher education licence was high with 1,500 of the 2,300 publishers signing up and the CLA is in consultation with the key publishers in relation to the schools licence. The CLA will publish a list of sites that have opted in to the new schools licence. This will then be updated as and when required.

Although the new schools licence will open up the licenced use of digital materials to schools, this requirement for a site to have been 'opted in' to the scheme will add a layer of uncertainty and administration for teachers, who will effectively have to check the list of opted in sites before using a website in the class room. This was a side effect that the CLA also expressed concern about. See further below for the CLA's suggestions for improving this situation. The new CLA Schools licence will result in a 10 percent increase in the fees, phased in over two years (5 percent this year, 5 percent next). The costs of these licences are set out in Schedule 1. This uplift in costs has been introduced before the CLA has full sign up from the digital rights holders.

The CLA considers its current collective licensing system administered through local authorities and through agencies for independent schools, to be an efficient system. The alternative would of course require schools to procure licences from each individual rights holder to use their copyright materials. This would be a logistical nightmare and a very costly exercise.

The Educational Recording Agency (ERA)

The ERA represents broadcasters. The ERA licence allows educational establishments to record the whole or part of non-encrypted broadcasts (not on demand or pay-to-use services) from free to air broadcasts on BBC, ITV, Channel 4, Film 4, E4, Five and S4C. The recordings can then be retained, stored and copied for educational purposes at the licenced establishment. The ERA licence covers broadcasts that are owned or controlled by its members. Broadcasts could apply to films broadcast on television, where they are owned or controlled by the ERA member, e.g. Film 4 but not to films belonging to other film studios that are broadcast on a member network.

The ERA issues the majority of its licences to local authorities as blanket licences. There are a few local authorities that have delegated responsibility to schools and so do not provide blanket licences for their schools and colleges. The ERA offers a 30 percent discount for blanket licences. This is a significant saving for local authorities/ schools. Some local authorities choose to recharge the amount to the schools and colleges in their area. In this way, the local authorities still recoup the fees paid but the schools and colleges benefit from the administrative savings and the blanket licence discount. The ERA has introduced the ERA Plus licence which allows an educational establishment to stream the recorded material, allowing students and teachers to access the material off site.

The ERA also offers a 30 percent discount for ERA Plus blanket licences. The costs of these licences are set out in Schedule 1.

The legislative backdrop to the ERA licence is interesting and should be noted. Section 35 of the CDPA provides an exception for copyright infringement for educational establishments, as follows:

'35. Recording by educational establishments of broadcasts

— (1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast, or in any work included in it provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.

(1A) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of subsection (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.

(2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.'

The effect of this section is that if the owner of copyright in a broadcast is not a member of the current ERA licensing scheme or other copyright licensing scheme (e.g. a MPLC or PVSL licence), then educational establishments can make a recording of the broadcast, make a copy of it or communicate it to pupils and teachers without infringing the copyright in the broadcast provided the educational purposes are non-commercial. The ERA licence specifically excludes OU programmes from the licence.

This gives schools a higher level of comfort, in that the risk of accidentally infringing copyright in broadcasts by recording, copying or communicating within the educational environment are low, provided the school is covered by an ERA licence. The ERA model is a good, simple model for copyright licensing in schools, although this is to be expected as the ERA was set up solely to licence copyright in broadcasts to schools.

Newspaper Licensing Agency (NLA)

The NLA represents national and regional newspapers. The NLA does not charge schools for licences to use the newspaper articles of its members. Schools must still sign up to the free NLA licence at <http://www.newspapersforschools.co.uk/>. The licence covers paper copying of newspaper articles and permits schools to access a news library containing newspaper clippings in PDF format from over 100 UK national and regional titles. While this limited service is free for pupils under 16, the NLA licences colleges and businesses throughout the UK.

The NLA has set up a new licence to allow use of newspaper websites. The current free schools licence does not cover use of online newspaper articles and so does not necessarily reflect the use of newspapers in schools. It is not clear whether newspaper websites will be included in the free schools licence. Newspapers are not covered by the CLA's licensing remit and so would not fall into the new CLA Schools licence. A NLA licence will be required for further education colleges, where pupils are over 16 years old and where a school or college wishes to use digital newspaper content. As the NLA does not chase schools for payment of licence fees, there is a risk that schools do not know that they have to sign up for the free licence and as such will not be aware of the limits or restrictions on use of Newspaper content. We understand that the NLA indicated a couple of years ago that it did not intend to start charging schools for licences.

PRS for Music (PRS)

The PRS administers the performance rights of music composers, songwriters and publishers. The CDPA provides an exemption for educational establishments to perform music in public, in 'the course of the activities of the establishment'. This exemption applies to all copyright protected music, whether otherwise covered by a licensing scheme or not. This term is not defined. The PRS has interpreted it as referring to the 'curriculum'. However, there is no statutory definition of 'curriculum' and so the PRS also provide their own, narrow interpretation of the 'curriculum'.

The PRS licence provides the right for an educational establishment to play live or pre-recorded music in public for a 'non-curricular' purpose on its premises. This is explored further below. An issue that arises with the PRS licence is that there is no statutory definition of 'curriculum', which allows the PRS to interpret this narrowly and essentially require a licence to be held for most performances of music in schools.

The PRS guidance gives the following examples of 'non-curricular' uses of music:

- Discos/end of term parties;
- Carol concerts;
- Concerts (not including musicals);
- Telephone systems music on hold;
- Playing a radio/tape/CD player;
- School fetes (where music is being played);
- Jukebox;
- Dance/Aerobics classes; and
- TV/Films.

The question is: who should decide whether these activities are curricular or not? In addition, the educational tariff for the PRS licence does not cover other uses of music by schools. For example, if a school wanted to record a podcast for pupils including background music or to run a school radio, this would require different and additional licences from the PRS.

The Centre for Educational Finance Management (CEFM) administers PRS licences for schools and colleges on behalf of the PRS. The PRS does not offer discounted 'blanket licences' but licences can be bought in blocks by local authorities, according to the number of schools within the area that require the licence. The advantage of a block licence is that local authorities can take out the licences on behalf of the schools, cutting down on the administration involved.

The standard PRS licence does not cover other uses of music, for example inclusion of music on websites or podcasts or recording of music CDs. The CEFM does not administer additional PRS licences, which must be arranged by the schools directly with the PRS and extra fees must be incurred.

It is important to note that a higher royalty rate (around a third higher) is payable for the PRS licence if the licence is procured 'after the event', that is, after the musical performance has taken place. This is a factor that should be accounted for by schools when determining which licences to procure.

Phonographic Performance Limited (PPL)

The PPL administers the performance rights of record companies and performers. A PPL licence is required where use is made in educational establishments (other than as part of the curriculum) of pre-recorded music e.g. tapes, records or CDs). This covers the copyright in the recording rather than the music and lyrics (which falls under the PRS licence). Therefore, whenever a sound recording or music video is played for non-curricular purposes, a PPL licence is likely to be required in addition to a licence from the PRS. The same issues with the definition of 'curriculum' as with the PRS licence arise here. A PPL licence is required as the PPL construe 'in the course of the activities of the establishment' narrowly, effectively requiring schools to be licenced whenever they play recorded music (save in very limited situations).

Often both a PRS (for the song) and PPL (for the recording of the song) licence is required where there is a public performance of music. Where a music CD is played in public, both licences will be required. Where a live performer performs a piece of music, there is no recording of the music and so only a PRS licence will be required. As with the PRS, the CEFM administers PPL licences, which can also be bought in blocks by local authorities. No discounted blanket licence is available.

Christian Copyright Licensing International (CCLI)

The CCLI administers licences for the use of Christian hymns and music. There are two types of licences available:

- The Collective Worship Copyright Licence (CWCL); and
- The Collective Worship Music Reproduction Licence (CWMRL).

The CWCL allows the licensee to copy the words of Christian hymns and songs and record a service either in video or audio. The CWMRL provides a licence to photocopy the music of Christian hymns and songs.

We understand from one local authority that the CCLI may offer blanket or block licences to local authorities. As set out below, most local authorities do not purchase CCLI licences but leave it up to the individual schools to determine whether they need one. While many hymns may now be out of copyright, the hymn books, hymn sheets, scores and recorded Christian based music are likely to be protected by copyright and schools will need a CCLI licence to use these materials. The CCLI refused to give us any financial data relating to schools. It is therefore difficult to determine how many schools purchase these licences or the financial spend, without talking to individual schools.

The Designs and Artists Copyright Society (DACS)

DACS represents designers and artists. It is a licensing body, which represents a number UK and international artists. A list of these artists can be found on the DACS website and includes Picasso and Matisse. DACS has entered into a relationship with the CLA, which allows the copying of artistic works from books, magazines and journals. In the event that artistic work is being used for commercial or non educational uses, a licence may be required direct from DACS. DACS has confirmed that they very rarely get enquiries from schools in relation to the requirement for a licence. Schools do not appear to be a potential source of licence revenue for DACS at present. DACS commented to us:

'We do not believe that the structure of the project really fits with our activities as a collecting society on an individual rights licensing basis. We have also had a look through our system and we hardly ever receive any requests from schools for primary licensing purposes. In cases where we do, we have licensing guidelines that describe the licensing process.'

This licensing scheme does not appear to be a significant issue for schools but has been included in this report as one of the licensing agencies identified by Becta.

The Motion Picture Licensing Corporation (MPLC)

The MPLC licence is very similar to the PVSL (see below) in that it allows for the non-educational screening of films on the premises of an educational establishment. MPLC represents a different body of studios and film producers to PVSL. MPLC mainly represents the independent studios and TV producers.

The MPLC used to have a facility on its website to 'look up' film titles to see if they fall into the MPLC licence. Due to 'technical issues' they are no longer able to provide this facility. Schools must identify the owner of the copyright in the film and then check this against the MPLC's list of members. The MPLC states that the information can be found at uk.imdb.com, 'Scroll down past the overview section to see 'additional details' and check for the producer/studio/distributor details under 'company name''. Alternatively, schools can contact the MPLC at ukinfo@mplc.com or Tel: 01323 649 647 *4 to enquire about a title. As far as we understand, the MPLC does not offer blanket or block licences. Licences are generally administered directly to schools and colleges as required.

The issue with this licence is the fact that it does not cover all films and schools therefore need to be aware of which films are covered by this licence, particularly if they do not hold a PVSL licence as well. As set out above, films that belong to or are controlled by ERA members (e.g. the BBC or Film 4) that are broadcast on member channels are included in the ERA licence and can be recorded and shown in schools for educational purposes. Films broadcast by the ERA members that are not owned or controlled by them do not fall within the ERA scheme. As there are other film copyright licensing schemes in place (e.g. PVSL and MPLC), the recording or showing of these films will not fall within the section 35 exemption. The broadcast of the films would have to be 'recorded' by the school. Purchasing and showing a DVD of a film owned by Film 4 would not fall within the ERA licence terms.

The Music Publishers Association (MPA)

MPA is not a licensing scheme as such and does not issue licences. The MPA is rather like a trade association and provides a good place for schools to go if they have questions about individual licensing of published music but generally the MPA will just direct the enquirer to the relevant copyright owner. The MPA reports that it receives a substantial number of enquiries from schools, in particular when schools wish to put on a musical.

The Open University (OU)

An OU licence allows the educational establishment to record and show OU programmes for educational purposes. We did not find much information to confirm that schools were purchasing OU licences. The costs of these licences are set out in Schedule 1.

Filmbank – Public Video Screening Licence (PVSL)

The PVSL was created by Filmbank Distributors who represents most of the leading Hollywood and independent film studios such as Warner Brothers, MGM, Sony Pictures, Disney, Pixar, Paramount, 20th Century Fox, touchstone and Universal Pictures. Filmbank has an online Film database as part of its rental library. This lists all of the titles owned by Filmbank members. This can be found at <http://bit.ly/nGD26k> and has a search facility for teachers, although this is not its primary function.

The PVSL is required for an educational establishment if a film is being screened on its premises for a non-educational purpose e.g. in a film club. Again the difficulty arises in assessing what is a 'non-educational purpose'.

The PVSL guidance states that this is where a film is shown for entertainment and not instruction, but this is not based on any statutory definition that we know of. The same issue arises as with the MPLC, in that the school must be aware of which films are not covered by this licence. Schools could just opt to buy either a PVSL or a MPLC licence and then only show films that are covered by the relevant licence. The PVSL licence is administered through the CEFM and no discounted blanket licence is available, although local authorities can buy block licences. See above in relation to films covered by the ERA licence.

Ordnance Survey (OS)

Licensed educational establishments are allowed to do the following:

- Copy mapping for educational purposes;
- Use digital mapping to produce paper copies for educational purposes; and
- Copy mapping for a location map in a prospectus; brochure; or website.

We understand that the OS supplies local authorities with its products and local authority funded educational establishments benefit from being regarded by the OS as departments of their local authority. Therefore, local authority funded educational establishments do not require a separate licence. OS licensing officers are appointed in each local authority. We understand that JISC is now dealing with OS licensing to further education colleges and higher education institutions. JISC is funding the licensing of digital mapping through the online service Digimap to these establishments, allowing users to print and download maps of any location in Great Britain. Schools do not currently have access to the Digimap service.

The Centre for Educational Finance Management (CEFM)

Set up as part of a project by the Department of Education and Science in 1990, the CEFM is not a licensing agency as such but administers licences to schools and colleges in the UK on behalf of the PRS, PPL and PVSL, as part its wider financial management function. The model works well and has administrative benefits for schools and local authorities. If local authorities are prepared to arrange block licences for their schools and colleges and choose not to recharge the establishments for these licences, this provides a financial benefit for the schools and colleges themselves. This model does not provide any other obvious financial benefits for schools and colleges or local authorities. However, the model does reduce administration for these three licensing agencies, which may be reflected in their educational tariffs. Conversely, the CEFM is likely to charge an agency fee to these licensing agencies, which may be passed on to schools and colleges in the educational tariffs.

The CEFM was not prepared to share any financial information with us. However, their online accounts show that this is a private company and is profit making. Its 2009 accounts showed an overall turnover of £1,379,149 and retained profit of £37,728. However, the CEFM carries out more than just a licence administration function. The accounts do not breakdown the CEFM's financials between its various functions and so these figures do not just apply to the licensing of schools.

Local authority licensing models

We have included details of the licensing models adopted by local authorities for each licensing agency in Schedule 2. A summary of our findings is set out below.

All of the survey local authorities provided blanket licences for the CLA and the ERA. The majority of the local authorities that responded to us provided block licences for the PRS and the PPL. The block licences do not offer a discount for local authorities but allow the local authority to arrange the licences for all of the schools in its area that need them.

As a general rule, the survey local authorities leave it up to the individual schools to procure other licences required for their individual needs, in particular, the NLA, PVSL, MPA, MPLC, CCLI and DACS, although a couple of survey local authorities provide blanket licences for the CCLI, the MPLC and the PVSL. The rationale behind the survey local authorities not arranging these licences appears to be that not every school requires these licences and each school is best placed to assess its own requirements for such licensing.

Other than the CLA and ERA licences, the licences each school requires will depend on the activities that school carries out and there cannot be a 'one size fits all' approach to copyright licensing. Feedback from local authorities suggests that schools generally have a reactive approach to licensing, i.e. they procure licences when they are contacted directly by the relevant licensing agencies.

The CCLI has approached one of the survey local authorities to offer a blanket licence for schools in their area. This is being considered by that survey local authority for FY 2010. Another survey local authority reported that the local diocese arranges CCLI licences for schools in the area. One survey local authority had approached the PVSL (via the CEFM) to request a blanket licence for all schools in its area, but this was refused. No survey local authorities had any information on Open University licensing and most knew nothing about Ordnance Survey licences.

Some survey local authorities choose to pay for the blanket or block licences centrally and charge the individual schools for these on a per pupil basis. Others take on the cost themselves. Some survey local authorities have set up specific sections of their website to deal with copyright licensing and provide detailed guidance for schools and colleges in their area, including details of the type of licences required and whether the local authority will arrange these licences or not. Others have no online information available.

We spoke at length with the E-Communications Officer at one survey local authority, who is in charge of copyright licensing for schools in their area. This individual had taken time to research the various licensing models and the underlying law and has created a portal on the local authority's website providing information and advice for schools. If there are any changes in the licence terms or law, she will update the portal to reflect this. This officer highlighted the following:

- Schools generally assume that if they have copyright licences or the local authority has blanket licences in place, then they can do whatever they want with the copyright materials. There is a general view amongst teachers that materials on the internet are 'fair game' and also if the school has bought the format containing the copyright material, for example a CD, then it is allowed to use it however it wants. In her opinion, there is a lack of understanding of the terms of the licences and copyright law in general.
- Schools usually contact the local authority when they have been contacted by the licensing agencies, i.e. to check whether they need to pay for a licence or not. This officer also gets specific queries from schools (usually secondary) about whether they can carry out certain activities under the existing licences.
- When asked what would make life easier for schools in her area (and herself), this officer said that there should be one licence to cover all curricular based activities in schools. She estimated that 99 percent of the activities carried out by schools are 'curricular'. In her view, the current licensing system only serves to inhibit the curriculum.
- This officer considered that there are a number of overlaps between the licences and the regime often results in absurd consequences. By way of example, a recent query the officer had was from a school putting on a school play. They had arranged a PRS licence for the public performance of music during the play. Due to child safety and data protection laws, parents were not entitled to film the school play. Therefore the school offered to film the play for them. Filming the play required an additional annual production licence from the PRS.

- This officer also expressed concern about the level of fees payable, particularly for smaller schools with a low budget. Some schools in her area had only 30 pupils.
- The officer described the current system as a 'minefield' and a 'nightmare'.

The overall impression we got from this exercise was that local authorities and schools pay the licence fees demanded with little or no question.

Costs

Full details of the licence fees paid by the local authorities that responded to us are set out in the table in Schedule 2. The licensing agencies have not provided us with any financial statistics, save for the ERA¹ and the CLA (which is available in its annual review). The CEFM and CCLI refused to provide any financial information.

The statistics for the CLA in the last calendar year are as follows:

- CLA – total licence revenue for UK licences - £48.3 million. £10.8 million of this was from schools (state and independent – from the figure we have available for primary and secondary pupils, we estimate that £6.2 million of this relates to primary and secondary state schools in England and Wales) and £5.7 million from further education colleges. The total percentage of licence revenue received from schools and colleges was 34.2 percent.

For the PPL and PRS, we have set out below a very rough estimate of the fees paid by schools and colleges, based on the average spend per local authority and the licensing agency's revenue for the last financial year. The average costs paid in the last financial year by the survey local authorities for copyright licences are as follows:

¹ ERA has provided its licensing revenue on a confidential basis

- PRS £18,856; and
- PPL £18,634.

The CEFM estimated that the PRS and PPL licences are taken out to cover 17,500 schools. Taking into consideration that there are 150 local authorities in England, we have calculated below an estimated amount of licence fees paid by local authorities for schools, as against the total revenue received by the licensing agency (from their company accounts):

- PRS – average spend of £2.8 million by schools and colleges as a percentage of total revenue of £608 million is 0.47 percent.
- PPL – average spend of £2.8 million by schools and colleges as a percentage of the total revenue of £127 million is 2.21 percent.

Although we do not have the financial details relating to the educational sector for the following licensing agencies, their total income for the last financial year (where available) is listed below.

- CCLI £4.85 million;
- PVSL £8.07 million;
- OU £6.56 million;
- DACS £9.07 million;
- NLA £26.1 million².

As well as the financial costs of the licences themselves, the administrative burden and cost of determining which licences are required and applying for these licences should not be underestimated.

It is difficult to determine what the likely costs involved in this would be and would depend on the number of licences each school requires and whether they are covered by the local authority's blanket/block licences. By way of example, the PRS, PPL and PVSL forms, administered by the CEFM, are relatively simple to complete, requiring just the school address and contact details, the number of pupils from the PLASC data and a signature.

The PVSL does, however, have a quarterly reporting requirement whereby a form must be completed indicating which films have been screened under the PVSL in that quarter, adding to the paperwork. Schools could potentially be faced with requests from around 10 different licensing agencies each year, at different times of the year. This will take time and resources to manage.

Issues with the current system

We have set out details of the key issues with each particular licensing agency's licensing model in Schedule 1. A summary of the key issues with the current licensing systems is set out below.

The current system is complex, requiring schools or local authorities to procure a number of licences from a number of different licensing agencies. This creates a high administrative and financial burden on schools and local authorities. It is important to remember that in the absence of these licensing agencies, schools would have to seek permission from each and every owner of copyright materials it uses. Therefore, these licensing agencies do significantly simplify copyright licensing in this respect.

² (Although the limited paper licence is free to school pupils under 16 years of age, the NLA does charge licence fees to further education colleges and for newspaper websites.)

- Different licences are required for the use of different types of copyright materials and a number of the existing licences appear to overlap, for example two licences are required to play a recorded piece of music (PRS and PPL).
- There are no standard licence terms for use of copyright materials in schools and so schools must be familiar with the terms of and restrictions under potentially twelve or more licences.
- The existing licences do not cover all materials used in schools (only those belonging to members of the relevant licensing agencies). These licences do not cover all uses of copyright materials in schools and these gaps leave schools open to the risk of copyright infringement and/or make schools wary of using copyright materials, inhibiting their ability to deliver the curriculum.
- There is little information or advice available for schools and colleges in relation to copyright licensing, without going to the licensing agencies themselves, who may not be impartial with their advice.

Section 34 of the CDPA provides the following:

(1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment—

(a) by a teacher or pupil in the course of the activities of the establishment, or

(b) at the establishment by any person for the purposes of instruction, is not a public performance for the purposes of infringement of copyright.

(2) The playing or showing of a sound recording, film, broadcast or cable programme before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

(3) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

Therefore schools and colleges can perform music or show films without a licence if it is in 'the course of the activities of the establishment' or 'for the purposes of instruction'. The PRS, PPL and PVSL define this exception in terms of curricular and non-curricular activities, which is not actually specified by the CDPA. Arguably, 'activities relating to an educational establishment' is wider than the curriculum.

As there is no statutory definition of curriculum, the PRS, PPL and the CEFM use their own interpretation of 'curriculum'. The CEFM FAQ page, contains the following question:

Q: Everything we do is within the school day and therefore curricular?

A: Just because music use happens in the school day does not necessarily make this a curricular usage. For example; playing some background music during a maths class is not required by the maths curriculum and therefore not exempt from copyright law' (see <http://bit.ly/pvckxB>)

Anecdotal evidence suggests that the CEFM has previously stated that 'music was just for use in music lessons'. If this is the type of advice that schools have been getting from the CEFM, which implies that any use of music in schools outside of music lessons is extra curricular, then it may be that schools are paying for PRS/PPL licences that they do not actually need.

Interestingly the PVSL licence guidance follows the wording of the CDPA in its explanation for where a licence is needed. If a film is shown for instruction, then a licence is not required. If it is shown for entertainment, a licence is required. Arguably, there is an overlap between instruction and entertainment.

Today schools are obliged to offer more than they have traditionally considered to be the 'curriculum' and it is the actual practice in schools that ends up defining the full curriculum. Should it be for the teacher to decide whether, for example, the use of music in the maths class is part of the curriculum and be prepared to defend this position if challenged?

We are not saying that schools do not need PRS, PPL or PVSL licences to play music/films to pupils and there would be a real risk of action from these licensing agencies if schools decided as a blanket rule not to procure these licences.

However, there is clearly some uncertainty as to the scope of the exemption and we consider it is preferable for the term 'activities relating to an educational establishment' to be clarified. If necessary, a suitable, universal legislative definition of curriculum should be created for the purposes of the CDPA exemption, to provide clear guidelines for schools as to when PRS/PPL/PVSL licences are required.

There is a risk that trying to define 'activities relating to an educational establishment' could result in a more restrictive regime for schools and so care must be taken when making this distinction. As Becta highlighted, this issue could be used in negotiations with these licensing agencies.

The existing copyright licensing schemes are struggling to keep up with the fast paced development of technology, in particular the use of digital materials in schools. As set out above, the CLA and ERA have tried to address the technological developments in the new Schools licence and ERA Plus licence. These new licences do take account of the use of digital technology in schools but whether they will be adequate for schools' needs and for how long, remains to be seen.

The expansion of these existing licences to cover digital technology has come at a price, with additional fees payable for the ERA Plus licence and a 10 percent increase in the licence fee for the new CLA Schools licence, to reflect the additional works that are being licenced. This increase in prices is largely unregulated (save for the ability to bring action to the Copyright Tribunal as explained further below). However, as the pool of rights holders will increase under the new scheme, it is reasonable that the prices are increased to reflect this. It is possible that other licensing agencies will follow suit. It is clear that the incorporation of new technology into the various copyright licences will result in higher licence fees.

The existing licensing agencies are not tightly controlled or regulated in the UK, other than by their own constitutions and members. In theory this allows these licensing agencies to impose their own licence terms and licence fees on licensees.



Licensees do have the right to complain to the Copyright Tribunal if they consider the terms or fees to be unreasonable. However, for the average school, the costs and time in bringing such a complaint may outweigh the potential benefits. Such applications are usually brought by larger commercial organisations although applications have been brought by representative bodies made up of members of a group of licensees e.g. Universities UK made up from chancellors and Vice Chancellors of UK Universities.

Many of the licences based on pupil numbers are calculated on the basis of PLASC data. One local authority commented that:

'the charging from PLASC data is not always accurate and figures often have to be manipulated. It would be far better if a standard charging policy on published or final PLASC data were uniform across all licensors.'

It is difficult to identify which licensing schemes certain copyright works fall into. For example, if you want to find out if a film is covered by an MPLC licence, there is no database for this. Instead, schools have to search for the producer/distributor of the film and then match this up with the participating rights holders. There is no central database of copyright works available for schools to access and use.

In summary, the current system is costly, confusing, outdated and does not provide adequate protection for schools and colleges from the risk of copyright infringement. We set out below the ideas for reform.

Part b – scope for reform

Summary: There are several options for reform of the current licensing system for schools which could reduce the administrative burden and cost for schools, and provide teachers with more freedom to operate. Ground level reforms include increased use of blanket licensing by local authorities and the provision of more information on copyright licensing. Technology could be used to help teachers navigate the gaps in the current licensing system. The administrative burden of the current system could be reduced through centralised administration, where one agency provides centralised administration of licences required by schools from all the licensing agencies. Licensing agencies could provide bespoke annual licences for schools, not all currently do, with standard licensing terms and develop 'pay as you go' licences for sporadic use.

Other options include establishing a body to review and oversee licensing for educational establishments by licensing agencies, or an expansion of the Copyright Tribunal's jurisdiction. Legislation could be amended to provide an exception for educational establishments in the absence of a licensing scheme, so reducing the risk of copyright infringement for schools where there are gaps in the current licensing system. What constitutes 'activities relating to an educational establishment' could be further clarified in law. Top level reforms include the establishment of a single licensing agency for schools, or referrals of existing licences to the Copyright Tribunal.

As set out in Part A above, we have identified a number of concerns/difficulties with the existing copyright licensing regimes for schools and colleges. The licensing regimes are well established in the UK. The licensing agencies have to act in the best interests of their members and they also have a much wider remit than licensing of schools and colleges and have to adopt their terms accordingly. The licensing agencies are all not for profit organisations and all profit is returned to their members. If the current system works well for them and their members, these licensing agencies are unlikely to change the current system.

The essential issue for educational establishments is that they want to save time and costs whilst ensuring that teachers have freedom to operate their classrooms within the scope of the law and any relevant licensing schemes, without having to check that they are licenced or simply not bothering to do the activity for fear of infringing copyright.

Can these two competing sets of objectives be reconciled? There are various ways to free up access to copyright materials for educational establishments, including free access to online materials, where such access is not restricted by copyright owners, a UK schools content bank containing materials in which copyright permissions have been pre-approved and the introduction of a reverse notice scheme. We do not intend to deal with these options in this Report and have focused our suggestions on the current licensing schemes in the UK.

We set out in the Summary of this Report a table summarising the solutions suggested below.

Ground level reform

Blanket licensing

As explained above, the CLA and ERA offer substantial discounts to local authorities which take out blanket licences for schools in their area. All of the local authorities that responded to us take advantage of the blanket licence but we understand certain local authorities have delegated responsibility for this to schools and colleges and no longer arrange these licences for their schools. This is a clear waste of the discount and administrative benefits of the blanket licence.

Blanket licensing is permitted under The School Finance (England) Regulations (SI 2006 No 468). Schedule 2 clause 29 recognises that one of the classes of expenditure that may be deducted from the Schools Budget of a Local Education Authority is 'Expenditure on licence fees or subscriptions paid on behalf of schools'. This is a discretionary matter and local authorities can choose to devolve these responsibilities to individual schools if it so chooses. The survey local authorities appeared to be aware of their ability to deduct these licence fees from the Schools Budget, although as set out above, some choose to recharge the schools for these.

The following is an example of the potential savings that can be made through blanket licensing:

An individual ERA licence is 32p per pupil for primary and 56p per pupil for secondary and there are 4,199,461 primary pupils and 3,420,375 secondary pupils that require licences in England and Wales. The annual cost of ERA licence would be:

- Primary £1,343,827.50
- Secondary £1,915,410.00
- Total £3,259,237.50

The blanket ERA licence offers a 30 percent discount on these fees. Therefore the total annual cost for these pupils under blanket licences would be £2,281,466.30 saving £977,771.25.

We understand that, for example, Haringey, Liverpool, Lambeth, Reading and Ceredigion local authorities do not buy blanket licences for their schools and colleges. These local authorities represent approximately 93,000 primary and 58,000 secondary school pupils that have to be covered by the full price tariff (totalling £62,240). If these local authorities had arranged a blanket licence, this would have saved £43,568. This is the total potential savings on ERA licences for schools in England and Wales. The information provided was not broken down into figures for England and Wales and as such this total includes Ceredigion (Wales).

While this may not appear to be a significant saving financially, it also saves the administrative burden on schools. In addition, the danger is that more local authorities will choose to devolve licensing function and spending to individual schools. In this event, the discounts available would be lost and schools would have to find these higher licence fees within their own budgets.

Therefore as well as looking to persuading the four English local authorities identified above to procure blanket licences where available, the situation with other local authorities must be monitored and the benefits of blanket licensing 'sold' to all local authorities to ensure local authorities continue to procure these blanket licences for their schools.

The PRS, PVSL and PPL do not offer 'blanket licensing' but offer 'block licensing' through the CEFM to local authorities. This means that the licences are still calculated on the basis of the number of individual schools that have said that they need a licence, but these licences are administered in blocks to the local authority, rather than the individual schools. Some local authorities automatically cover all schools in their area in much the same way as a blanket licence. Although there are no discounts available for block licences, they do reduce the administration required for schools.

Not all licensing agencies offer 'blanket licensing' or 'block licensing' and we deal with this issue below.

Advantages and disadvantages

The cost and administrative advantages of the blanket and block licensing option are clear. The disadvantage for local authorities is that arranging these licences puts an additional burden on them and, we understand certain local authorities have therefore delegated responsibility for licensing to their schools and colleges. As we have seen, some local authorities recharge schools for these licences, and so if it is the budget that is an issue, this could provide an alternative option for the local authority which does not wish to pay the licence fees.

While schools will have a better idea of their pupil numbers for the purpose of licensing (as opposed to the issues with the PLASC data identified below), if the individual schools procured the licences, they would not benefit from the blanket discounts available to local authorities. The benefits of blanket licensing would greatly outweigh any discrepancy in pupil numbers. It may be worth Becta notifying the Department for Education of the issues relating to the PLASC data and highlighting the consequences of inaccuracies.

Suggested approach

Local authorities should be made aware of the benefits of blanket and block licensing for schools. In the short term, it would be relatively easy to contact the local authorities that are not taking out blanket licences, as listed above to make them aware of and encourage them to participate in these blanket and block licences. Their internal governance may prevent this and reform at a local level may be required. The ability to deduct licence fees from the education budget is currently discretionary. This could be made compulsory through legislation.

Accessible information

We recognise that there are financial and logistical constraints to providing copyright licensing training for teachers and staff in all schools and understand that this may therefore not be a practicable exercise. However, one of the issues identified is that there is nowhere really for schools to go if they need information and guidance on copyright licensing.

There are some materials available on the internet, for example at <http://www.licensing-copyright.org/glance.htm>, which provides a useful 'At a Glance' Table explaining which licence is required for different uses of copyright material. Most of the licensing agencies have pointed this website out to us and clearly put a lot of value on its usefulness for schools. However, the information on the website is limited to the requirements for a licence.

It does not explain what schools can do without a licence or once they have a licence. We understand that this website is soon to be updated, although we do not know the extent of the information that will be available on the new site. We requested details of this and were told that 'we will make the PDF download lighter', which does not sound like a significant development!

It would be useful for the licensing agencies to provide examples and/or case studies to help schools determine which licences they require and to highlight what teachers can actually do within the licences.

Through our research and in particular responses from local authorities, we have determined that some local authorities are providing varying levels of online guidance to schools in their area in relation to copyright licensing. Individual schools often go to the local authority for information and guidance on copyright licensing. However, our research also showed that local authorities do not feel well equipped to deal with queries from schools and the only place for local authorities to go for help is the licensing agencies themselves. Understandably local authorities are concerned that the licensing agencies will not give totally impartial advice.

From the local authorities that responded to us, we understand that there are no specific Copyright Licensing Officer roles within the local authorities and other members of staff have to take on the role in addition to their other responsibilities. These staff do not have the time fully to research and advise on copyright licensing issues to enable them properly to advise schools or assess their licensing needs.

Local authorities could set up a specific role for overseeing and arranging copyright licensing for the local authority, including for schools and colleges. Ideally this would be funded as a fulltime role. Specialist training could be run for the individuals appointed to this post and then these Copyright Licensing officers could be the main point of contact for schools and colleges to advise on copyright licensing requirements. Standardised guidance for local authority websites could be provided to create online resources for schools to access.

Alternatively or additionally, the existing licensing-copyright.org website and offering could be revised and improved.

It would also be useful for schools to be able to find out quickly and easily what licences they have, particularly where the local authority has a blanket licence. We understand that when the licensing agencies set up the licensing-copyright.org site, the committee also discussed setting up a portal that would contain details of which schools were licenced under which licences. Schools would be able to access this portal and find out which licences they held. The committee ruled against creating this portal due to lack of resources. This idea should be revisited in combination with an online advisory service.

As highlighted above, there is no central database of copyright works to enable schools quickly and easily to identify which works are covered by copyright and which licences they fall under. The various licensing agencies may have this metadata available and so could, in theory, assist Becta in setting up and maintaining this centralised database.

It became clear from our discussions with the CLA that education for teachers and pupils is high on its list of improvements required to the system, although it recognises that teachers struggle to find the time to receive training. The CLA is keen to ensure that copyright licensing is understood so that teachers and pupils are confident with what they can and cannot do with copyright protected materials. The CLA considers that without this confidence, teachers may be too afraid to copy materials, even though they are probably covered by the relevant licence. The CLA does try to provide educational training, for example when invited into schools or at teacher training conferences.

However, the CLA admitted that its educational programme is not strong, is mainly reactive and much more could be done on its part to educate. The obstacles the CLA considers to be in its way in relation to education is:

- Funding – the CLA runs a not for profit business. It currently takes a 10 percent administration cut from the licence revenue received and the rest goes to its members. There is very little left over for the CLA to run workshops, seminars etc for education purposes; and
- Access – the CLA sometimes finds it difficult to get into schools and colleges as it is very much regarded as the 'enemy' in the equation. The CLA was keen to highlight that its licensing system is intended to make copyright materials more accessible to schools and simplify licensing requirements for schools. The CLA's relationship with schools should not be an adversarial one. More exposure to schools would help the CLA's profile in this respect, particularly as the CLA's main relationship at present is with local authorities rather than individual schools. The CLA considers that Becta's assistance in facilitating such contact would be very welcome.

Advantages and disadvantages

The advantages of the above proposals are that they are relatively simple to implement and would provide local authorities with the tools to help and advise schools in their area as well as carrying out the administrative role for blanket/block licensing and would allow teachers to be more confident in what they can and cannot use the materials for. It would provide an impartial advisory and information service for schools and local authorities in the UK. The licensing agencies have already set up a committee to create the licensing-copyright.org site.

This is a good step towards the end goal and is something that Becta can help to build on.

The disadvantages would be that this would inevitably require funding to set up and maintain. The potential savings may not be enough to offset the budgets required to set up this sort of project/operation. If the local authority route were taken, this would effectively create more work for the local authorities and the individuals concerned who take on the copyright licensing liaison role.

Suggested approach

The local authority approach would require 'buy in' from all of the local authorities to set up these online resources and contact points for schools in their area and desirably the specialist copyright licensing role. Many of the local authorities that responded to us agreed that the licensing schemes were complex and difficult to understand. However, it was also clear that the local authorities consider the burden of licensing is already high. They may not be willing to take on additional responsibilities. In order to achieve uniformity across the board and to assist local authorities with their responsibilities, Becta could create and supply suitable materials to local authorities with instructions as to their use and incorporation. Becta is in a good position to assist the licensing agencies to get the message across to schools and colleges.

A centralised site would be cheaper and easier to implement than a roll out to all of the local authorities. An alternative (or additional) option would be to develop the existing licensing-copyright.org site with the relevant licensing agencies and local authorities to provide more information for schools. The existing licensing agency committee would be a good place to start for discussions. An E-Learning product could be developed to roll out to teachers and schools.

This may be a good way to get the information into schools without having to deliver training. Becta mentioned approaching JISC and/or NEN with a view to taking this project forward.

Once the local authority or central advisory copyright licensing information service has been set up, we must consider how to flow the information down to schools. The www.licensing-copyright.org committee provided the 'At a Glance' leaflet for schools and discussed the most effective way to filter this information down. The 'At a Glance' leaflet is essentially the same as the information available on the www.licensing-copyright.org website. They decided to send these leaflets to the Chair of the Board of Governors of each school, rather than head teachers, on the basis that head teachers were likely to be too busy to review these materials.

As the CLA has expressed a real interest in taking its educational remit further, and in light of the high profile nature of the CLA amongst the licensing agencies of relevance to schools, it would appear sensible to begin the discussions with the CLA. Becta may wish to consider jointly run and funded training events with the CLA. If this approach is successful, Becta could develop an educational offering to pitch to the other licensing agencies.

Use of technology

As highlighted above, not all copyright owners sign up to the collective licensing scheme and so there are still gaps in the licensing scheme whereby teachers must determine whether the materials they wish to use are licenced or not. We explore further below how these gaps could be 'closed'. However, a more practical and realistic solution could be to use technology to assist teachers particularly in relation to digital materials.

By way of example, as set out above, the CLA has a list of websites that have 'opted in' to the collective licensing scheme. Instead of a teacher having to check each website they intend to use, technology could be developed alongside the CLA to either block websites that are not licenced under the scheme (or any other scheme) or, less restrictively, to flash a warning if it is unlicensed or to indicate if it is licenced, or perhaps more simply, to tell you which one is licenced.

The CLA also suggested an interactive 'hub' whereby teachers could search titles or websites to determine whether they fall within the CLA licensing scheme.

Advantages and disadvantages

This use of technology would remove some of the uncertainty from the licensing process for teachers and give them the confidence to use copyright materials. However, it is difficult to envisage how technology could be used in this way in relation to copyright materials other than written works (i.e. which fall under the remit of the CLA or NLA) and so the application may be limited. As set out above, under the ERA licensing scheme, broadcasts that are not part of the ERA licence scheme are exempt under the CDPA and so the copyright warning/indication or search system would not be required, provided the school has an ERA licence.

CLA licenced copyright materials are likely to be the key digital materials licenced for schools and therefore this additional information may make a significant difference for teachers. The development and roll out of new technology will require funding and will take time, although this may be an area where licensing agencies would be prepared to contribute financially, as it would work in the interests of their members.

Suggested approach

The CLA has expressed an interest in understanding the existing technology platforms in schools and working with local authorities/schools to develop this technology to simplify licensing in schools. This is an area where Becta's expertise and experience would be of real assistance. If this is an area that Becta sees as a viable option, then we suggest that Becta approaches the CLA to discuss this option further.

Centralised administration

We understand that the Local Government Association used to act as a centralised body for all Local Education Authorities and the LGA had the power to negotiate and arrange licences on behalf of the LEAs under the School Standards and Framework Act 1998. The School Finance (England) Regulations (SI 2006 No 468) devolved funding for schools to the local authorities. The legislation included a list of funding issues that could be passed down to schools and which had to be retained by the local authorities. After some pressure, licensing was included in the list of matters to be retained by the local authorities. This is now a discretionary matter for local authorities. This devolution of funding to the individual local authorities, while still more efficient than licensing individual schools, is more costly administratively for the licensing agencies. We know that the CLA passes this cost on to local authorities through an administration fee and it is likely that the other licensing agencies include some kind of administration fee in the licence fees.

The CEFM was set up by the Department of Education and Science in 1990 to provide (amongst other things) a central administration of licences for the PRS, PPL and Filmbank (PVSL).

Historically, the CEFM was set up to support grant maintained schools and administered licences from a number of bodies, including the PRS. When the PPL was set up, a number of staff moved from the PRS to the PPL and then appointed the CEFM to administer licences for the PPL, as they were used to dealing with them. Filmbank has always had links with the PRS and so joined suit, when it started its licensing scheme. The CEFM also acts as a licensing agent for independent schools.

We understand that the CEFM collects an agency fee for administering the licences on behalf of these licensing agencies. It is not known whether this fee is passed down to the licensees through the licence fee. The arrangement the CEFM has with most local authorities is that the local authorities write to the schools in each area and ask them if they require a PRS, PPL and/or PVSL licence. The local authority is then billed centrally for the schools that take up the licences. This arrangement still places an administrative burden on schools but it is less than dealing with the three licensing agencies individually.

The CEFM merely administers the licences on behalf of the three licensing agencies and does not have any say in the licensing models provided by these licensing agencies, i.e. if the licensing agency does not offer a blanket licence for local authorities, then it can only administer these licences on a school by school basis. It would also have no say in the licence fees charged by these licensing agencies.

Administratively, this centralised approach cuts down the number of licensing agencies a school or local authority has to deal with, i.e. they can get their licences for the three licensing agencies through one body.

In addition, a specific body set up to deal with the licensing requirements for schools is likely to understand the needs and requirements of individual schools and be best placed to advise them on their licensing requirements. The CEFM provides an advisory helpline for schools. While the CEFM was set up to support schools, the CEFM is still a 'collection agent' for the three licensing agencies. In addition, the guidance materials available on the CEFM website appear to be provided by the individual licensing agencies and so the CEFM's advice is likely to be based heavily on PRS/PPL and Filmbank guidance.

Two possible improvements to these arrangements would be:

- To try to expand the role of the CEFM to administer licences on behalf of more of the licensing agencies. The CEFM is set up to administer copyright licences for at least three of the licensing agencies and so it would appear possible to expand the role of the CEFM. This is likely to have been considered and/or attempted by the CEFM or the licensing agencies previously and so there may be obstacles we are not aware of;
or
- Alternatively, a new centralised body could be set up to administer these licences on behalf of the licensing agencies, instead of or alongside the CEFM. This new body could combine these services with an educational and advisory function as discussed above. If the new body was funded centrally, this may reduce the costs to the licensing agencies (and therefore the local authorities and schools) and make the licensing agencies more willing to participate.

Advantages and disadvantages

There are clear benefits to setting up a central body for the administration of copyright licences for schools. Local authorities/schools would only have to deal with one body, rather than potentially twelve. Feedback from our sample local authority was that it is much simpler to deal with one body for these three licensing agencies and it would prefer to extend this model so it only has to deal with one entity for all copyright licensing requirements. This is only the opinion of one local authority officer but from the information we have received, we consider that most local authority officers would agree with this.

The set up of such a central body/agent would require the 'buy in' of the relevant licensing agencies. The licensing agencies may be wary of doing this, particularly if an agency fee would be payable by the licensing agencies to the administrative body. There is also a risk that if an agency fee would be payable, that costs would be passed on to the local authorities or schools through the licence fees. The licensing agencies may, however, be so persuaded of the benefits of certain and easy collection of licence fees through such a body that agency fees may not be required.

Suggested approach

For this option to be explored further, a greater understanding of the way the CEFM operates and the background to the CEFM's establishment and privatisation, is needed. We consider the first step would be to set up a meeting with the CEFM to discuss the potential for widening the scope of their licensing service and any approaches to other licensing agencies that have been made in the past. If the option appears viable, then Becta can decide how best to approach the individual licensing agencies to discuss a centralised system, either in conjunction with or without the CEFM.

The CEFM has made it clear to us in our discussion with them that they are happy to open their doors to other licensing agencies. The other licensing agencies know how the CEFM works and are free to approach it to discuss the administration of their licences through the CEFM. The fact that they have not indicates that these licensing agencies are satisfied that they can administer their licences themselves.

The CEFM did comment to us that it would be interesting to see what would happen if there is a change of government and/or there is more delegation by local authorities to school level. If local authorities would no longer arrange licences on behalf of the schools in their area, the licensing agencies would have to deal with each school directly. The CEFM is set up to do this and these other licensing agencies are unlikely to have the resources to deal with the increased administration of having to contact and work with over 33,000 schools. This may be the driver needed to persuade licensing agencies to sign up to the CEFM or single centralised administration.

It would be interesting to determine the background to the CEFM and why it was privatised, to understand whether there are any fundamental bars to setting up a centralised system. Becta could look into the independent schools sector to determine how they use licensing agencies for licensing to see if the model would be transferable to the public sector schools. We understand the CEFM also acts as an agent for independent schools for the three licensing agencies.

Bespoke licensing models for schools

As set out above, the majority of the licensing agencies do have specific models for schools, whether it is blanket licensing or special educational tariffs. However, certain aspects of the existing models could be improved to benefit schools.

Our suggestions include:

- Blanket licences could be made available from each licensing agency to cover all schools in a local authority, available at discounted rates from the individual school licences. As set out above, blanket licences save administration time and costs for individual schools and colleges. Only the CLA, ERA and (possibly) CCLI currently offer blanket local authority licences at a discounted rate.
- Implementation of model licence terms across the board for all types of copyright licensing. The idea would be to have one form of licence contract for use by all licensing agencies so that schools are familiar with the terms and restrictions, rather than having to familiarise themselves with the terms of twelve or so different licences.
- Ensure that licence terms reflect the activities carried out by schools and colleges. Existing copyright licence terms contain restrictions or exclusions that leave gaps in the current licensing regime. If licence terms were modelled around the actual activities carried out by schools and colleges, then this would give them more comfort that they can use copyright materials in the educational environment without infringement and/or breach of their licences.
- The implementation of 'pay as you go' tariffs. Licences are payable on an annual basis to cover schools for use of copyright materials during that period. Therefore, for example, if a school intends to put on a school play for three nights, which includes recorded music, it will require a PRS and PPL licence for this 'extra curricular' activity to cover the school for public performances of music for the whole year.

This seems extreme for a three night performance (provided the school does not carry out any other licensable activities) and the risk is that schools may just decide not to bother getting an annual licence for the school play. The licensing agencies such as the PRS may consider a 'pay as you go' licence/ tariff to accommodate for these one off events.

Advantages and disadvantages

The advantage of the suggestions above is that they would hopefully make the administration of and compliance with copyright licences easier for schools and local authorities and may save costs. The disadvantage of blanket licences is that not all schools will require all copyright licences. Therefore, a blanket licence, even at a discounted rate may work out more expensive for local authorities and/or schools than the existing regime.

The licensing agencies may be reluctant to provide blanket licences for the education sector, for financial reasons and for fear that they would have to start offering similar deals to other sectors.

It is also difficult to envisage how a model licence would work across the different types of copyright. For example, licence terms that allow schools to photocopy a book would necessarily differ from a licence to play a CD in public. The model licence may end up being more restrictive for certain types of copyright materials than the existing licences in place at the moment. The licensing agencies that deal with other sectors are also likely to be satisfied with their form of licence and reluctant to change to satisfy one sector. We know that JISC has a model licence that it signs all of its copyright licensors up to, which appears to work across a range of digital materials. JISC could be involved on an advisory level in relation to the development of any new model licence.

Suggested approach

Implementation of the above suggestions would have to be through negotiations and discussions directly with the licensing agencies. We consider that it would be helpful in any event for Becta to meet with the licensing agencies to discuss licensing to schools in general and understand what scope there is for negotiating bespoke models for educational establishments.

Becta can also attempt to discuss/negotiate further discounts on the licence fees for schools. We note in particular that other than the ERA, CLA and OU, the licensing agencies do not make a distinction between primary and secondary pupils. This may be an area where discounts could realistically be applied.

Tighter controls on licensing agencies

Although the authority to set up collective copyright licensing agencies in the UK is found in the CDPA, there is very little regulation relating to the operation and administration of the licensing agencies, which are controlled and regulated by their constitution and their members. However, UK legislation does provide general controls over monopolistic or anti-competitive practices.

Licensing agencies have the ability to decide their own tariffs and the terms of their licences (within the scope of copyright law). As set out below, the CDPA provides for an appeal process for licensees that consider the terms of a licence to be unfair. However, such actions are costly and the licensing agencies, in particular the PRS and PPL are well equipped to defend such actions. The licensee or an organisation representing a group of licensees has the right to bring action to the Copyright Tribunal.

A representative body made up of representatives from licensees has taken action in the past (the Universities UK body, made up of Vice Chancellors and Principals of Universities successfully took action against the CLA in 2001 in relation to the CLA's decision to remove artistic works from its standard higher education licence and charge an additional fee for these works and the CLA's separate licensing scheme for course packs). Unless and until challenged in the Tribunal, these licensing agencies are free to determine the scope of their licences and the fees payable.

In addition, there is little control over the introduction of new licensing agencies into the UK or at least a lack of awareness and information, for example, schools and local authorities have always relied on the PVSL licence to allow educational establishments to show films.

However, in the last couple of years, the MPLC was established to represent certain other film distributors. Suddenly schools were being approached by this additional licensing agency which caused confusion and concern.

One exception to this is that the CDPA provides for a notification and certification scheme for any licensing scheme that displaces a permitted exception to copyright infringement. For example, Section 35 in relation to the educational recording of broadcasts. As set out above, educational establishments are permitted to do certain acts with broadcasts, unless there is a licensing scheme in place. If a licensing scheme is set up, such as the ERA, it must be notified to and certified by the Secretary of State. However, this certification does not require an assessment of the reasonableness of the licensing terms.

It would be beneficial to copyright users as a whole for the licensing schemes to be subject to more stringent controls and regulation. Options for achieving this would be to set up a body to review and oversee licensing practices in the UK or to expand the powers of and accessibility to the Copyright Tribunal, for example by permitting representative actions or by giving it pro-active investigatory powers.

Advantages and disadvantages

The advantage of tighter regulation would be to provide a more uniform approach to copyright licensing across the various licensing agencies, with controls over the costs and scope of the licences. The licensing agencies would no longer have the power unilaterally to impose their tariffs and licence terms on schools and businesses. The disadvantage would be that legislative reform would be required to create a regulatory system for collective licensing agencies.

Suggested approach

Legislative reform would be required for this proposed approach to be feasible.

Legislative changes – educational use of copyright

There are a number of areas where copyright legislation could be amended to provide more protection for schools in relation to use of copyright materials. It would clearly be beneficial for schools, and other educational establishments, if the exemptions from copyright infringement under the CDPA for educational establishments was expanded to allow schools and colleges to use all copyright materials freely within the educational environment without the need for licences. The exceptions would recognise the developing technology used by schools and cover distance learning as well.

However, this 'nirvana' for educational establishments has to be balanced with the rights of copyright owners to receive fair compensation for the use of their works, which in turn encourages authors/creators to create such works. Without such financial encouragement, such works may not be produced. The protection afforded to intellectual property rights is always a balance of reward to encourage further creation against others' freedom to use.

One of the areas that legislation could usefully address would be the 'gaps' in the types of works that are licenced by the licensing agencies. As set out above, Section 35 CDPA usefully provides that where there is not a licensing scheme in place, educational establishments may use broadcasts freely within the establishment. The ERA licence covers use of many broadcasts, but not all. However, schools that have an ERA licence in place can be comforted by the fact that the broadcasts in question are either covered by the ERA licence or by the exemption. Similar provisions exist for the reproduction of excerpts of published literary, dramatic or musical works, i.e. that it is permitted by educational establishments provided no licensing scheme is in place to cover these works.

This section could be expanded to include all copyright materials, i.e. that educational establishments are entitled to use copyright works freely, unless there is a licensing regime in place for those works. This approach would give comfort to schools and colleges and help legislation keep up with developing technology. This could, however, result in more licensing agencies being set up in the future and further licences and costs for schools.

The Gower's review in 2006 highlighted areas where the educational exemptions could be expanded to provide schools with more protection.

The UK Intellectual Property Office, the IPO thereafter, has taken these recommendations on board and has put forward a proposal for consultation. The second consultation closed on 31 March 2010 and licensing agencies such as the ERA and CLA will have submitted responses. The IPO's proposed amendments to the educational exemptions in the CDPA are as follows:

- Extend the educational exceptions to permit certain broadcasts and study material (for example handouts of excerpts from copyright works) to be transmitted outside the institutional campus for the purposes of distance learning but only via secure networks;
- Extend the exception relating to copying of small excerpts so that it covers film and sound recordings but this will not cover artistic works;
- The exception will apply only to the extent that licensing schemes are not in place.

Following the first consultation, the IPO has rejected Gower's proposals to expand the educational exceptions to cover distance learning and interactive whiteboards, on the grounds that the exception would only relate to distance learning and interactive whiteboards only to the extent these were not covered by a relevant licensing scheme. Any extension to the exception would not be absolute and would only apply subject to any relevant licensing schemes. As such, the IPO acknowledged that existing licences would have to be changed to keep up with the developing technology.

While these proposed amendments (if they come into law) will go some way towards improving access for schools to copyright materials, the changes are not substantial and are unlikely to have a big impact on the current licensing schemes. The IPO appears reluctant to recommend the radical expansion of the existing copyright exemptions and so the position discussed above is unlikely to become a reality in the foreseeable future.

- As discussed above, the definition of 'activities relating to an educational establishment' and/or 'curriculum' could be defined by legislation, to clarify the exemption in Section 34 of the CDPA and prevent licensing agencies such as the PRS and PPL from interpreting the provision as they like. However, there are no current proposals to do this.

Advantages and disadvantages

These changes would provide greater protection and freedom for schools in relation to the use of copyright materials in the classroom but would require legislative reform.

Suggested approach

These changes would require legislative reform, which in light of the IPO's reluctance to consider radical reform is unlikely to happen at the present time.

Top level reform

A single licensing agency for schools

The ideal position for copyright licensing for schools and other sectors, would be for one central collective licensing body to licence copyright in different materials across the board (i.e. to all licensees). This would require significant legislative overhaul effectively to disband the existing licensing agencies and set up a new licensing agency to licence copyright in all copyright works through a single licence.

In any event, this is unlikely to be practicable across the board, as the various licensees of the many different types of copyright will have different needs and may also have different priorities in their licence terms. Additionally, a blanket 'copyright licence' for all forms of copyright would be unnecessary, for example a cinema would require the ability to show films and play music but would have little use for written materials, whereas a bank is more likely to need to use written copyright materials but with less need to show films or play music. The likely cost of a combined licence would be high and would not be justified for schools or businesses that do not need the wider licence.

Schools and colleges have broadly the same needs for copyright materials. Certain licences, such as the Christian Copyright licences are not required by all schools and colleges but most schools will require the key licences of the CLA, ERA, PRS, PPL and PVSL. Therefore it may be more practicable to set up a single licensing agency to issue one annual blanket licence to (ideally) local authorities or individual schools and colleges that would allow these educational establishments to operate within the scope of copyright law without having to assess their individual needs and worry about whether or not they are licenced. This licensing agency could either interact with the other licensing agencies (to secure the licences) or directly with the authors/owners of the copyright works. There would still remain the issue of those works not within any of the licence schemes and the schools' ability to determine this.

Advantages and disadvantages

The benefits of a single licensing agency for schools to educational establishments would be significant. Local authorities or schools would only need to buy one licence to cover all uses of copyright in educational establishments, taking the risk and stress out of copyright licensing.

The disadvantage of this set up is that it is very unlikely to be supported by the various licensing agencies or their members as it would not necessarily represent the members' best interests. The set up of the licensing agencies is very different, for example, some licensing agencies are assigned the rights of their members, such as the PRS, while others merely administer the licences on behalf of their members, for example the MCPS. Even though the PRS and MCPS have formed an alliance, these different approaches would prevent them from becoming one licensing agency under their current constitutions.

A single licensing agency for schools would require a complete and radical legislative overhaul effectively to set up, operate and control this single licensing agency. In addition, there is a risk that a blanket licence covering all educational uses of copyright would attract a higher fee than most local authorities or schools are currently paying for individual licences. There are also a series of cross jurisdictional licensing arrangements that allow, for example, a UK company to use a copyright work belonging to a United States copyright owner under the relevant UK licence, without having to obtain a licence from the relevant US licensing agency. These existing cross jurisdictional arrangements would have to be considered and carefully managed in any UK legislative reform.

Suggested approach

This 'ideal' model would require extensive consultation and legislative reform. We do not consider that it would be possible to achieve the position where there is a single licensing agency and/or single licence in the UK, whether across the board or just for educational establishments. The single administrative umbrella licensing agency explored above, would be a more practicable option.

The Copyright Tribunal powers and practice

The Copyright Tribunal was set up by the CDPA and has powers to hear and determine certain matters relating to copyright licensing schemes. In particular, the Copyright Tribunal will decide, where the parties cannot, the terms and conditions offered by or licence schemes operated by collective licensing bodies, including the reasonableness of the licence fees involved. The majority of the Copyright Tribunal decisions in this regard have been brought by private companies against the PRS or the PPL for a determination of the reasonableness of the fees involved.

Anyone who has been unreasonably refused a licence or considers the terms of a licence to be unreasonable can refer the matter to the Copyright Tribunal. In addition, the Secretary of State and government departments, such as The Department for Education, can refer matters to the Tribunal. The CDPA allows the referral of a licensing scheme proposed to be operated by a licensing body to the Copyright Tribunal by 'an organisation claiming to be representative of a person claiming that he requires a licence in a case of a description to which the scheme applies'. This should cover local authorities, a government department, such as the Department for Education and, potentially Becta and a collective body of schools.

The Tribunal has the power to determine reasonable terms for copyright licences from collective licensing agencies, on application by the licensee. Referrals usually come about when licensing agencies seek to impose new annual fees on licensees or charge for new uses of copyright works that did not previously fall within the licence terms. Referrals are infrequent, presumably because most disputes over licence terms and fees are settled between the parties without the need for the Tribunal's intervention.

New procedural rules have been issued for the Copyright Tribunal, with the intention of bringing the process in line with court actions, to make the application process simpler and more streamlined³. A small applications track has been introduced where the value to each party is under £50,000, and the facts and legal issues involved are simple. The new rules enable the Tribunal to manage applications more efficiently but do not change the scope of the Tribunal's powers substantially.

An application to the Tribunal is not something that we would recommend at this stage but it may be a useful option further down the line, if it can be established that the terms of the licences to and/or the licence fees payable by schools are unreasonable.



³ New rules of procedure were introduced on 6 April 2010

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