

NOTE ON CHANGES TO UK COPYRIGHT LAW

A Joint Note from the British Library (BL) and The Copyright Licensing Agency Ltd (CLA)

At the end of October 2003, the law of copyright in the United Kingdom changed in a number of significant respects. The changes stemmed from a European Union Directive passed in Summer 2001 in an attempt to harmonise the laws of copyright amongst Member States and to bring the laws up to date to take account of the realities of electronic information in general, and the Internet in particular.

The EU Directive has led to a number of important changes to UK copyright law. One of the most important changes was to remove from some of the exceptions to copyright (i.e. fair dealing and the library privileges), any copying that is carried out for commercial purposes. This may affect individuals and organisations making copies or requesting them from document delivery services that operated by the BL when requiring the copy for a commercial purpose.

Note that these are our views only, and neither the British Library nor CLA can accept any responsibility for the accuracy of the following advice.

1 General

1.1 What changed the copyright law?

There were a number of changes made to copyright law. One of the most important is that copying for commercial purposes will no longer be allowed under the existing exceptions whereby limited amounts may be copied without the consent of the copyright holder, providing the copies are for research or private study. For copying for non-commercial purposes, rules such as the amount that can be copied the requirement for it to be fair dealing or the need to sign a declaration, is unchanged.

1.2 Why have changes been made?

The changes were made as a result of the European Copyright Directive, which aims to give some level of harmonisation of copyright law across the European Union. Copying for commercial purposes without the consent of the copyright holder is to be an infringement in all Member States.

1.3 When did the change take place?

They apply with effect from 31st October 2003.

1.4 If I am only using material produced before this date, do the new rules apply?

Yes. The changes do not affect the copyright status of copyright material. They do affect the exceptions to copyright law, therefore it is the date at which the copies are made that counts.

1.5 Are there any guidelines as to what would count as commercial copying?

This FAQ, jointly produced by the British Library and CLA, a body which represents many copyright holders, is intended to provide some guidance, but it carries no legal force and it should be recognised that borderline cases will always be difficult. 'Commercial' is a broader term than 'profit-making'. 'Commercial' is in practice synonymous with 'directly or indirectly income-generating'. It is also clear that the purpose at the time the request for a copy is made is what is important and so some genuinely unforeseen income at a much later date is not relevant to the question. Your intention at the time must be unambiguously non-commercial.

1.6 When deciding whether or not something is commercial or non-commercial, is it the proposed use of the copies or the nature of the requesting organisation that is the decisive factor?

As mentioned above, the **purpose** for which the copies are required is the decisive factor. This will mean that non-profit institutions will need to obtain permission for some copying, and employees of commercial firms may in very rare cases be able to make copies without permission, if the purpose is entirely unconnected with the employer's commercial objectives.

1.7 The material I wish to copy is very old and the publishers have been out of business for years. Where do I start looking for the copyright holder?

A fact sheet on tracing copyright holders is available from the Book Trust at booktrust.org.uk. If the copying is done under the terms of a CLA licence, you do not need to trace the copyright owner.

2 Example Scenarios

2.1 I work for a firm of solicitors. Would the copies I make for *pro bono* cases count as non-commercial?

If the work is purely *pro bono*, it would probably be exempt from copyright fees. However, *pro bono* work carried out in the hope of generating subsequent fee-paying work or enhancing the reputation of the firm could be construed as commercial. Furthermore, copies made for *pro bono* cases must not then be used on other cases conducted on a commercial basis.

2.2 The copies I require are often for general office use and not for any specific income-generating purpose. Would I still need permission before making the copies?

Although the copies may not have a specific purpose, general or background research for any type of income generating business will count as commercial research.

2.3 I am a student, but a commercial company is sponsoring my degree. The company may want to make use of any research I do towards the degree. Would any copying be viewed as educational or commercial?

If there is a clear intention that your research would be used by your sponsor, it would count as commercial. If, on the other hand, your sponsor is in practice unlikely to find research carried out at your level of study to have commercial value, it is more likely that the copying is for non-commercial purposes.

2.4 A university would obviously count as a non-commercial organisation, but would copying carried out for research sponsored by a commercial organisation still count as non-commercial?

Almost certainly not. Whether the organisation itself is commercial or non-commercial is irrelevant; it's the purpose of the copying that is significant. In most, if not all, cases the sponsoring organisation will be intending to use the research for direct or indirect financial gain.

2.5 Would a spin-off company based at a university still count as a non-commercial organisation?

No, it is the commercial purpose of the activity, not the organisation, that is the deciding factor. Copies made for research in such organisations will need the consent of the copyright holder, for example by way of a CLA licence.

2.6 I am hoping to present my findings at a non-profit-making conference. Delegates are charged an attendance fee but this is purely to cover costs. I am not being paid anything other than travel expenses.

As neither the conference nor your participation is for commercial advantage, you will be able to order your material to assist in preparing your presentation without incurring copyright fees. However, you will not be able to further copy the material, for example by using the diagrams in your conference paper or presentation, without permission from the rights holder.

2.7 I am carrying out my own personal research but I hope that if all goes well I may be able to publish the findings in a publication that will earn me royalties or other income. Do I have to take into account future possible uses of the research when deciding whether or not it is non-commercial?

The fact that you are thinking of publishing your findings with the intention of generating income is probably enough to make the research commercial. Publishing the results of the research in a scholarly publication of some sort where you receive no income or royalties would probably be considered non-commercial research, even if the publisher might generate income from your publication.

2.8 Although we are a commercial company, we occasionally carry out research for Government bodies on a non-commercial basis. Would research under these circumstances be classed as non-commercial?

It is unlikely. Only if the research is being conducted on a truly non-commercial basis - i.e. you will receive no income whatsoever for it and the pro bono work is not being done with the hope of earning money from the Government in some future project, and will not be used later for commercial projects - will it class as non-commercial.

2.9 I am a picture researcher for a media company using a public library. I quite often make black and white photocopies of images which I think may be of use. When it is decided which images we want to use we will contact the copyright holder and then request a good quality image which we can reproduce. The majority of the images are not used, and the photocopies could not be reproduced anyway. Surely I don't need permission for the initial research.

As the end product of the research is income generating you should get permission for all copies made in the process of achieving the finished product. The new CLA Sticker Scheme Sticker could be used for each copy made provided the image from which you take the copy is in a book, magazine or journal.

2.10 I work for a registered charity. Although our job is to raise money we are non-profit making. Would our research be classed as non-commercial even though it may be used to raise money for the charity?

Once again you need to consider the purpose of the copying. If it is in direct support of the main purpose of the charity, for example improving living conditions, raising awareness of disease, or providing care or services free of charge for those in need, then research carried out to further those aims which will be seen as non-commercial. However, copying which is carried out in order to raise money, which will in turn be used to further the charity's aims, would not qualify as non-commercial.

2.11 My company, although profit-making, covenants its profits to charity. Would research for the company be considered non-commercial?

Once again, it's the purpose of the copying that is at issue. Such copying would definitely be considered commercial as it is carried out to further the financial interests of the company; it doesn't matter what happens to the company's profits.

2.12 I am a librarian and, although I work in a commercial library, I often need articles for my own professional development, which is of no direct commercial advantage to the company. Would I still be able to order non-commercial copies?

Professional development research paid for by your company would probably count as "commercial". However, your own private research which is not directed at improving your earning potential is non-commercial.

2.13 I work for a learned society that provides copies to members. Would these copies be classed as non-commercial?

It depends on the use to which these copies will be put. Each request will have to be accompanied by a signed declaration that the copying is not for direct or indirect commercial purposes, in order to qualify for exemption from copyright fees. If your members predominantly work in industry or the professions, rather than academia, then it is more likely that the purpose will be commercial. You will probably also need a licence from CLA, which has a range of schemes available for society libraries providing services to their members.

3 Summary

3.1 The following cases would clearly count as commercial copying:

- Research relevant to R&D in a commercial company
- Market research or competitor intelligence in all organisations
- Searching for legislation and regulations for a commercial company
- Research relevant to R&D where results will be passed to a commercial company for commercial use
- Work done by an information broker for clients

3.2 The following examples would certainly be viewed as copying which does not have a commercial purpose:

- R&D in educational establishments which is not related to any commercial venture
- Individuals' own private research or study, unrelated to any commercial venture
- Research on a genuinely pro-bono basis

4 Where can I go for further advice?

For information on new legislation – Copyright Directorate, Department of Trade and Industry. Note that any textbooks on copyright law that were published before 2003 may not have taken the new legislation into account.