

This item was submitted to [Loughborough's Research Repository](#) by the author.
Items in Figshare are protected by copyright, with all rights reserved, unless otherwise indicated.

Clearing the way: copyright clearance in UK libraries

PLEASE CITE THE PUBLISHED VERSION

PUBLISHER

Library and Information Research Group / © Elizabeth Gadd

VERSION

AM (Accepted Manuscript)

LICENCE

CC BY-NC-ND 4.0

REPOSITORY RECORD

Gadd, Elizabeth A.. 2019. "Clearing the Way: Copyright Clearance in UK Libraries". figshare.
<https://hdl.handle.net/2134/4325>.

This item was submitted to Loughborough's Institutional Repository (<https://dspace.lboro.ac.uk/>) by the author and is made available under the following Creative Commons Licence conditions.



CC creative commons
COMMONS DEED

Attribution-NonCommercial-NoDerivs 2.5

You are free:

- to copy, distribute, display, and perform the work

Under the following conditions:

BY: **Attribution.** You must attribute the work in the manner specified by the author or licensor.

Noncommercial. You may not use this work for commercial purposes.

No Derivative Works. You may not alter, transform, or build upon this work.

- For any reuse or distribution, you must make clear to others the license terms of this work.
- Any of these conditions can be waived if you get permission from the copyright holder.

Your fair use and other rights are in no way affected by the above.

This is a human-readable summary of the [Legal Code \(the full license\)](#).

[Disclaimer](#) 

For the full text of this licence, please go to:
<http://creativecommons.org/licenses/by-nc-nd/2.5/>

Clearing the way: copyright clearance in UK libraries

The Occasion

This research into Copyright Clearance in UK Libraries was supported by the 2000 Elsevier/LIRG Research Award.

The Author

After qualifying with an MSc in Information Studies from Loughborough University, Elizabeth took up the role of Copyright Officer on the eLib Project ACORN in 1996. She later went on to manage the project which established an electronic collection of journal articles. She is currently the Academic Librarian for Engineering at Loughborough University, and recently won the 2000 Elsevier/LIRG Research Award for a study into Copyright Clearance in UK Libraries. She also co-owns the email discussion list, "Lis-Copyseek" for copyright permission seekers.

Abstract

Reports on the results of a research project supported by the 2000 Elsevier/LIRG Research Award into Copyright Clearance in UK Libraries. It provides brief summary of its key findings including who is clearing rights and where; what is being cleared and for what purpose; the clearance process; licences and clearing houses; the cost of clearance; and organisational clearance services. It then discusses some of the ways the clearance situation could be addressed in the UK.

Introduction

Recent developments in the provision of information to library users (electronic collections, distance learning materials, and computer-aided-learning) have brought about an increase in the volume of copyright clearance being undertaken. This is because copyright law (on the whole) does not provide for the inclusion of copyright materials in such initiatives. In the absence of copyright licences that could permit these activities, the only recourse is to gain permission directly from rights holders. This increase in copyright clearance coupled with the forthcoming EU Copyright Directive and re-negotiation of the CLA HE Licence, suggested that an investigation of the clearance processes faced by libraries would be timely. This article provides an

overview of the research, a brief summary of its key findings, and a discussion of some of the ways the clearance situation could be addressed in the UK.

Research aims

The aims of this research were to:

- Raise awareness as to the volume of clearance that needs to be undertaken in libraries as a result of current copyright legislation and licensing;
- Inform centralised clearing houses and licensing organisations in the establishment of library-friendly services;
- Gain a better understanding of the main areas of confusion surrounding copyright law and library services.

In order to achieve these aims, the following objectives were set:

- To provide an overview of the copyright clearance activities being undertaken in libraries with a particular focus on HE Libraries;
- To provide a comprehensive survey of current UK practice with regard to copyright clearance;
- To distil best practice guidelines to libraries undertaking copyright clearance.

Methodology

The research was performed by a questionnaire survey advertised by email and completed on the web or by hand, and a series of interview visits to five copyright clearance services in UK HEIs.

Questionnaire respondents

Fifty-seven questionnaire responses and 11 other email responses were received: 68 in total. Eighty-nine per cent of respondents were from the HE environment.

Who clears rights where?

Fifty-six per cent of responding organisations stated that the majority of their copyright clearance took place in the library (38% by library staff, 18% by dedicated clearance staff). The remaining 44% stated that the majority of their clearance took

place elsewhere (35% by individuals, 9% by dedicated copyright units). Sixty-three per cent of organisations involved at least two members of staff in rights clearance; however, the average amount of time spent clearing rights was almost a day a week over the year. This figure irons out seasonal fluctuations of which there are many. Overall thirteen different job titles were given in connection with clearance, showing great variation in the status of copyright clearance within organisations.

What is being cleared and for what purpose?

Seventy per cent of respondents cleared rights for more than one purpose. The most common reason for clearance was to create coursepacks (55% of respondents). Interestingly, 55% of all coursepack clearance was done in the library. The second most popular purpose for clearance was for Short Loan (47% of respondents). Clearance for Distance Learning packages was also popular (38% respondents). In terms of actual materials being cleared, 94% of respondents cleared book chapters and/or journal articles. A wide range of other materials were cleared including newspaper articles, illustrations/plates, photographs, slides, video, adverts, and music.

The clearance process

The clearance process is a lengthy and time-consuming one involving at least ten distinct steps. These are:

- Receiving request from internal customer
- Assessing request to see if clearance is necessary
- Checking accuracy of bibliographic information
- Check if requested materials were authored in-house
- Trace rights holders
- Generate and send request letter
- Chase request (in many cases)
- Check terms and conditions of granted permission (or negotiate a refusal)
- Notify internal customer of request outcome
- Receive approval from customer
- Pay rights holder

Comments about the clearance process bemoaned the difficulties of liaising with academic staff, the heavy administrative burden, difficulties with liaising with the CLA, and the problem of interpreting unclear, and widely varying licence terms. In particular, clearers find it difficult to maintain a balance between providing the best service to their users by making copyright material as accessible as possible, while at the same time protecting copyright material to ensure it is only used legitimately. They feel that both users and rights holders view them with suspicion while they occupy this uncomfortable middle ground. In terms of figures:

- The average (mean) number of items cleared by respondents per annum was 439.
- The average time taken to receive permission was between 2-4 weeks.
- On average (median) one-third of clearance requests require chasing.
- On average (median) clearers would chase permissions twice.
- On average a clearer is chasing 315 times per year.
- The average (median) percentage of requests never answered was 5%.

Licences and clearing houses

Fourteen different copyright licences were subscribed to by respondents. Perhaps unsurprisingly considering the high proportion of HE respondents, 93% took out a CLA HE Licence. Seventy-seven per cent of clearers used some sort of clearing house – leaving 23% that did not. CLARCS was the clearing house most frequently cited by respondents. Opinion about CLARCS is split down the middle with 13 positive comments, 9 mixed and 13 negative. Positive comments included the speed of the service and helpfulness of staff. Negative comments were vociferous, and cited a poor level of customer service from uninformed staff, administrative difficulties, and the expense.

The cost of clearance

The cost data provided by respondents only gave an indication of the sorts of clearance fees charged for specific types of permission. The highest fee charged in the electronic environment was “many thousands of dollars” to place an article on CD-ROM. The highest fee charged in the print environment was £7.55 per article for

300 students that came to £2,265. This illustrates how small fees can add up when large numbers of students are involved. Average coursepack fees ranged from £350 to £1000. On average between 1-10% of items were granted for no charge.

Six different charging mechanisms were used by rights holders for permission fees. The most frequently cited charging mechanism was the one-off fee. Many rights holders calculated fees on a per-page basis. This was questioned as an appropriate method of charging for intellectual property, the value of which is independent of the number of pages on which it is written.

Copyright clearance services

Copyright clearance services (via a dedicated unit or post) had been established in 32% of responding institutions. The reasons given for setting up clearance services included increasing demand for clearance; the desire to stay legal; “the CLA”; efficiency; visibility; and specific projects. Over 60% of units surveyed were established in the last 3 years. Over 90% of units surveyed were established after the CLA was set up in 1982.

The services interviewed were responsible for a wide range of copyright duties other than clearance. These included awareness raising, copyright advice, negotiating electronic resource licences, protection of the HEI’s own IP and data protection. All clearance services interviewed received top-sliced funding. None passed back administration charges to internal customers, only the clearance fees themselves.

Staffing clearance services can be difficult as the work is seasonal, and some clearances and queries can take a disproportionately long time to deal with. The skills required of clearance staff depends on the types of materials cleared. Text clearances require excellent administrative and negotiation skills. Audio-visual clearances demand strong negotiators, persuasive skills and an attention to detail for contract work. All of the clearance services interviewed had someone with copyright expertise available full-time to answer copyright queries, and most reported that they had been well-received by their internal customers.

Solving the clearance problem

Without question, copyright clearance is felt to be a real burden to UK HE, in time, complexity and cost. So how could the situation be improved?

There are many different levels at which the clearance problem could be addressed from a copyright clearer's point of view. Firstly, and most fundamentally, it could be addressed by a change in copyright law. Secondly, copyright licences could be altered to allow additional copying without requiring individual clearance. Thirdly, centralised clearing houses could make certain changes as could, fourthly, rights holders. Of course, more and more copyright material is now being produced electronically which may mark the beginning of some technological solutions to the clearance problem. "The answer to the machine is the machine" as Charles Clark famously once said. However, electronic materials are more commonly governed by licence agreements than copyright law, so the answer to some clearance problems may be found in negotiating library-friendly electronic resource licences.

Assuming that the current copyright situation is not going to change for the time being, how are organisations to deal with increasing copyright clearance demands and complexities? And assuming we are still dependent on in-house clearance services, how are they to operate successfully? The following sections look at some of these issues in detail.

Copyright Law

As respondents were very aware, copyright law in the UK may be changed as a result of the EU Directive currently going through the European Parliament which aims to harmonise certain copyright and related rights in the Information Society (Commission of the European Communities, 1999). Once the Directive has been adopted, member states will have two years in which to implement the Directive. Faced with the possibility of a change in the law, the question is raised as to how the balance between copyright holders and users could be addressed in order to reduce the burdensome clearance transaction costs with which we are currently faced. Years of imperfect copyright law prove that this is not an easy question to answer.

Provision for educational use

One proposal might be more provision within the law for legitimate educational use of copyright materials. Clearly many rights holders are currently of the opinion that educational use of their materials does not damage their economic interests, as they allow educational copying for no charge. Perhaps they see education as the start of a creative process without which future intellectual property may be under threat.

Mandatory clearing houses

Another proposal – and one already in place in other countries such as Norway and Japan – could be the implementation of mandatory clearing houses. Under such a scheme it would be compulsory for all rights holders to make their works available for licensing through a central source. Carmel and Collins provide an excellent discussion of the advantages and disadvantages of mandatory clearing houses. They recognise that while they strengthen the position of the user and make clearance activities a lot less burdensome, “some creators of some works will be reluctant to produce or distribute works in such an environment.” (Carmel, E. and Collins, E 1997).

Clearer clauses

Of course many copyright clearers have no aspirations to change copyright law in such major ways, but would simply settle for a clear, no-nonsense interpretation of the law we already have. What is “fair dealing”? What does constitute a “reasonable proportion” or “substantially the same”? The difficulty is that when such terms *are* explained in minute detail, they have a tendency to look petty or ridiculous. The CLA’s Higher Education Copying Accord is a document that fell foul of this principle. The CLA made every effort to define a coursepack in as clear terms as they were able: “a compilation of materials...of four or more photocopied extracts from one or more sources, totalling over 25 pages of material...” (CLA, 1998) However, academics are often bemused that 25 one-page journal articles does not constitute a coursepack, neither does four fifty-page journal articles, but three ten-page articles does. This is the price you pay for quantifying copyright regulations.

Copyright Licences

Assuming UK copyright law is not changed significantly by the forthcoming EU Directive, another level at which the clearance problem could be addressed is at licence level. The number of different copyright and related licences specified by respondents was fourteen. Hopefully not every copyright clearer has to come to a working understanding of that many licences. However, it does give an indication of the scale of the licensing problem.

Value for money

One of the main complaints from respondents was that licences were becoming more and more restrictive, offering users less for their money, and necessitating additional clearances. This is a serious issue. The intention of the provision made in the CDPA88 whereby rights holders could offer licences for additional copying was surely to save users from extra burdensome clearances. Somewhere along the line users have found themselves with up to fourteen additional licences, *and* a large clearance bill. One interviewee disclosed that their CLA HE Licence fee in 1999 amounted to £71,700 while their CLARCS clearances for the same year cost a further £34,500 – an additional 50% on top of the licence fee. It is an obvious recommendation therefore that more copying is allowed under licence, resulting in less transactional clearances.

The law/licence interface

As licences are meant to offer an *extension* to the law in terms of the amount of copying that can be done by the signatory organisation, it is important that licences do not take away any rights provided by the law. It is also important that Licensees do not agree to such terms as they *may* stand up in court. It is recommended that all licences be checked for an explicit statement that they do not prevent activities allowable under law. It also causes confusion if a Licensor's interpretation of the law is different to that widely accepted by the licensed community. As the Copyright Act is ambiguous on a number of counts, it is not surprising that there are differences of opinion about its meaning, particularly between rights holders and rights users. Examples of this are frequently discussed on the Lis-Copyseek discussion list. As there is very little case law in this area – and no copyright clearer wants to become

case law – most err on the side of caution.

With regard to the HE community, it would be extremely beneficial if there were a central body that interpreted the law and the various HE-related licences on their behalf. The body could provide advice (and preferably indemnity to HEIs taking that advice) on common areas of confusion about what is and is not permissible under the law or licences. Weedon's research into copyright policies in UK HEIs recommended that the

“JISC might act as a co-ordinating centre for the dissemination of information on Copyright; might provide funding for a centre of expertise and a national officer for copyright, along with funding for further research”. (Weedon, 2000)

This recommendation has now been implemented in the form of the JISC Legal Information Service. It may be therefore, that the above might become a part of its remit.

Administering licences

One of the administrative problems with licences is that of where they are kept, and how their contents are filtered down to users. The signatory for organisation-wide licences is usually a member of senior management staff, and in some cases the licences can stop there, rather than being filtered down to those that need to interpret them for their every day work. Alternatively they may be sent on to some users, but not others. Weedon noted that

“The various copyright licences could be dealt with in a number of places within an institution – at one place it was in Reprographics while their library dealt with copyright on short loans and exam papers and the Research Office with copyright in postgraduates' work.” (Weedon, 2000)

Such a large number of licences can be a particular problem for clearance staff, the vast majority of whom are a) not trained to interpret legal contracts (which is effectively what a licence is), and b) part-time. Copyright licences, like copyright law, are infamous for vague terminology and complex clauses. One respondent

pleaded:

“Licence agreements need to be written in plain English and crystal clear – a lot of Lis-Copyseek is about how to interpret ambiguity”.

This is again an area where licensors can improve the experience of copyright clearers.

Centralised clearing houses

If mandatory clearing houses such as those mentioned above are out of the question, we are left with voluntary schemes such as the BLDSC Copyright-cleared service, CLARCS and HERON. Such services do allow for the easy identification of rights holders; providing standard terms of permission often for standard prices, and allow for the easy payment of rights holders.

Perhaps the most surprising find regarding clearing houses therefore was that almost a quarter of respondents didn't use them. As 94% of respondents clear book chapters and journal articles, it's unlikely that all those not using them don't do so because the services don't clear the materials they need. It is more likely that the services are not mandated to clear the volume of copies they need (see below). However it appears that others don't use them on principle. As one respondent wrote:

“We now write direct to the Publishers for clearance as we did before the inception of the Licence. The Licence has not erased the clearance problem it has in fact made it more complicated and contentious...In many respects it is easier to write direct to the Publishers than to deal with the CLA”

CLARCS

The Copyright Licensing Agency was established in 1982 by the Authors' Licensing and Collecting Society (ALCS) and the Publishers Licensing Society (PLS). It exists to represent the interests of authors and publishers with respect to copying from materials produced by the two groups. The main way it does this is by offering licences to various sectors (Business, Government, Higher Education, Further

Education and Schools) that allow more copying than the CDPA88 permits. Up until recently all such licences were for paper-to-paper copying. However in 1999 the CLA introduced a digitisation licence for Higher Education. It is expected that this will be rolled out to other sectors in the future. Copying not covered by the “blanket” licences mentioned above, can be cleared on a transactional basis through the CLA’s Rapid Clearance Service (CLARCS). All electronic copies have to be cleared through CLARCS in accordance with the accompanying digitisation licence.

Historically the relationship between the CLA and HE has been strained. The recent reference of the CLA HE Licence to the Copyright Tribunal by the CVCP illustrates this. In a recent paper given by Peter Shepherd, CEO of the CLA at their HE Consultation Day in July 2000, the forthcoming renewal of the CLA Licence was discussed. He felt that any objections to a “smooth rollover” would fall under three headings “administrative, economic and...philosophical”. These headings neatly describe the issues raised by respondents about CLARCS.

Administrative

There is no doubt that one-stop clearing houses such as CLARCS can considerably reduce the clearance workload for copyright clearers when the service is functioning smoothly. Comments comparing response times from CLARCS to those directly from publishers illustrate this: “CLARCS 1-2 Weeks, Direct 4-8 weeks”. Having said that, many respondents bemoaned a slow response time from CLARCS, particularly at peak times of the year, and after changes to the licence. Other administrative frustrations reported by respondents resulted from the interface between the CLA and their rights holders. Further details on this are given below.

Another difficulty raised by respondents was the absence of a simple method of ordering repeat coursepacks over consecutive years. This latter concern has been recognised by the CLA who hope to address it in the near future (Shepherd, 2000). Perhaps the most unnecessary administrative burden experienced by respondents was the “unhelpful attitude of staff”, described by one as “the customer is always wrong” attitude. It would seem that this might be the easiest administrative problem to address.

Economic

It is not only the expense of *CLARCS* fees that concern clearers, but the cost of clearance fees generally. However, the payment of *CLARCS* fees after organisations have already paid for a *CLA* Licence does seem to irritate many clearers. As highlighted above, some institutions are paying half the cost of their *CLA* Licence again in *CLARCS* fees. In 1999 *CLARCS* transactions in the HE sector totalled £538,325 (*CLA*, 1999). That is over half of the total *CLARCS* income of £1,026,174. The other £487,849 was generated from the business sector. It concerns many that cash-strapped HE is paying more than the business sector in *CLARCS* fees. One of the main reasons for this concern is the belief that HE is paying to copy materials that were produced by the HE sector in the first instance. This leads on to the philosophical issues below.

Philosophical

The seeming injustice of academia having to pay to copy materials originally produced by academia – materials that were “given away” to publishers in return for publication in a “publish or perish” environment - has been much bemoaned. As mentioned above, the income collected in *CLARCS* fees from HE is considerable and many believe that HE is paying many times over for material they initially produced. Various solutions to this problem have been proposed. They include HEIs retaining copyright in work written by their employees (Patel, 2000a); HE setting up their own University Presses; self-archiving of drafts of articles on e-print servers; and so on. Some publishers have responded to these concerns by allowing authors to retain their copyright under certain conditions (Patel, 2000b).

It would seem prudent for HEIs to encourage their academics to licence their copyright to publishers rather than to assign it. This would at least enable them to use their own work in their own teaching. In order to benefit other institutions, however, self-archiving is a good option. Academics need only point their students to the electronic archive where the research is freely available. No need for clearance.

HERON

HERON was set up in 1998 in response to a call from the JISC under Phase 3

of the eLib programme. Projects in this area concentrate on the electronic storage of documents for the purposes of customised on-demand publishing to support taught course students in their essay and project work. It built on the work of the On-Demand Publishing and Electronic Reserve strand of projects funded under Phase Two of the eLib programme. HERON has been funded over a period of three years on a reducing basis. Funding has been provided by JISC and by Blackwell Retail Ltd, HERON's commercial partner.

The aims of HERON are to:

- develop a national database and resource bank of electronic texts which will widen access to course materials and improve the quality of learning throughout Higher Education in the UK;
- co-operate with rights holders and representative bodies to remove blockages in copyright clearance and to determine appropriate fee levels and conditions for the digital age;
- provide a one stop shop for copyright clearance and digitisation for UK Higher Education Institutions (HEIs).

In undertaking this role, HERON aims to reduce duplication of effort in digitisation and remove the burden of copyright clearance from individual HEIs. At the same time it hopes to reduce problems for publishers that might otherwise find themselves being deluged with requests from multiple sources. HERON are working with the CLA's Digitisation Service for some clearances, while negotiating others on their own.

Benefits

There is no doubt that HERON offers a service the nearest *in effect* to a mandatory clearing house, as they will attempt to clear any printed materials on your behalf, unlike the BL and the CLA that are only able to clear materials from rights holders that have mandated them. HE certainly seems to have caught on to the fact that HERON offers a convenient, value-added, interface to the CLA's Digitisation service, as the recent CLA newsletter notes: "Most licensed HE institutions have chosen to manage their digitisations through the JISC-funded HERON project" (CLA, 2000).

Because the service is based in the HE sector and is not employed by rights holders it should avoid some of the difficulties that CLARCS has faced.

HERON may also give HE “a stronger negotiating position to lower fees” as one respondent hoped, and there may be other economic benefits. One interviewee pointed out that the current subscription price to HERON of £800 is cheaper than a member of staff would cost to do the clearances. Also, if HERON are unable to get clearance *and/or* provide a digital file of the material you need, within the timescale you specify, no fee is payable. It therefore offers a no-risk option for cash-strapped HEIs embarking on digitisation projects.

Disadvantages

There are a number of difficulties HERON has to face however. Firstly the long-term viability of a resource bank seems to rest on the assumption that there is overlap amongst HEIs as to what they want cleared and digitised. Initial work by some of the On-Demand Publishing and Electronic Reserve eLib projects cast doubt whether this was the case.

Secondly, although HERON is working closely with the CLA to obtain clearance for materials from publishers that mandate the CLA, there are many requests that cannot be cleared through this route. For example, overseas publishers and many smaller rights holders need to be approached individually. Typically such rights holders are the more difficult part of the marketplace: smaller publishers can be hard to locate, and overseas publishers can be hard to contact and communicate with. Direct negotiations with any rights holder is time consuming, but even more so when negotiating electronic rights, until publishers begin to develop their own policies on electronic permissions.

Thirdly, in addition to the subscription fee, HERON adds an administration fee to each successful transaction. This is done as part of HERON’s move towards becoming self-supporting, but may make HERON’s costs appear high to institutions.

Many of these problems will be teething problems. Once the service is up and running and they have agreements with a good proportion of the rights holders, the

process should speed up and prove more and more valuable to HE.

British Library Document Supply Service – Copyright Cleared Copies

The British Library's Copyright Cleared service was established in the 1990s in response to pressure from corporate customers, particularly from the USA, most of whom would only use a copyright-cleared article service. They supply over 500,000 articles per year of which only 100,000 are supplied within the UK. Of this 100,000 only 18,647 were supplied to UK HE in 1999/2000 so the HE market is still a fairly small one. Having said that, there was an almost three-fold increase in requests between 1997/98 (6,859 requests) and 1998/99 (16,968 requests), undoubtedly in response to the introduction of the Higher Education Copying Accord.

This service provides another approach to copyright clearance that has parallels in the HERON service. Namely, they both combine document supply with the clearance necessary to use the document in a specific way. It raises the question as to whether there could be a parallel in the primary publication market. For example, could HE libraries purchase "library copyright-cleared copies" of certain texts - at a premium of course - that they could then on-copy for coursepacks, short loan, and other educational purposes?

Rights holders

Mandating centralised clearing houses

Rights holders are also in a position to alleviate transaction costs for copyright clearers. The most obvious way they can do this is to mandate central clearing houses such as those mentioned above, so clearers do not need to approach them individually for frequent clearance requests such as coursepacks. However it is also important to clearers that rights holders mandate centralised clearing houses for the *quantity* of copying they need too. A number of respondents reported difficulties trying to clear book chapters through CLARCS where publishers had limited the volume of clearance allowable (either in terms of the number of pages, the number of copies or the financial value of the clearance transaction). The reason that publishers impose such limits results from their concern that CLARCS sales might replace book sales. However, some respondents found that book chapters often exceeded the number of

pages CLARCS have been mandated to clear. Others said that the number of students on their courses were greater than the number of coursepack copies they were sometimes permitted to make. It is important to remember that it is the larger groups of students whose needs are the least likely to be met by traditional library provision, and who benefit the most from coursepacks cleared by services like CLARCS.

Difficulties also arise when copyright clearers apply direct to rights holders that *have* mandated CLARCS. A clearer might do this if they require more copies than CLARCS has been mandated to clear, or if they want to use the material for a purpose other than that for which CLARCS has been mandated. Respondents' reported that some rights holders automatically forwarded their requests to CLARCS without reading them to see what they were actually asking. Some confusion can also arise when rights holders both mandate CLARCS, *and* deal direct with clearers. This can result in two separate rates being offered to copyright clearers for the same material, and raises doubts in their minds as to whether they are always getting the best deal.

Publishing on a chapter-by-chapter basis

Clearly if whole textbooks were meeting the needs of all courses of education, then there would be no need to "pick and mix" chapters of individual books for coursepacks. However this is apparently not always the case. It is the view of some copyright clearers that this problem could be overcome if books were sold as they were often used, namely, on a chapter-by-chapter basis. Although some publishers are concerned that this not a viable economic model, one publisher in the US, IDG Books, is testing this out (Guernsey, 2000).

Making rights decisions prior to publication

However rights holders choose to handle their secondary rights, it is important that conscious decisions are made on this matter prior to publication. If the decision is made to handle permissions in-house, the publisher should ensure that they have enough staff to deal with inevitable demand for clearance. One respondent felt that "publishers don't have enough staff to deal with clearances". Another respondent wrote "I've been waiting years, and people are still saying 'the publishers can't cope with this'".

If the decision were made to grant permission for no charge for certain educational uses, it would be helpful to copyright clearers if this information was made clear on the material itself. Indeed the inclusion of rights metadata on items of intellectual property looks set to become the norm in the electronic environment. However it would also be useful if this information was available in the print environment. Perhaps a series of rights codes could be developed that have clear, impossible-to-misinterpret meanings, that could be marked on all newly published items of intellectual property.

Addressing the problem at local level

Of course if the clearance problems cannot be solved at a national level in the ways suggested, copyright clearers would have to continue to adopt strategies at a local level. Indeed many organisations have begun to address the problem by establishing centralised copyright clearance services in-house. The research therefore made recommendations on establishment of such services in terms of writing a proposal, setting up a pilot, and staffing a clearance service. Best practice guidelines were also written covering the following areas:

- Defining the remit of the clearance service;
- Administering a clearance service;
- Liaising with internal customers;
- Clearance procedures;
- Liaising with rights holders;
- Dealing with copyright law, licences and regulations;
- Paying fees.

Conclusion

It is hoped that by suggesting a number of solutions to the problems faced by copyright clearers in the UK, some improvements will be made. However, because the clearance marketplace has so many stakeholders, and has been so difficult for so long, many are giving up hope. When asked the question “Do you think copyright clearance is going to become easier in the future?” thirty-six per cent of questionnaire respondents thought it would get easier and 64% felt that it would not. We can only watch and hope that the confidence of the 37% will be rewarded.

Word Count: 5,725

References

Carmel, Erran, and Collins, Elizabeth. (1997) Impact of copyright management on multimedia markets. *Telematics and Informatics*. 14 (1), 97-109.

Copyright Licensing Agency. (1998) *Higher Education Copying Accord*. London : CLA.

Copyright Licensing Agency. (1999) *A year of growth : the Copyright Licensing Agency : a review 1999*. CLA : London.

Copyright Licensing Agency. (2000) Digitisation news. *CLARION : the newsletter of the Copyright Licensing Agency*. Winter.

Commission of the European Communities. *Amended proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society*. CE COM(1999)0250

Guernsey, Lisa. (2000) Books by the chapter or verse arrive on the internet this fall. *New York Times on the web*. July 18, 2000. URL <http://www.nytimes.com/library/tech/00/07/biztech/articles/18book.html>

Shepherd, Peter. (2000) *The Higher Education Copying Accord*. [Paper given at the CLA Higher Education Consultation Day, 6 July 2000]. URL <http://www.cla.co.uk/www/heca.htm>

Patel, Kam. (2000a) Libraries unite over copyright. *Times Higher Education Supplement*. 26 May 2000.

Patel, Kam. (2000b) Team finds way round copyright. *Times Higher Education Supplement*. 25 February 2000.

Weedon, Ralph. (2000) *Policy approaches to copyright in HEIs : a study for the JSC Committee for Awareness, Liaison and Training (JCALT)*. Glasgow : Centre for Educational Systems.