

Should there be an amendment to the Information Society Directive to allow for an exception for “creative, transformative or derivative works”?

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Abstract

In December 2006, the Gowers Review proposed “that Directive 2001/29/EC [the Information Society Directive] be amended to allow for an exception for creative, transformative or derivative works, within the parameters of the Berne Three-Step Test”.

Firstly, this paper seeks to demonstrate why such a provision may or may not be desirable in the UK. It will analyse the text of the Gowers Review, especially in light of the advantages that it suggests reform could bring.

Secondly, the Gowers Review does not detail how such a system could operate. This paper suggests how a system could be implemented. Key among the issues to be considered are a) whether such a reform would damage the interests of current right holders, and b) whether such a reform could undermine other provisions of the Information Society Directive and other laws.

As it stands, the Gowers Review needs to define more precisely some of the terms that it uses when suggesting for such a review. For instance, what is meant when it refers to “creative, transformative or derivative works” within the UK? How far is this to be extended?

The Paper therefore seeks to analyse a) the benefits and disadvantages of allowing such uses, b) to suggest how such a system could be implemented, highlighting the potential conflicts with other laws.