

The future of the distance learner: A consideration of the Gowers Review on Intellectual Property and educational exceptions

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Abstract

The Gowers Review on Intellectual Property (the Report) which was published on 6 December 2006 argues that in the modern world, the UK's economic competitiveness is increasingly driven by knowledge based industries, innovation and creativity. As such, the Report mainly aims to strengthen enforcement, provide additional support for British businesses using IP and strike the right balance between creativity and use.

This paper will specifically consider the impact of the Gowers Report on the present law, in particular, copyright exceptions for education and consider the manner in which the concerns raised by the Report can be met. Currently, the educational exceptions set out in the Copyright Designs and Patents Act (CDPA) 1988 are too limited for the digital age, especially in relation to secure virtual learning environments (VLEs) or networked computers or "intelligent whiteboards" within educational establishments. Identifying these gaps, the Gowers Report emphasises that in order to ensure that the educational establishments are able to take advantage of new technology to educate pupils regardless of their location, it is necessary to expand the existing copyright exceptions. Whilst the existing law incorporating the Information Society Directive 2001 does provide for situations where a copy of a broadcast (e.g. television programme) is communicated to students who are not located within an educational establishment, it does not permit the licensing of short extracts being sent to distance learning students by e mail or in a virtual learning environment. Distance learning is becoming more and more important and common-place, and therefore it is submitted in this paper that the present law in particular be extended to, take in to account for example, passages from works to be made available to students by e mail or VLE without infringing copyright.

In UK, the Copyright Licensing Agency (CLA) exists to permit the photocopying and scanning of material for educational use. Pertaining to this agency, a further question which is raised in the paper is whether CLA permits the licensing of short extracts for distance learning students? In attempting to answer this question, the paper will also take an insight in to the recently negotiated Photocopying and Scanning License 2006 of CLA and identify the weaknesses of this license in the context of this paper. Thereafter, the paper will turn to consider other options such as the Higher Education Resources On Demand (HERON) and analyse whether it meets the needs of the digital era. HERON is a one-stop shop which provides for copyright clearance, digitisation and delivery of books extracts and journal articles enabling universities and colleges to provide access to key learning material for all their students where ever they are based. It is submitted that HERON offers a more 'tailor-made' service and therefore, if developed further will be able to fill in the gaps left open by the law and collecting agencies such as CLA.