



About BAPLA

BAPLA – British Association of Picture Libraries and Agencies represents the commercial interests of the photo image licensing and archive sector. Our membership is made up of photographers that license their work, companies such as agents or libraries, publishers and broadcasters that do so on behalf of photographers and entities that are the rightful owners of archives they license for trade.

BAPLA is an active member of the Copyright Hub Launch Group as well as a stakeholder on the IPO Working Group on **Extended Collective Licensing & Orphan Works**

Exceptions

The first drafts published for review are exceptions for private copying, parody, quotation, contract override and public administration.

While BAPLA understands the requirement to update copyright exceptions to encompass the development of online technologies, the proposed exceptions raise strong concerns over the vagueness and ambiguous language used across each one. This lack of definition and focus will present rights holders and users with much uncertainty. It will also lead to a greater risk of infringements, copyright theft and plagiarism as well as costly litigation by large organisations, with small creative organisations and individual creators overwhelmed to act on protecting their work.

Of particular importance and concern to our members is the use of photographs in parody and quotation, which we feel strongly, should be excluded.

1. Private Copying

On first reading a private copying exception – for personal, non-commercial use only, seems innocuous. We raise the following cautionary questions:

What can be considered a ‘non commercial use’? Use of the term is often seen as *controversial* on the grounds that it is unclear what can be considered a non-commercial setting and / or application. Is a blogger posting content into an ad-paying environment a non-commercial use if they are in receipt of payment from the direct use of that content?

Does ‘sole personal use’ (s.28B (3)) apply to sites such as Facebook or Twitter, Pinterest? If these peer-to-peer sharing sites are used

within a commercial setting - both at work and for work, does this mean their use is non-commercial?

Exceptions to private copying will create user uncertainty, furthermore, and of importance to our members, it will create a legacy of great *legal* uncertainty.

Could private uses prejudice the legitimate interest of the rights holder or conflicts with the normal exploitation of his work or other subject matter?¹ If it does how might government support the creative industry to overcome this?

Our concerns are aligned with the paper submitted by the collective photographic organisations and that of the Creative Rights Alliance regarding the absence of an economic impact assessment and consultation on the status of digital works regarding exhaustion.²

Legal drafting – clarification

“Lawfully acquired” – what does this apply to? ³

“Permanent” - what does this refer to? ⁴

2. Parody

BAPLA wishes to see photographs excluded from parody exception⁵. The global market for licensing images for use in parody is fully functioning. Its implementation will interfere with income derived from lawfully licensing such uses and this current and future income has not been fully considered in government’s economic impact assessment.

The opportunity for misinterpreting this exception is prodigious both in terms of plagiarism and moral rights within the works. Without clear definitions of what constitutes parody or caricature or pastiche, users / rights holders are offered either very little or no certainty.

3. Quotation

For the purposes of quotation all photographs, film stills or reproduction of an entire work or substantial part of a work should be excluded. We are supportive of the position paper drafted by CRA and Getty Images in this regard.

¹ Article 5(2) Recital 44 InfoSoc Directive or the WIPO Treaty on harmonization (2001/29/EC) should be an immediate

² WIPO Directive on Harmonisation (2001/29/EC)

³ Modernising Copyright Para 1 <http://www.ipa.gov.uk/techreview-private-copying.pdf>

⁴ s.28B(2)

⁵ Section 30.B.(1).

Legal drafting – clarification

“fair practice” – has no definition in UK law

We have not seen any evidence that the introduction of exceptions for parody or quotation would bring any economic benefits to the UK economy.

Printed publications often use images to illustrate articles or as a stand-alone piece with text depicting the content. Our concern in this context is the misinterpretation of the concept of quoting.

Likewise, applying this exception to photographic images is nonsensical as one can only use the work in its entirety. The interpretation can be seen as using a limited portion of a photograph. A 'crop' of an image would affect and misrepresent the moral rights of the rightsholder.

It would also be harmful to the photographic industry if this enabled search engines to provide image search services that reproduce images in a way that would otherwise be infringing copyright. Existing image search services by major search engines that are currently operating within the confines of existing copyright law are already reducing the number of people viewing images on the websites where they are legitimately published under license, thus reducing revenue opportunities for those customers of photographers who are paying to publish content. This is in turn harming photographers who are finding it harder to license their images. Any steps to encourage this practice under UK copyright law would impact directly on photographers' ability to manage their works.

4. Contract override

Contract override should not be included for any exceptions for which photographs are not excluded as this takes away the photographer's right to choose when and where their photographs are used. The introduction of contract override in an economy managed under direct licensing will create greater uncertainty and litigation.

5. Public Administration

We also raise concerns over this exception for public administration for public bodies that are open to public inspection with regards the drafting of this exception. It does not make clear what effect this exception would have with content published online by such bodies, and how such institutions would identify which works are not commercially available. We would request that the right to use the works, firstly permission is sought from the copyright owner, and secondly is limited to not for commercial purposes for public bodies open to public inspection and work communicated to the Crown.

For further information:

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