

Protection of copyright exceptions from override by contract

One of the most important structural changes to the law in 2014 was to protect copyright exceptions from override by contract. Given that the freedom of contract in UK law is a very important legal principle, before 2014 libraries were faced with a situation where contracts were removing most copyright exceptions. According to a [study](#) commissioned by the government's Strategic Advisory Board on Intellectual Property, whether contracts could vary copyright exceptions was decided on a case by case basis by the courts, thus providing essentially little if no clarity for libraries or educational establishments. However, as a result of the 2014 changes, many UK copyright exceptions can no longer be "trumped" by provisions in a contract. This means that no matter what your licence, subscription agreement or contract with a publisher says, for most UK educational and library exceptions (see the list below), you can ignore what the contract says. This is because the law now states for these exceptions, that they cannot be overridden by contracts or licence agreements:

To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.¹

Whereas exceptions have traditionally not been seen as a right as such, as many of the UK education and research exceptions can no longer be removed by contract, they are now to all intents and purposes new rights that learners, libraries and researchers have been granted in the law.

Are people aware of these important new rights?

Of the 117 people who responded to the LACA survey on contracts, 65% were aware of the 2014 changes to copyright law, 26.5 % were not aware, and 8.5% answered "don't know" (one person skipped this question). Crucially in response to the question "Are you aware that most library, research and education copyright exceptions in the UK cannot be overridden by terms and conditions in a signed contract?" only 52% said yes, with 38.5% saying no, and 9.5% responding don't know.

Assuming that most people who answered are fairly engaged with copyright, as the questionnaire was promoted through LACA's twitter feed @UKLACA, it is clear that greater awareness and training on copyright law and where it can support the works of librarians and archivists, is needed. Something that LACA will certainly consider further.

Contracts in the digital age

This important change to the law is all the more vital in the digital age, given that purchased electronic materials will usually come with a licence or a contract. Before 2014 this meant effectively that whether people could copy for educational and other purposes was no longer the decision of parliament in the public interest, but the decision of the individual or publisher licensing the library.

Organisations like the British Library, the Wellcome Trust, LACA and Universities UK worked for many years highlighting to government the importance of this issue for research and education. By protecting exceptions that relate to education, research and libraries the government has now sought to protect many of the activities important to learning in the digital age.

How will these new rights help me?

Here are just a few areas where contracts can no longer remove the exceptions in copyright law that UK based institutions can enjoy:

Document Supply: Whereas paper journals, books etc don't come with a licence (unless distributors like Swets impose them on the library), electronic journals and other e content does. The licences for use of electronic materials also vary from publisher to publisher, making understanding and compliance at any scale extremely time consuming and problematic. The good news now however is that for document supply purposes, it doesn't matter what the contract for the e subscription or licence says, you can under UK law (s.42A) supply an article or a book chapter to a student for the purposes of their own study and (non-commercial) research.

Copying for the Disabled: Until 2014 the UK used to have some of the most unfriendly copyright laws in Europe for disabled people. However now, not only can libraries supply a whole copy of something to them, it does not matter whether any contract with the provider allows or disallows this activity. What is important is that copyright law allows this.

Text and Data Mining: One of the major new exceptions we saw in 2014 relates to data analytics of big data. Although, because of the Copyright Directive this was limited to non-commercial use, someone who has legal access to an in copyright work can now use a computer to analyse it. This is vitally important as most e journals and websites come with some form of terms and conditions. However now these terms and conditions can be ignored, if you have legal access to the work.

Illustration for Instruction: This exception allows someone who is "giving or receiving instruction" for a non-commercial purpose to use a fair proportion of an in-copyright work. As with all the other exceptions that prevent contract override, teachers and others giving or receiving instruction can irrespective of the contract governing use of the work, use a fair proportion of the work (as long as where practical the copyright holder is acknowledged).

Taken from a blog post by Ben White, February 2017

<https://www.cilip.org.uk/blog/copyright-law-gets-upper-hand-how-contracts-can-no-longer-remove-many-rights-users-have-uk-copyright>