

# Notes from the British Academy on Academic Copyright

*British Academy Working Party on Copyright and Scholarly Research in the humanities and social sciences*

The purpose of copyright is the protection of the rights of authorship while securing the dissemination of knowledge. The British Academy has established a review of current law and practice relating to the scholarly use of copyright material in the humanities and social sciences.

Existing UK law provides that scholars may use copyright material for purposes of criticism or review and for non-commercial research, and does not require the consent of the rights holder for such use. There is some concern that these provisions are not always achieving the intended effect, and that scholarship is thereby impeded. This may be because the scope of provisions is narrowly interpreted, or because publishers are unwilling to rely on the legal exemptions to copyright where the permission of the rights holder has not been obtained. Some examples are shown at the end of this message.

We would be particularly grateful for any further examples of such difficulties that you may have encountered. Your examples will be considered by the Working Group and may also provide useful case studies for the final report of the review. We would emphasise that the present review is limited to the scholarly use of copyright material. It is not concerned with the use of such material in teaching, or with other aspects of copyright relevant to scholars, such as the relationship with employing institutions in respect of intellectual property rights.

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The examples shown below highlight the difficulties copyright can present for scholarly research activities. Please reply to **review@britac.ac.uk**.

**MUSIC:** popular music involves major commercial interests which have no interest in or wider understanding of scholarship. Musicologists wishing to quote short extracts from song lyrics or sheet music have faced outrageous financial demands, lack of response, or even refusal coupled with a threat of litigation.

**ART HISTORY:** the exemptions for criticism and review have generally been held to permit the reproduction of only a portion of the work concerned. This is frequently inadequate for the needs of art historians. This problem has recently been compounded by demands by the owners of works (which may be out of copyright) for fees for the reproduction of photographs of the original work of art in their possession.

**ORPHAN WORKS:** copyright lasts for the lifetime of the author plus seventy years. As a result scholars seeking permission to reproduce works by authors the date of whose death is unknown along with the current ownership of their literary estates are frequently left in difficulty about the steps needed to comply with copyright requirements.

**EDITORIAL WORK:** while recent case law confirms that the editing of texts and source material can give rise to copyright protection even although the work edited is not in copyright, it is not clear whether this covers the situation where the editor has worked from a single surviving source. The exact nature of copyright in unpublished source material, especially where that material pre-dates the invention of copyright, is another source of difficulty.

**DATABASES:** it is increasingly the case that printed source material, especially if out of copyright, is being gathered together in large commercial databases, to which access is only possible on payment of substantial subscription or other charges. These databases enjoy copyright and/or the recently introduced "database right", which provide the basis for the charges imposed. Increasingly those unable to afford the charges may find themselves cut off from basic research material.

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