

<b>Title: Extending Copyright Exceptions for Educational Use</b>  <b>IA No:</b> BIS0312  <b>Lead department or agency:</b> IPO  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 13/12/2012*		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Robin.stout@ipo.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£25.75m	2.67	£-0.31m	Yes   OUT

**What is the problem under consideration? Why is government intervention necessary?**

The UK Copyright Act provides exceptions that allow certain works to be copied for educational purposes without infringing copyright. These exceptions currently 1) do not apply to artistic works, films and sound recordings, or to use with modern technology; 2) only permit copying of small extracts of literary, dramatic and musical works; and 3) do not permit sharing of extracts of copyright works with distance learners. These limitations restrict the benefits of these exceptions and create administrative costs. The Government intends to update education exceptions so that copyright does not unduly restrict useful activity.

**What are the policy objectives and the intended effects?**

To amend copyright exceptions for education, so that copyright does not unduly restrict education and teaching, without undermining incentives to creators. This means widening the current exceptions, applying them to more types of creative works, and more kinds of technology. The aim is to make it easier to use copyright works in education, particularly with modern technology, in order to enrich and enhance the learning environment. This will also provide administrative and other savings to educational establishments, and reduce the risks associated with using copyright materials when delivering education.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0 – Do nothing  
Option 1 – Expand the types of copyright works covered by the education exceptions and enable copies to be communicated to students via interactive displays  
Option 2 – Increase the amount of a copyright work that can be copied under the education exceptions  
Option 3 – Expand the current education exceptions to enable distance learners to access educational materials over secure networks.  
Option 4 – Implement all of Options 1-3  
Option 5 – Widen the definition of an ‘educational establishment’  
Option 6 – Remove or limit ability to license over the exceptions  
Option 4 is our chosen option. Options 5 and 6 have been rejected.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 05/2020					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> n/a	<b>Non-traded:</b> n/a	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:

..... Younger of Leckie ..... Date: 23 March 14 .....

# Summary: Analysis & Evidence

# Policy Option 1

Description: Apply copyright education exceptions to more types of work and presentation technology

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 1.27	High: 25.07	Best Estimate: 13.20

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

None.

### Other key non-monetised costs by 'main affected groups'

No annual costs are expected as a result of this exception. Copyright owners will (as now) have the opportunity to seek remuneration for the reproduction of their works. Some copyright owners may experience transitional costs from adapting licensing schemes to comply with the new legal framework. We have not been able to estimate these costs, but expect them to be small.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.0	0.2
High	0	5.8	50.2
Best Estimate	0	2.9	25.0

### Description and scale of key monetised benefits by 'main affected groups'

Schools are expected to benefit through not having to clear or record the use of reasonable extracts of copyright materials in presentations. Savings between £0.03m and £5.2m for state schools and £0.003m and £0.63m for independent schools per annum [based on reduction in clearance costs in 1% of cases, an incidence of one extract used in a presentation per school, per day, minimum/maximum admin costs of £6.50 or £130 per extract used]. The average of these provides the best estimate (£2.9m per annum).

### Other key non-monetised benefits by 'main affected groups'

Educational providers – all will benefit from being able to deliver teaching more effectively and avoiding risks/social costs associated with copyright infringement.

General reprography exception – educational establishments will benefit from reduced admin costs compared to status quo (88% or 100% reduction depending on whether a work is licensed or not).

Presentation exception – other education providers will experience similar admin savings as schools.

Copyright owners will also benefit from reduced clearance costs.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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This Option assumes that the current possibility for copyright owners to "license-out" of the exception remains. This severely restricts benefits, but means there would be no costs to copyright owners.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.3	Net: 0.3	Yes	OUT

# Summary: Analysis & Evidence

# Policy Option 2

Description: Increase the amount of a copyright work that can be copied under the education exception

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.04	High: 0.78	Best Estimate: 0.71

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

None – copyright owners will be able to license the acts permitted by the exception.

### Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.1	0.6
High	0	0.1	0.8
Best Estimate	0	0.1	0.7

### Description and scale of key monetised benefits by 'main affected groups'

Benefits to educational establishments from being able to copy longer extracts of unlicensed literary works estimated to be £82,000 per annum. We have carried out a 10% sensitivity analysis to provide low and high estimates.

### Other key non-monetised benefits by 'main affected groups'

When combined with Option 1, there will be benefits to educational establishments from being able to copy longer extracts of unlicensed sound recordings and films, and from being able to copy photographs (to a fair extent), which we are unable to monetise.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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This Option assumes that the current possibility for copyright owners to “license-out” of the exception remains. This severely restricts benefits, but means there would be no costs to copyright owners.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	Yes	Zero net cost
Benefits: 0		
Net: 0		

# Summary: Analysis & Evidence

# Policy Option 3

Description: Expand the education exceptions to secure distance learning environments

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

None

### Other key non-monetised costs by 'main affected groups'

No costs are expected to arise as a result of this option, as long as it is limited to secure networks and copyright owners are able to license acts covered by the exceptions as they apply to distance learning to the same extent as they are able to license acts covered by the conventional education exceptions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits of this option. No useful data was provided at the consultation stage that would enable us to do this.

### Other key non-monetised benefits by 'main affected groups'

Educational establishments / distance learners are expected to benefit from:

- being able to use a wider range of copyright materials in distance learning
- an enriched and more effective learning environment
- equality between educational provision to on-site and distance learners

To the extent that licensing schemes exist for the uses covered by this Option, these benefits will be limited.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

We assume that safeguards including a requirement that a distance learning network is secure, an ability for copyright owners to license activities, and the availability of sanctions for unauthorised file sharing sufficiently minimise the risk of copyright materials being shared with the wider public as a result of this exception.

## BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero net cost

# Summary: Analysis & Evidence

# Policy Option 4

Description: Implement all of Options 1-3

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.88	High: 50.96	Best Estimate: 25.75

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

None

### Other key non-monetised costs by 'main affected groups'

Transitional costs to some copyright owners as they may need to modify existing licence terms, as described in Option 1.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.1	0.9
High	0	5.9	51.0
Best Estimate	0	3.0	25.8

### Description and scale of key monetised benefits by 'main affected groups'

At a minimum, educational establishments will experience the sum of the monetised benefits of Option 1 (between £ and £2.6m per annum) and Option 2 £82,000.

### Other key non-monetised benefits by 'main affected groups'

The overall benefits of this exception are expected to be greater than those of Options 1, 2 or 3 alone, as each has a multiplier effect. Educational establishments and their students will be able to use more types of copyright works, with more types of technology, including presentation devices and distance-learning networks. They will benefit from being able to deliver teaching more effectively, avoid risks/social costs associated with copyright infringement, and will avoid the administrative costs associated with the clearance of any type of copyright-protected materials in many common classroom situations.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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This Option assumes that the current possibility for copyright owners to "license-out" of the exception remains. This severely restricts benefits, but means there would be no costs to copyright owners. Furthermore, we assume that safeguards including a requirement that a distance learning network is secure and the availability of sanctions for unauthorised file sharing sufficiently minimise the risk of copyright materials being shared with the wider public as a result of this exception.

## BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.3	Net: 0.3	Yes	OUT

## Evidence Base (for summary sheets)

### Rationale for intervention;

A number of exceptions to copyright for the purpose of teaching and education already exist. However, these were crafted at a time when information and communication technologies were not widely available in educational settings. Modernising the education exceptions will allow educational establishments to make use of a broader range of copyright works with a wider range of technologies without risking copyright infringement. This will enable them to provide an enriched learning environment, would acknowledge the value of education, and has the potential to reduce the administrative costs faced by educational establishments.

### Policy objective;

The Government is looking to modernise the current copyright exceptions for education.

The Government aims to:

- expand the types of creative works that are covered by the exceptions;
- enable teachers to use extracts from copyright works when teaching using interactive whiteboards and other displays;
- enable distance learners to access copyright works over secure networks without infringing copyright;

It aims to do this to the extent that is possible without undermining incentives to creators.

Groups affected by the policy proposals include copyright owners, licence operators, educational establishments and Local Education Authorities, students and teachers.

### Background;

#### The nature and scope of the current UK education exceptions

Several different exceptions for educational use of copyright works currently exist:

Section 32 permits copying for specific uses, such as examination, and chalk board teaching

Section 34 permits the performance and showing of works to classroom audiences

Section 35 permits the recording and use of broadcasts

Section 36 permits the reprographic copying of up to 1% of a literary, dramatic or musical work every 3 months.

Sections 35 and 36 only apply to the extent that the work being copied is not registered with a collective licensing scheme that permits educational use. A number of collecting societies license the uses covered by these exceptions, and in practice most educational establishments hold one or more of these licences (see Table A).

The Section 32 and 34 exceptions apply regardless of the availability of collective licences.

Every exception requires the source of a work, including its author, to be acknowledged.

None of the exceptions applies to works provided to distance learners over secure networks.

### Problem under consideration;

The current copyright exceptions for education are limited in scope, restrictively defined by media and location, and do not meet educators' expectations of reasonable use of copyright materials in the digital age. In particular they create the following problems:

Copying different types of works and media: The current education exception that permits reprographic (i.e. electronic) copying only applies to literary, dramatic and musical works,

and excludes the use of extracts from artistic works, films and sound recordings. This limits the types of media that can be easily copied for educational use, limiting variety and creativity in multimedia teaching.

Teaching using new technologies: Current education exceptions permit extracts of copyright materials to be reproduced on chalk boards in face-to-face teaching, but do not permit similar use of extracts using presentation technology such as interactive whiteboards.

The amount that can be copied: The exception that permits copying of extracts from literary, dramatic and musical works only permits copying of 1% of a work per quarter. This is a small amount of a work and means the exception is often of little practical use.

Distance learning: The exceptions do not permit communication of works to distance learners, such as people with disabilities that prevent them from attending the premises of an educational establishment, people who require flexibility because of work or family commitments, etc. As a result, distance learners are disadvantaged compared to students based within an educational establishment, and access to education may be limited.

### **Description of options considered;**

The options considered were:

Option 0 – Do nothing

Option 1 – Expand the types of copyright works covered by the education exceptions and enable copies to be communicated to students via interactive displays

Option 2 – Increase the amount of a copyright work that can be copied under the education exceptions

Option 3 – Expand the current education exceptions to enable distance learners to access educational materials over secure networks.

Option 4 – Implement all of options 1-3

Option 5 (rejected) – Widen the definition of an 'educational establishment'

Option 6 (rejected) – Remove or limit ability to license over the exceptions

### **Costs and Benefits**

#### **Option 0: do nothing**

The education exceptions would remain as they currently are. People working for educational establishments will continue to have to work within a complex set of rules when using copyrighted materials in the classroom, in particular when using these materials with new technologies and communicating them to distance learners. Licences and permissions to use certain works will continue to be difficult to obtain in many cases. These obstacles will continue to restrict the variety and impact of education provision, particularly when delivered using new technology.

## **Option 1 – Expand the types of copyright works covered by the educational exceptions**

### **Changes to Section 36 (the general reprographic copying exception)**

#### Current scope

Section 36 currently permits general “reprographic” copying (ie. using an electronic device) by educational establishments in relation to extracts from literary, dramatic or musical works. A permitted extract is defined as up to 1% of a work every three months. This exception only applies if the works in question are not collectively licensed for educational use. If they are, an establishment needs to hold the relevant collective licence to copy them. Under this system, all works are available for copying – either under licence or under the exception. This means educational establishments do not have to seek permission from individual rights holders to photocopy literary works, and delivers the following benefits:

- Educational establishments are guaranteed access to a wide range of creative materials, allowing them to deliver teaching on the subjects of their choice without risk of copyright infringement.
- The administrative costs associated with copying these materials are reduced, as individual clearance to use each copyright work is not required.
- Copyright owners are incentivised to sign up to collective licensing schemes, as otherwise they will not be remunerated for copying of their works.

#### Proposed changes

Under our proposals, this exception will be extended to cover all types of copyright work, including artistic works, films and sound recordings. As is currently the case, the exception will only apply when a work is not licensed for educational use.

Without such an exception, schools, colleges and universities are unable to reproduce these types of materials easily, and sometimes are prevented from using them at all. They are also at risk of copyright infringement if they do use them.

The aim is to deliver the same types of benefits in relation to all classes of copyright work as are currently available in relation to literary, dramatic and musical works.

#### Costs to copyright owners (no ongoing costs, small transitional costs)

This exception will not permit educational establishments to get educational materials for free. It would be possible to copy a short extract from a film but not to copy so much that it substitutes for and damages sales of that film. So there would be no costs due to lost sales of works.

This exception will only apply to works that are not licensed for copying by educational establishments, only copyright owners that do choose not to license their works for such use will not be remunerated. We do not consider this to be a cost to copyright owners, it will be their choice, and the opportunity for remuneration is still available to them.

No impact is expected on existing licensing schemes for literary, dramatic and musical works, which have been subject to this exception for several decades. Of the works that the exception will be expanded to cover, the great majority of sound recordings are already collectively licensed for educational use, so licensing in this area is also unlikely to be affected. On the other hand, artistic works – including photographs – are often licensed individually. Both individual or collective licensing would allow copyright owners to be remunerated, so they would not lose income as a result of this exception. However, there may be small transitional costs as some adjust to new licensing arrangements.



## Benefits to educational establishments, teachers and students -

Educational establishments currently have three choices when they wish to copy a copyright work that is not licensed for educational use.

- 1) They avoid copying it, and use an alternative work, or no work at all. This restricts their freedom to use the most appropriate materials, distorting what can be taught.
- 2) They undertake a clearance process in order to copy it legally. This has associated costs, and may be considered too inconvenient or expensive;
- 3) They copy it illegally. This presents legal and reputational risks to the institution.

This exception will deliver benefits in relation to each of these current behaviours.

- 1) Educational establishments will be able to reproduce the most relevant extract from any work, delivering the most appropriate teaching. (primarily social benefit)

It will be easier for teachers to deliver education using a wider range of media and technology, providing a richer and more varied learning experience for their students. It will mean that no works are out of bounds for discussion and study due to an inability to reproduce them.

These benefits are the reason the current exception was introduced, and the current exception is generally considered to have delivered these benefits in relation to literary, dramatic and musical works. By widening the exception, similar benefits will be delivered in relation to more classes of works, and more types of technology.

These benefits will primarily be social, though benefit to the economy will also be expected due to enhanced education. We have been unable to monetise these benefits as there is no robust way to measure the educational value that will be delivered.

- 2) Educational establishments will not face the administrative costs of negotiating permission to copy individual works. (financial benefit)

Currently, if a teacher wishes to copy a work which is not licensed for educational use (and is not currently covered by this exception) they have to identify the copyright owner, contact them, negotiate permission to copy that work and (if granted) they may have to pay a fee. The PwC report “An economic analysis of education exceptions in copyright” (PwC, 2012) (commissioned by the Copyright Licensing Agency (CLA)) estimates these costs based on the following clearance steps (and time taken):

- 1) researching and identifying the copyright owner (1h)
- 2) contacting the copyright owner (0.5h)
- 3) negotiating with the copyright owner (3h)
- 4) paying a licence fee (0.5h).

Assuming a teacher does this clearance, we estimate admin costs using the 2011 Annual Survey of Hours and Earnings (ASHE)<sup>1</sup> hourly pay for teaching and educational professionals (£21.70) to derive a total administrative cost per clearance of £126 [5h x £21.70 x 1.16].

If a work is covered by a collective licence, and the establishment holds that licence, the only direct cost associated with copying that work is the administrative cost of keeping

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<sup>1</sup> <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-256648>

appropriate records. Users are expected to record, for each work copied, the book or journal title, year, author, page references, ISBN number and course code. PwC estimate this takes 15 minutes “per item”. Universities UK (UUK) in their consultation response argued that in some cases it takes 48.5 minutes per scan. Both estimates appear high, so we use the lower figure (15 minutes, 0.25 hours) to calculate the admin cost under the CLA licence to be £6.30 [0.25h x £5.43 x 1.16] per work copied. In addition to these costs, there are yearly costs associated with collective licences, relating to 1) negotiating the licence; 2) buying the licence; 3) understanding licence terms; 4) permitting audits of records.

Overall, the PwC report estimates that the collective licensing of literary works for use in higher education reduces total potential admin costs from an estimated £145m (£55.1m for HE users; £90m for copyright owners) to £6.7m (£1.7m for HE users; £4.9m for copyright owners) – 95.4% less than the cost of individual licensing (97% and 95% respectively). In our consultation, Universities UK disputed this estimate, calculating the compliance costs for the HE sector to be £6.5m as opposed to £1.7m (12% of the cost of individual licensing, so a cost reduction of 88% instead of 97%). Using either figure, the administrative cost is greatly reduced when compared to individual clearance of extracts.

If a work is covered by the exception and not licensed, then an extract of it can be reproduced without clearance, and without having to keep records, so there are no administrative costs.

Following amendment of this exception, films, sound recordings and artistic works will fall within the scope of the exception. To the extent that an extract is permitted by the exception (currently 1% of a work, but to be increased under Option 2, below) the admin costs associated with individual clearance (£126) will disappear, either to be replaced by the cost of keeping records/holding a relevant licence (£6.30 per copy plus yearly costs) or removed altogether (if not covered by the licence). So per-extract costs for educational establishments will be reduced by either 88% or 100% depending on whether educational use is licensed or not.

Potential overall administrative savings arising from this option are therefore considerable. The true level of these benefits will depend on how much clearance takes place in practice, as opposed to works not being used, or being used illegally, due to high clearance costs.

We have no means of estimating the total number of works that would be affected under this option, so cannot provide a robust estimate of the overall administrative savings.

3) Educational establishments will have more certainty over what they can legally copy.  
(social and legal benefit)

The introduction of a minimum level of permitted copying for all types of work will make it easier for anyone working at an educational establishment to be confident about what they can copy within the law, reducing complexity and the risk of copyright infringement.

The Government views the infringement of copyright law by educational establishments as undesirable both in itself and for the example it sets. An exception that helps educational establishments to comply with copyright law will reduce the legal risks and costs associated with infringement, and set a good example to students using copyright materials.

### Distribution of benefits

The exception will deliver benefits of different types depending on which of the above three behaviours is currently followed. We expect all behaviours currently occur, but are unable to quantify the proportion of each. Given the high administrative cost of clearing an individual

work for educational use, we expect that behaviours 1) and 3) occur more often in practice, so the benefits of this option will primarily be social and legal, rather than financial.

### **Amendment to Section 32 (narrow exceptions for specific purposes)**

#### Current scope

Section 32 provides narrow exceptions permitting a) the copying of materials using non-reprographic means; b) the use of extracts of films and related works during instruction in film making; and c) use of copyright materials for the purpose of an examination. Unlike Section 36, these provisions do not depend on the availability of licences. One act permitted by these exceptions is the reproduction of quotes or other extracts on a chalk board during teaching, but similar reproduction using an interactive whiteboard is not permitted.

The following section analyses the impact of amending this exception to permit the use of quotations and extracts of works in a Powerpoint or interactive whiteboard presentation to a similar degree as currently permitted in a chalk board presentation. We estimate that this will deliver benefits in terms of enhanced teaching, reduced administrative costs, and increased legal compliance.

#### Costs to copyright owners

##### Impact on sales

An exception for teaching that permits the use of quotes in presentations is expected to have minimal impact on sales of copies of works, for the following reasons.

- Copies made under the exception could not be issued to the general public, so would not compete with commercial offerings.
- To qualify, use of a quotation must be fair, and only to the extent justified by its purpose.
- To be considered a quotation, an extract must be used in the context of another work that comments on it. This and the need to make it legible in a presentation will naturally limit its size.
- The use of an extract in a presentation will be an essentially ephemeral use.
- Such an exception would not permit free access to works. Schools would still need to pay to access film clips, photo libraries, commercial interactive whiteboard courses, etc.
- Such use is already permitted to a great extent under the fair dealing exception for criticism and review, and the exception for showing and performing works in class.

For these reasons, such an exception is not expected to reduce or undermine the sales of copyright materials.

##### Licensing income – per extract

In our initial impact assessment on quotation, we estimated the licence fee for a text quotation based on information derived from Society of Authors guidelines (which provide a rate of £170 per 1000 words). In the context of a Powerpoint presentation a quote will be shorter – likely to be 25 words or fewer. Using these rates, a fee for such an extract could be £4.25 (25 x £170/1000). In practice, as shown by evidence submitted to the consultation and publishers' guidelines, short quotations for non-commercial use are often licensed for free. Therefore, £4.25 per extract is likely to be a high estimate, and £0 is more likely.

If these fees are avoided, there will be a transfer from copyright owners to educational users. In practice, in view of the above analysis, this transfer is likely to be small or zero.

We do not have similar figures relating to the use of photographs, films or other works in a similar context. However, the same factors described above would also apply to these works, limiting the impact of this exception. In addition, the playing of a film before a classroom audience is already not a copyright infringement (under Section 34). The transfer occurring as a result of this exception to be of a similar scale in relation to all types of work – ie. small or zero.

#### Benefits – per extract

The main benefit of this exception derives from a reduction in the administrative costs associated with using copyright materials in presentations.

The PwC study above estimates the time taken to by a higher education establishment to clear the rights to copy a book to be 5 hours (see clearance steps above).

Assuming it will usually be the person delivering a presentation who has to clear the use of an extract, we estimate the costs of doing this using the 2011 Annual Survey of Hours and Earnings (ASHE) hourly pay for teaching and educational professionals (£21.70) to derive a total administrative cost per clearance of £126 [5h x £21.70 x 1.16].

If an educational establishment has a CLA scanning licence, and the work from which an extract is taken is covered by the licence, the associated admin costs will be greatly reduced though not removed entirely. As a collective licence removes the need for individual clearance, the only admin costs will be associated with record keeping. As above, using the PwC estimate of 15 minutes per record we calculate the admin cost of using an extract covered by such a licence in a presentation to be £6.30 [0.25h x £5.43 x 1.16] per extract.

Therefore, depending on the source of the extract, educational users will benefit from admin savings of £6.30 or £126 per extract.

#### Benefits – per presentation

The Association of Curators of Art and Design Images (ACADI) /Art Libraries Society consultation response provides evidence showing use of images in lectures, including:

- 9 images in a 15 slide presentation on nursing (8 potentially requiring copyright clearance);
- 100 images in a 60 slide presentation on Egyptian artistic culture (75 potentially requiring clearance);
- 71 images in a 26 slide presentation on classics (63 potentially requiring clearance).

We expect that this data represent a higher than average use of images, but are useful for illustration of benefits. Of these, some images do not require clearance as they are already licensed for educational use (either specifically, or under a creative commons licence). Some are from websites, and probably require individual clearance. Others are from books and may be useable under the CLA scanning licence, should an institution hold such a licence.

Taking as an example the presentation on nursing (9 images, 1 from a textbook, 6 from websites requiring individual clearance), the total time to clear these works could amount to 30.25 hours [1 x 0.25h + 6 x 5h]. The total benefits of not having to clear these works is estimated to be £762.3 [£6.30 + 6 x £126].

#### Benefits versus costs

In the scenario where a teacher or lecturer currently clears an individual extract for use in a presentation, the administrative benefits to them of this exception are expected to range between £6.50 per extract and £126 per extract, depending on whether the extract is licensed for this use under a collective licensing scheme. They are also expected also avoid paying licence fees, though in practice these fees will usually be zero. Even if a fee is charged, our estimate is that such a fee is likely to be a maximum of £4.25, delivering a maximum saving per extract of £130.

### Scale of costs and benefits

To derive the overall benefits of this exception it will be necessary to scale these benefits by the number of teaching presentations given in the UK every year, and the number of extracts and quotations (of a “fair” length) used in them. This data is unavailable, and would be disproportionate to collect (if indeed possible). However, we can get some idea of the potential benefits by considering the use of interactive whiteboards in schools. In 2010, 96% of primary school teachers and 53% of secondary school teachers claimed to use interactive whiteboard tools in at least half of their lessons.<sup>2</sup> In 2011 there were 16 884 state-funded primary schools and 3 310 state-funded secondary schools in the UK.<sup>3</sup>

Given the incidence and use of whiteboard technology, we can derive a very conservative estimate of the benefits by assuming at least one teacher in each of these institutions will want to use at least one fair extract from a copyright work with an interactive whiteboard every year. This would deliver a minimum benefit of £131 000 [20194 institutions x £6.50] and a maximum of £2.6m [20194 x £130].

A more realistic estimate is that one such extract is used per day. Assuming 200 school days per year, this gives potential benefits of between £2.6m and £520m per year.

The same calculation is used to determine the value to businesses, through the benefit to independent schools. In 2011 there were 2415 independent schools<sup>4</sup> in the UK. This would deliver a minimum benefit of £0.02m [2415 institutions x £6.50] and a maximum of £0.31m ([2415 institutions x £130].

Again, a more realistic estimate is that one such extract is used per day. Assuming 200 school days per year, this gives potential benefits to business of between £0.31m and £62.6m per year.

### Distribution of benefits

In practice, given the high costs of clearance, many extracts will not be cleared for use in presentation. Instead, they might not be used at all, or they might be used in breach of copyright or licence terms. In the first scenario, the main benefit will be more effective teaching. In the second, the main benefit will be the removal of legal and reputational risk. In neither case will copyright owners be clearing works or receiving payment, so copyright owners will not experience additional costs. We expect that, given the high cost of clearance relative to the value of an individual work in the context of a presentation, these two scenarios will predominate over the scenario where clearance is sought for copying.

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<sup>2</sup> Becta (2010) Harnessing Technology School Survey: 2010, Available from: [http://dera.ioe.ac.uk/1544/1/becta\\_2010\\_htss\\_report.pdf](http://dera.ioe.ac.uk/1544/1/becta_2010_htss_report.pdf)

<sup>3</sup> DfE (2011) Schools, Pupils and their Characteristics, January 2011, Available from: <http://www.education.gov.uk/rsgateway/DB/SFR/s001012/sfr12-2011.pdf>

<sup>4</sup> DfE (2011) Schools, Pupils and their Characteristics, January 2011, Available from: <http://www.education.gov.uk/rsgateway/DB/SFR/s001012/sfr12-2011.pdf>

Assuming clearance is obtained in only 1% of cases (and in the other cases, an extract is either not used or used illegally), this still delivers a benefit of between £26 000 and £5.2m per year to state schools and between £3,000 and £0.63m for independent schools. The true benefit will be higher than this, as our estimate is only based on schools, whereas universities and other institutions will be able to take advantage of this exception.

For these reason the best estimate for clearing individual extracts in state schools is £2.6m, with a low estimate of £26,000 and a high estimate of £5.2m per annum. The best estimate for independent schools will be £0.31m, with a low estimate of £3,000 and a high estimate of £0.63m.

## **Option 2 – Increase the amount of a copyright work that can be copied under the education exceptions**

The current UK copyright exception for reprographic copying by educational establishments permits no more than 1% of a work to be copied every quarter (e.g. 1 January to 31 March). This restriction exists in part to ensure that copies made by an educational establishment will not lead to lost sales by copyright owners (e.g. a whole book cannot be copied, as this might mean a school would no longer need to buy copies of books).

Our initial impact assessment suggested that a 1% copying limit may have little value in practice. In copyright law, a “literary work” may be a book, in which case copying 1% may be useful. It means quotations can be copied from books for use in lessons and lectures, and as much as two pages from a 200 page book could be copied in full. But much shorter works also qualify as literary works – such as poems, or even newspaper headlines. Consultation responses by educational users of copyright materials confirmed that a 1% copying limit is, in many cases, of no practical use.

Under this option, the 1% per quarter limit would be increased to allow “fair dealing” with a work. Fair dealing is a defence developed by case law, and essentially permits uses of a work that could be considered reasonable by a fair minded and honest person. The courts tend to consider three main factors when determining whether dealing with a work was fair:

- a) The degree to which a use competes with the exploitation of the work by the copyright owner. For example, if a copy is capable of substituting with an original it is unlikely to be considered fair.
- b) The amount of a work that has been taken – a useful test is whether it was necessary to copy as much as was copied in order to achieve the relevant purpose.
- c) Whether the work has been published – if unpublished copying is unlikely to be fair.

Turning this exception into a fair dealing exception is therefore likely to permit copying of more than 1% in many cases, and would be more flexible than the current provision. However, it would ensure that primary sales are not undermined (primarily as a result of factor a). Also as we will not remove the ability of copyright owners to license this exception it will have minimal or no impact on secondary licensing income. Overall, therefore, the cost of this option to copyright owners is expected to be minimal or zero.

### Benefits

This option would increase the extent to which copyright works that can be used in teaching, enabling teachers to provide a richer and more varied learning environment.

The beneficiaries of an enhanced learning environment will be the students attending those establishments, who will benefit from the greater proportion of copyright works that can be incorporated in educational materials.

In our initial impact assessment we did not attempt to quantify the benefits of this option due to the lack of available data. The PwC report “An economic analysis of education exceptions in copyright” (PwC, 2012), contains data enabling us to estimate the value of the benefits of this option to educational establishments in relation to literary works.

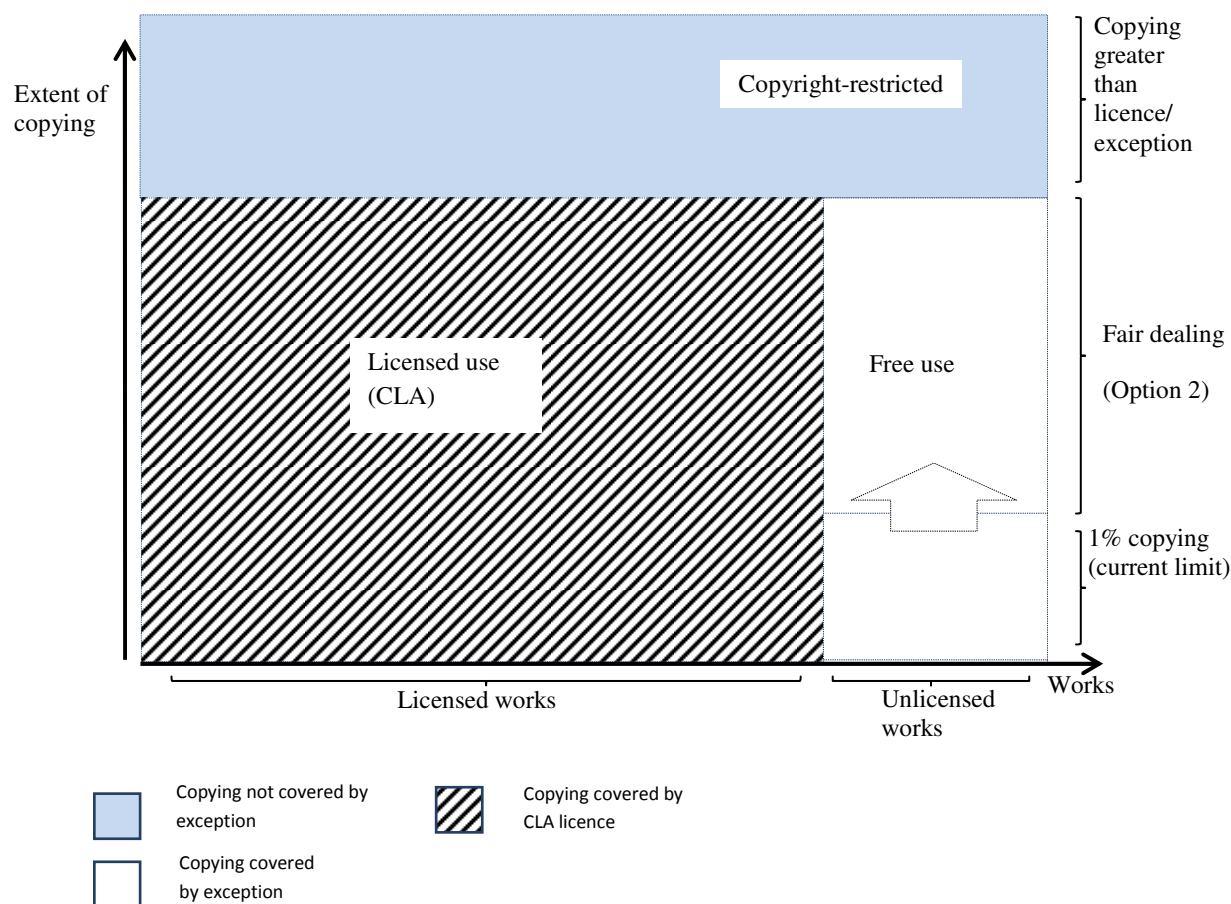
This report estimates that only 3582 literary works are not covered by the current CLA educational licensing scheme, versus 1.4m licensed works. However, we expect that the true number of unlicensed works is likely to be higher, as 1) this estimate only relates to educational materials in traditional book form, whereas the exception covers all media including online publications and less formal works such as websites, blogs etc; and 2) this estimate assumes all literary works are covered by the CLA licence unless specifically excluded. In fact, any literary work not specifically registered with the CLA scheme will fall outside it and this will be true of many informal and online publications in particular. So we expect the true number of literary works falling within the “free use” category to be somewhat more than 3582.

As regards licensed literary works, the CLA estimates £33.3 million as the total value of licensing income in 2011/12. This appears to be a reliable estimate, as it is estimated using current licensing income.

The PwC report estimates that the value of the works falling within the “free use” sector of Figure 1 will be £82,000. This number is arrived at by dividing the CLA’s educational licensing income (£33.3m) by the number of works licensed (1.4m) and multiplying by the number of works they estimate to be in the “free use” category (3582). A “fair dealing” exception applying to those works not covered by a license is likely to permit a similar amount of copying to that currently permitted under the CLA licence, so this appears to be a reasonable method of estimating the value of these works.

The PwC analysis deducts from the estimated value of “free use” works under a “fair dealing” copying limit the estimated value of “free use” works falling within the current 1% per quarter copying limit, estimating this to be worth 1/5 of a 5% or fair dealing exception. We expect the true value of the current 1% copying limit is much lower than 1/5 of a fair dealing exception, as 1% of many works is of little if any value. In view of this, we do not think it makes sense to deduct 1/5 from the estimated value of “free use” works under a fair dealing exception. We therefore take our best estimate of the value of literary works not covered by the CLA licence to be £82,000, representing benefits to the users of those works if the amount they can copy is increased to a “fair dealing” level. A 10% sensitivity analysis is carried out to provide a low and high estimate.

**Figure 1 – impact of increasing copying limit for literary works**



The main category of work not currently licensed collectively for education is artistic works (though works embedded in books are licensed under the CLA licence). A percentage extract makes little sense in relation to artistic works, so without a fair dealing limit, or a similar approach, the exception could not meaningfully be extended to these works.

In view of this, Option 1 must be delivered in combination with Option 2 in order to apply to photographs and other artistic works. The impact of this option is therefore expected to be largest in relation to artistic works, as it will unlock the benefits of Option 1 for this class of work (these benefits - social, financial and legal – being delivered to educational establishments as described above). The second largest impact is expected to be in relation to films, as collective licensing of these is less common than books and sound recordings. The impact on literary works, which are already mostly covered by licensing schemes, is expected to be the least.

Unfortunately, our consultation did not provide any data that would allow us to estimate the benefits of this Option in relation to non-literary works. Therefore, we have used the estimate of the benefits in relation to literary works as our minimum estimate. The benefits will be greater than this due to the wider range of works this exception will apply to, and in particular due to the role of this Option in supporting delivery of Option 1 for artistic works. No costs to copyright owners are expected, for the same reasons as described in Option 1.



### **Option 3 – Expand the current education exceptions to enable distance learners to access educational materials over secure networks.**

This option would enable educational establishments to copy broadcasts and extracts from copyright works such as literary, dramatic and musical works (to the extent covered by the current education exceptions – described above) and transmit them to students who are working remotely. This would enable distance learners to benefit from the education exceptions to the same extent as students based at educational establishments.

#### Potential costs to copyright owners – lost sales

The exception will be limited to secure networks so that only targeted and identifiable students would be able to access the copied works. This will limit the scope for causing harm to copyright owners (via unauthorised file sharing etc). If works are shared outside the secure network this will be (as now) a breach of copyright law, and appropriate legal sanctions will apply. The exception will be subject to equivalent licensing requirements as exist in relation to the conventional education exceptions, allowing copyright owners to be remunerated for and to monitor the use of their works. In view of all of these safeguards, copyright owners are not expected to experience any costs due to this provision.

#### Benefits due to potential cost savings

As with Option 1, to the extent that collective licensing schemes cover the acts that this exception would permit, educational establishments would not benefit from cost savings as a result of the exception, as they will face the same licensing fees and admin costs.

To the extent that works are not covered by collective licences, educational establishments would in theory experience cost savings, as they are currently expected to license the use of individual works and their transmission to distance learners. The benefits therefore are similar to those estimated under Options 1 and 2, but would be enjoyed by more students, and would apply in more teaching situations, so are overall expected to be greater.

#### Benefits due to enhanced distance learning

This option would enhance educational provision for distance learners such as those who suffer from disabilities that prevent them from attending the premises of the educational establishment, those that work from remote locations and those that require flexibility because of work or family commitments. The Open University, the largest university in the UK, has more than 250,000 students, 12,000 of whom have a disability, health condition, mental health difficulty or specific learning difficulty (such as dyslexia). By making it easier to provide educational materials remotely, distance learners such as these will benefit, as will the educational establishments to which they belong. The number of beneficiaries is expected to increase, as improvements in distance learning technology continue.

We do not have access to sufficient data to robustly monetise the benefits of this option. However, the amount educational establishments are prepared to pay for licences that permit this type of use helps to illustrate the value they place on this activity.

For example, UK educational establishments paid a total £1.3m in 2010/11 for the ERA Plus licence (16% of total ERA revenues). The CLA does not have a separate licence for distance learners but its main licences cover distance learning as well as other uses. The total licensing revenue collected from educational establishments by the CLA in 2008/9 was £27.1m (CLA *Annual Review 2009*). Assuming that a similar proportion of CLA licence revenues are associated distance learning as is the case for ERA (i.e. 16%), this means that £4.3m of total revenues (16% of £27.1m) may be attributable to use for distance learning. As

educational establishments are currently prepared to pay this much in order to provide copyright materials to distance learners, they clearly highly value their ability to do so.

As with Option 1, these figures indicate the value educational establishments place on the type of copying for distance learners that they are currently permitted to do under licence to be in the order of several million pounds.

We were unable to obtain sufficient data to monetise the costs and benefits of this option but comments from stakeholders suggest that our assumptions are broadly correct. The overall benefits of this option justify it being taken forward.

#### **Option 4 – Implement all of Options 1 to 3**

Each of the above options are estimated to provide benefits to educational establishments with minimal, if any, costs to copyright owners. Option 2 will multiply the benefits of Option 1 as it will enable it to apply to more types of creative work. Option 3 will multiply the benefits of all options by extending it to people working remotely, as well as those working within an educational establishment.

In view of the above, Option 4 – implementing all of Options 1 to 3 – is our preferred option.

#### **Option 5 – Expand the definition of an educational establishment (not taking forward)**

This option would permit a wider range of organisations, such as public museums and galleries, to take advantage of the Section 35 and 36 education exceptions. Public museums and galleries are currently excluded from taking advantage of the education exceptions although they offer a range of educational activities to students.

Following the logic of Options 1 to 3, Option 5 ought to deliver overall benefits for the establishments falling within any new definition with minimal costs to copyright owners. However, additional costs are expected as 1) any new definition will be difficult to define and to apply, and is likely to create uncertainty for rightsholders and users alike; and 2) rightsholders will have to amend their licences to take account of the new definition (a transitional cost). In their consultation responses, rightsholders also raised concerns that it would be difficult to limit the exception to educational activities in institutions whose primary role is not the delivery of education.

We received little data to help us assess this option during the consultation process. In part, this is due to a lack of agreement among stakeholders as to the type of additional institution to which the exception could be extended, and the nature and degree of the risks associated with a new definition. Although we expect the benefits of this option to be greater than its costs, we have insufficient data to justify taking it forward.

#### **Option 6 – Remove or limit ability to license over the exceptions (not taking forward)**

We are not taking forward Option 5, which contemplated the removal of the ability to license all or part of Sections 35 or 36. Doing so would have resulted in a number of different scenarios, depending on the proportion of a work that could be copied (see Option 2). An analysis of the impact of introducing a 5% unlicenseable copying exception in relation to literary works was provided to the consultation in the PwC report commissioned by the CLA. Such an exception would not permit copying to an extent that was able to substitute for primary sales, so any impacts would be confined to secondary licensing income.

The PwC report assumes that all CLA educational licensing revenue will be lost under a 5% copying exception, equivalent to its projected revenue in 2011/12, £33.3m. We think this is

unlikely for two reasons. First, current CLA licences permit copying that is more generous than 5% (complete chapters from books, whole articles, poems and short stories). Second, the CLA's and other consultation responses show that educational establishments often copy up to (and sometimes beyond) these limits. However, such an exception – the widest contemplated – would reduce the value of this licence and provide an opportunity for educational establishments that do limited copying to avoid having one.

Costs to copyright owners could therefore be significant. Half of authors surveyed by the ALCS said that their income received via the CLA is essential to support their creation of new works,<sup>5</sup> so this option could create disincentives to them.

A fair dealing exception is likely to be more restrictive than a 5% exception, depending on how fairness is assessed (see Option 2). Therefore an unlicensable fair dealing exception is expected to have less impact on licensing revenues than the 5% option, but could still result in losses for CLA and reduce incentives to rights holders, at least in the short to medium term. A 1% unlicensable exception is likely to have the least impact on the CLA and its members, and, given the ongoing upward trend in CLA licensing income, is likely to be made up over the long term but is the least practical for users of the exception (see Option 2). In view of all of the above considerations, Option 5 has been ruled out in relation to literary and other works.

In relation to broadcasts (which can currently be copied under Section 35 or the ERA licence), both rightsholders and educational users felt that the option presented in the consultation (removal of licensing for “time-shifting”) did not reflect actual practice in educational establishments, so would be unnecessary and complicated, so Option 5 has also been ruled out in relation to broadcasts.

### **Option 6 – Implement all of Options 1-3**

We consider the benefits of each of Options 1 to 3 to outweigh any associated costs. In view of this, we the benefit of implementing all of these options together will be at least the sum of these three options. Therefore, our chosen option is to implement Options 1 to 3.

### **Direct Costs and Benefits to Business Calculations (following OIOO methodology)**

Under the “One In, One Out” rule, whereby a measure that has a net cost to business must have a measure or measures of equivalent cost removed in order to be implemented. Most of the benefits we have been able to monetise are for state funded school, we have therefore excluded these from the OIOO calculation. We have been able to monetise the benefit to businesses through the benefit to state schools. It has not been possible to monetise many of the costs and benefits due to a lack of available data. However the benefits will outweigh the costs and there is a clear benefit to businesses, therefore we have counted this as an OUT .

### **Risks and assumptions;**

By making more copyright works available electronically, it may be possible that such works may become more vulnerable to unauthorised copying and onward transmission to others including students overseas, outside the jurisdiction of UK law. A further risk concerns the impact on rights holders in terms of security measures as well as incentives to produce educational content, resulting in a negative impact on the creative industries in that sector.

### **Wider impacts;**

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<sup>5</sup> See ALCS response.

No impact on race and gender equality is anticipated, but it is expected that there will be a positive impact on equality, addressing the disparity between distance learners and those located on the premises of educational establishments.

## **Evaluation**

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the copyright reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured, which will depend on the type of benefit, as some benefits will be measured by applications and take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the copyright system, as well as research that is commissioned in order to measure the benefits.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the copyright reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

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### **\*Note:**

As part of the process of reviewing the Impact Assessments in the lead up to publication of the regulations, it came to our attention that the Impact Assessment published in December 2012 for Education was not the final version agreed with the Regulatory Policy Committee. Specifically, the summary pages of the published version did not capture the net present value and cost to business as identified in the impact assessment. Following comments from the RPC secretariat, the final version was updated to include these numbers, and it is this version that we are now publishing. Otherwise, the IA has not changed since it was submitted to RPC in 2012, and no new evidence has been provided that has led the Government to alter the overall numerical assessment of the costs and benefits contained within it.