

<b>Title:</b> Copyright exception for archiving and preservation  <b>IA No:</b> BIS0306  <b>Lead department or agency:</b> IPO  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 09/08/2012		
	<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> AMBER
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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?
£222.9m	£222.9m	-£24.44m	Yes   OUT

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

UK copyright law provides an exception that allows librarians or archivists to copy certain works for the purpose of preservation without infringing copyright. The exception does not apply to sound recordings, films, broadcasts, or artistic works. Current wording implies that only a single copy can be made, so backup copies appear to be precluded. The exception does not apply to other institutions with large collections of works, such as museums and galleries. The costs of clearing the copyright in such large collections is prohibitively high. The Government intends to modernise the exception to apply to more works, more institutions, to make it easier to preserve works for future generations.

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

The objective is to make it easier to preserve creative content held by libraries, archives, museums and galleries by widening our existing preservation exception - extending it to cover all types of copyright work, and to apply to more institutions. This would reduce transaction costs faced by archivists making it easier and less costly for them to preserve their permanent collections. The intention is that this will enable a greater proportion of the nation's cultural heritage to be preserved. We will minimise any negative impact on copyright owners by limiting this exception to certain uses by specific organisations.

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

Option 0 - No change to copyright law.  
Option 1 - Enable libraries and archives to make multiple copies of all classes of works for the purposes of preservation.  
Option 2 - As Option 1, but also extended to allow museums and galleries to benefit from the exception.

Option 2 is the chosen option as it provides the greater benefits and best achieves the policy objective.

<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 SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Enable libraries and archives to make multiple copies of all classes of works for the purpose of preservation and extend to allow museums and galleries to benefit from exception.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 148.6	High: 297.2	Best Estimate: 222.9

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'

The introduction of an exception is not expected to come at the expense of reduced revenues to copyright holders. This is because it only permits copying within a library or archive, of works already in their collections, for preservation and archiving purposes. The exception will not permit copies of works to be put on the market so there will be no loss of income.

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

The main group concerned will be copyright holders. For above mentioned reasons, however, we do not believe that there will be any impact on their sales from the proposed exception.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	17.3	148.6
High	0	34.5	297.2
Best Estimate	0	25.9	222.9

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

We estimate that the benefits to libraries, archives, museums, galleries and copyright owners amount to £25.9m p.a in savings from reduced administrative costs. These annual benefits are £10.4m to Copyright owners, £11.1m to Libraries and archives and. This estimation is based on empirical evidence and realistic assumptions about costs of clearing works for preservation, the number of affected works and digitalisation rates and are explained on page 6 onwards.

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

Main beneficiaries are libraries, archives, museums and galleries, which will no longer have to seek clearance from copyright owners to preserve audio/visual works. Admin savings ~ £95 per work preserved. Copyright owners will no longer have to clear rights for preservation - admin savings ~ £70 per work. Millions of works potentially affected so significant potential savings. The evidence base estimates these savings, based on available data. Data showing total number of works requiring copying

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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We have assumed that this exception will have no impact on sales of works by copyright owners, as copying is only for preservation within an institution - not sharing beyond it - and only applies when commercial replacements unavailable. We have assumed the data in "An economic analysis of copyright, secondary copyright and collective licensing", by PwC (2011) and "Seeking New Landscapes" by Barbara Stratton (2011) gives reliable estimates of the typical time to clear a work for preservation.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0	Benefits: £24.4	Net: £24.4	Yes	OUT

## Evidence Base (for summary sheets)

### Problem under consideration:

Digital technology allows archives to copy creative works such as books, sound recordings and films, prevent works deteriorating and being lost to future generations.

An exception to copyright already exists that allows libraries and archives to make a copy of certain creative works in order to preserve them, without infringing copyright. It is intended to help minimise wear and tear of fragile items or to replace lost, destroyed or damaged items.

However, the current exception only applies to literary, dramatic or musical works. This means that copying a sound recording, film, broadcast or artistic work (such as a photograph) for preservation is an infringement of copyright, unless expressly permitted by copyright owners.

The current exception appears to only permit the making of a single copy, so multiple backup copies or the use of preservation technology that operates by making multiple copies are not covered by it.

In addition, only prescribed libraries and archives are able to benefit from this exception. This means other cultural organisations with valuable historical collections such as museums will infringe copyright if they copy for preservation without express permission from copyright owners.

### Rationale for intervention

Copyright incentivises and rewards the creation of new works of art, literature, music, song, film etc. It does this by giving creators and producers of creative works the rights to control how they are used and by whom, including the right to seek payment for this use. Copyright thus imposes costs on users and consumers of copyright works to the benefit of creators and producers of creative works. Exceptions to copyright are one way of ensuring costs on users of copyright materials are not too great. They achieve this by permitting specific acts of copying without permission from copyright owners. The Government intends to modernise exceptions to copyright to ensure it does not unduly restrict beneficial activity by users of copyright materials, while maintaining incentives to creators.

The current preservation exception unduly restricts the ability of cultural heritage institutions to preserve cultural works for future generations and could be widened without negative impact on copyright owners.

### Policy objective

The primary aims of this measure are 1) to reduce costs to cultural organisations by removing unnecessary regulation, and 2) to enable them to deliver greater benefit to society by making it easier to preserve our cultural heritage for future generations. The main limitation on the extent of this measure is the need to ensure that the incentives of the copyright system are not undermined, in particular by ensuring the exception does not undermine commercial sales by copyright owners.

### Description of Options Considered

The options considered at the consultation stage were:

Option 0 - No change to copyright law.

Option 1 - Enable libraries and archives to make copies of all types of works in order to preserve them.

Option 2 - As Option 1 but applying to museums and galleries as well as libraries and archives. This is our chosen option, in view of its high overall benefits and minimal costs.

### Option 0: Do nothing

The Copyright Act provides an exception that permits librarians and archivists to make a (single) copy of any item in their permanent collection in order to preserve it, or to receive a copy from another library or archive if their copy has been lost, stolen or damaged. The exception only applies when a new copy is unavailable for purchase. The exception does not permit multiple copying, copying of sound recordings, films, broadcasts, or artistic works, or copying by galleries and museums.

Under Option 0, the exception would still be available to librarians and archivists, but they would continue to face costs of having to seek and agree permission to preserve certain works. Museums and galleries would face these costs for all works. An analysis of these costs is set out below. To the extent that they do not seek permission and copy, they risk being sued for copyright infringement.

### **Option 1: Enable libraries and archives to make preservation copies of all classes of work**

Under this option, libraries and archives would be able to copy any type of copyright work in order to preserve it – not only literary, dramatic and musical works (eg. books, plays, musical scores), but also films, broadcasts, sound recordings, and artistic works (eg. photographs). As many copies that are needed to enable preservation would be permitted.

### **Option 2 - As Option 1, applying to museums and galleries as well as libraries and archives.**

Under Option 2, we would not only amend the exception to apply to more types of work, but would also amend it so that museums and galleries could benefit from it.

As the nature of the costs and benefits are similar for both Option 1 and 2 we have assessed them simultaneously but have made it clear where there are any differences and why Option 2 is preferred.

### **Costs and benefits**

Currently, if a librarian or archivist wants to preserve a sound recording, film or broadcast by copying it, they need to work out who owns the copyright in the work, and whether they need to seek permission from them. They will need to check ownership records, contracts and agreements and, if necessary, to seek and agree relevant permissions from copyright owners. Being able to avoid this administrative process is expected to result in benefits for libraries, archives and copyright owners.

### ***Potential for lost sales by copyright owners***

This measure is not expected to impact on sales of copyright works. This is because this exception only permits copying within a library or archive, of works already in their collections, when it is not reasonably practicable to purchase a replacement. It does not permit copies of works to be put on the market. For these reasons, copies made under this exception cannot compete with or harm sales of commercial copies. During the consultation we sought to test this assumption and received no evidence to suggest that this was not the case. One consultation respondent suggested that it should be possible to copy artistic works for archiving but not display, as allowing display of preserved works could compete with commercial sales of those works. We note this concern, but do not believe it would arise in practice given the limitation of this exception to works that are already part of an archive or gallery's permanent collection, and its application only when it is not reasonably practicable to purchase a replacement.

### ***Licensing costs***

A copyright owner is entitled to seek remuneration for the copying of their work. Responses to the Government's consultation suggest that the vast majority of copyright owners are happy for their works to be copied by libraries and archives for preservation purposes, as long as limited to this purpose. This supports evidence from libraries and archives that, when asked, copyright owners rarely, if ever, refuse permission or seek remuneration for preservation copying. Based on this evidence we infer permission for preservation copying is granted in the vast majority of cases without licence fees being sought, and that when they are sought it will largely be to cover admin costs. We therefore assume licensing fees are negligible and focus on admin cost savings when estimating benefits. During the consultation we sought further evidence, but received no data that challenged this assumption.

### ***Benefits – estimates of cost savings per work preserved***

The benefits we have been able to monetise for this Impact Assessment are the administrative cost savings. These benefits will only apply to the works that would continue to archive if the exception is not introduced and do not apply to works that are only archived as a result of the exception.

The typical actions involved in obtaining permission to copy a literary work are:

1. Researching and identifying who owns the copyright in a work
2. Contacting the copyright owner
3. Negotiating with the copyright owner
4. Paying for the right to copy the work

A British Library/ARROW study on mass digitisation by libraries and archives found that, on average, it took almost 6 hours to clear the rights to digitise a single book.<sup>1</sup> This estimate relates to the same types of institution that benefit from the preservation exception, and a similar profile of works (many of which are old and whose authors are difficult to trace) so we consider it to be a good estimate of the average time to clear a work for preservation copying.

It should be noted that this exception is restricted to cases when it is not reasonably practicable to purchase a replacement copy, so an organisation will need to check commercial availability of copies before considering preservation copying. This impact assessment only considers the additional costs of rights clearance once such a determination has been made, so this step is not included in our analysis.

We have been unable to find reliable estimates of exactly how long it takes to clear the rights to copy a film, broadcast, sound recording or artistic work. A large number of separate copyright works, belonging to different owners, will be present in a film or broadcast (eg. soundtrack, script, direction), so clearing permissions to copy these works is likely to take longer than clearing the rights to copy a book. On the other hand, a photograph or painting is likely to have a single creator, so the time taken to clear it is likely to be closer to the above estimate for a literary work. On average, we consider 6 hours to be a reasonable estimate for all types of work.

Assuming 6 hours to clear a single work, and that clearance will be sought by a librarian or archivist, we can estimate the costs of clearance using the 2011 Annual Survey of Hours and Earnings (ASHE)<sup>2</sup>. Average hourly earnings for librarians, archivists and related professionals were £13.21. Assuming an uplift of 16% to account for overheads<sup>3</sup>, the cost saving to libraries and archives associated with clearing a single work for preservation is calculated as follows:

Admin cost per work = 6 hours x (£13.21 hourly earnings x 1.16 uplift) = £92

A PwC report on educational copying<sup>4</sup> estimates that it takes about 4.5 hours for a copyright owner to clear the rights to copy a single literary work. Assuming licence requests will either be processed by an author/creator or treated as an administrative task by their publisher/representative, we calculate upper and lower estimates of current admin costs to copyright owners using ASHE 2011 earnings figures.

Average hourly earnings for artistic and literary occupations = £13.70

Average hourly earnings for administrative and secretarial occupations = £9.84

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<sup>1</sup> "Seeking New Landscapes" by Barbara Stratton, British Library/ARROW, 2011

<sup>2</sup> <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-256648>

<sup>3</sup> This is a commonly accepted uplift to account for non-wage overhead costs based on a Transport Economic research paper. The 16% uplift is based on Eurostat figures for UK non-wage labour costs that show wage costs are 85.9% of total labour costs in the UKt

<sup>4</sup> "An economic analysis of copyright, secondary copyright and collective licensing", by PwC for the Publishers Licensing Society, 2011 (see Table 10)

Therefore, high and low estimates of the current admin cost to copyright owners associated with clearing a single work for preservation are calculated as follows:

High estimate = 4.5 hours x (£13.70 hourly earnings x 1.16 uplift) = £72

Low estimate = 4.5 hours x (£9.84 hourly earnings x 1.16 uplift) = £51

Best estimate = (£72+ £51) /2 = £62

Using the best available data, we estimate that removing requirements to clear broadcasts, films, artistic works and sound recordings for preservation copying will result in per work benefits of:

Libraries and archives: £92 per work

Copyright owners: £62 per work

The above estimates are considered conservative, as they are based on clearance of literary works whereas the exception will also apply to more complex works (eg. audiovisual). During consultation we did not receive any evidence that undermined our use of this estimate.

### ***Total benefits – number of relevant works***

To estimate the total benefits in relation to existing collections we need to estimate the number of works that will benefit from the exception. The information we need to do this includes:

W = The number of works affected =  $W_A$ , broadcasts, films, sound recordings and artistic works in UK libraries and archives +  $W_M$ , all works in UK museums and galleries.

C = The proportion of these works likely to be in copyright – i.e. clearance needs to be sought before they can be legally copied.

B = The proportion of commercially available works (it is reasonably practicable to buy replacements).

P = The proportion of works that would be archived even if the exception was not implemented.

The maximum number of works that will benefit from the exception, assuming every work needs to be copied for preservation, will be the total number of works that are in copyright and cannot easily be bought:

Maximum potential number of works =  $W \times (C - B)$

Not all works that potentially require preservation copying will need it in practice. For example, some may already be in a suitable format. So the maximum potential number of works needs to be multiplied by a factor P to give the actual number of works benefiting from the exception.

The actual number of works =  $W \times (C - B) \times P$

Multiplying this number by our per-work benefit estimates will give the total benefits of this exception.

To estimate the number of works (W), we first need to determine the number of the works held by libraries and archives that are broadcasts, films, sound recordings or artistic works ( $W_A$ ) (libraries and archives can already copy literary, dramatic and musical works for preservation). We also need to determine the total number of works held by museums and galleries ( $W_M$ ) (these currently do not benefit from the exception at all). The total number of works affected (W) is the sum of ( $W_A$ ) and ( $W_M$ ).

Consultation responses provided evidence of the number of works in libraries, archives, museums and galleries. This largely supersedes the evidence used in our initial IA (from the JISC “In from the cold” study) as it provides definitive numbers rather than a range (e.g. greater than a million works). The following table summarises the consultation responses.

Media category	Libraries and archives ( $W_A$ )	Museums and galleries ( $W_M$ )
Artwork	-	548,000
Sound Recording (hrs)*	1,050,000	50,000
Commercial film (hrs)**	21,800,000	-
Archive Films (hrs)	769,000	345,000
Photo libraries	5,000,000	-
Archive photos	14,345,000	30,000,000
Written material <sup>†</sup>	N/A	8,900,000
Mixed collections <sup>§</sup>	58,500,000	-
<b>Total</b>	<b>101,464,000</b>	<b>39,843,000</b>

\*Scaling the average IWM record to 90 minutes, or one standard cassette tape  
\*\*Treating an average film as 1.5hrs long, and including both UK and European film archives  
<sup>†</sup>not counting the 600,000 orphan texts at Oxford and the 195m<sup>3</sup> material at the national history museum.  
<sup>§</sup>Treating the average work at the National Archive & National Records Scotland as a 1cm wide holding.

The total number of works ( $W$ ) is the sum of relevant works in libraries/archives ( $W_A$ ) and museums/galleries ( $W_M$ ).

$$W = (W_A) + (W_M) = 101,464,000 + 39,843,000 = \underline{141,307,000}$$

This evidence provides a good estimate of the total number of works but should be considered an underestimate as:

- a) Evidence was not obtained from all libraries, archives, museums and galleries, although evidence was received from the largest;
- b) The evidence supplied by many museums and archives did not cover all media types that they hold, therefore there will be works unaccounted for

The British Library/ARROW study referenced above estimates the **proportion of library collections that are in copyright**. The study found that 27% of a sample of 140 works were in the public domain (i.e. copyright had expired) so did not require permission to be copied. 57% were determined to be in copyright, and 16% were of unknown status. Therefore, 73% had to go through a rights-clearance process. This appears to be a reliable estimate of the percentage of in-copyright works in archives, so we have used it to estimate potential costs and benefits.

In the same study, 5% of works were found to be still in commerce. We assume that it is likely to be reasonably practicable to purchase a replacement copy of such works, so they will fall outside the exception. Therefore the percentage of works in a collection that will potentially benefit from the exception is  $C - B = 73\% - 5\% = 68\%$ .

Using the above estimates, the number of works in libraries, archives, museums and galleries that will potentially benefit from this exception is  $W \times (C - B) = [141,307,000] \times 0.68 = 96,088,760$  works.

One consultation response questioned our decision to assume that the 16% of works of unknown status require clearance, when some are likely to be out of copyright. We have assumed this because an

archivist would usually assume a work of unknown status is in copyright until they determine the opposite. To do this they will at least need to undertake steps 1 and 2 of the clearance process described above, and may (if a work is found to be in copyright) have to undertake steps 3 and 4. A work's unknown status suggests it is difficult to determine basic information about it, usually making clearance longer (or impossible). So we assume works of unknown status will on average go through a similar length of clearance process as works known to be in copyright.

### Total Benefits

Using all the estimates discussed above we can calculate the total benefits of this exception, assuming it is relied on to preserve all relevant works in libraries, archives, museums and galleries. We do this by multiplying the potential number of works (96.1m) by the benefit per work (£92 for libraries, archives etc., and £62 for copyright owners). This gives:

Potential benefit to libraries, archives, museums and galleries =  $96,088,760 \times £92 = £8,840,166,000$

Potential benefit to copyright owners =  $96,088,760 \times £62 = £5,957,503,000$

These are the potential benefits that will be delivered if every work falling within the exception is actually copied for preservation. In practice, the true benefits will be lower, and will be delivered over a long period of time. First, some works will already be in a suitable format and will not require preservation copying. Second, this estimate assumes that all works currently copied for preservation are cleared with copyright owners. In fact, given the costs involved, some works will not be copied for preservation at all (a social/cultural cost, see non-monetised benefits below), and others will be copied without permission from copyright owners (in breach of copyright law, so a legal risk and a potential cost) and so cannot be included in the administrative cost savings. To take account of these factors, we need to scale the potential benefits (by a factor P) to give an estimate of the benefits that are likely to arise in practice based on the number of works that would be archived if the exception was not implemented. It is difficult to estimate this factor due to a lack of available data. However, we note a) that many cultural institutions have an obligation to preserve their holdings, and many have digitisation strategies in place, and will attempt to keep the number of works lost through lack of preservation to a minimum; b) our consultation process showed that most cultural institutions consider themselves risk-averse and attempt to adhere to copyright laws. It is very difficult to get evidence on the number of works that are illegally archived as institutions are not willing to share this data. In view of this, we consider that seeking copyright clearance to preserve these works is the most likely of these three options, and in view of this expect P to be greater than 1/3. We therefore take P to be 1/3, to give a conservative estimate. Whilst we appreciate that there is limited evidence to support this assumption of a third, we believe it provides a conservative estimate and we do not consider it possible or proportionate to get further data to determine the percentage of illegal archiving.

Actual estimated benefits =  $(£8,840,166,000 + £5,957,503,000) \times 0.33 = £4,932,566,000$

Finally, these benefits are expected to be delivered over the long term, but digitisation takes a long time and can be costly. Therefore we have scaled these potential benefits to reflect practical limits to capacity. The high costs (money and time) restricts the amount that can be copied in practice, and the benefits arising from preservation will be spread over a number of years. A study examining the work of a digitalisation centre, finds that: "The centre was able to achieve a throughput of 140,000 pages (about 500 books) each day [...] At this rate, it would take 10 years for a single centre to scan a million books."<sup>5</sup> By applying this number to the 14m monographs in the British library, we find that they would be able to scan  $100,000/14,000,000 = 0.7\%$  of their collection per year. Similarly, the British Library has submitted information about the number of hours of different formats digitised in 2011 (2,470h), as well as the number of hours in their sound archive (700.000h), leading us to a digitisation rate of about 0.35% per year. Therefore using these numbers we have scaled the potential annual benefits by 0.7% and 0.35% to provide high and low end estimates respectively. Our estimated annual high end benefit is therefore  $£4,933m \times 0.7\% = £34.5m$

Our estimated annual low end benefit is therefore  $£4,933m \times 0.35\% = £17.3m$

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<sup>5</sup> Sankar / Ambati / Pratha / Jawahar (2006): "Digitizing a Million Books: Challenges for Document Analysis".



Taking the average of the two estimates we arrive at our annual best estimate:  $(34.5\text{m} + £17.3\text{m})/2 = £25.9\text{m}$ .

It should be noted that the figures above are related to the potential savings following the introduction of policy option 2. As only  $W_A$  is affected by option 1 the related potential benefits would be:

Potential benefit to libraries, archives =  $68,995,520 \times £92 = £6,347,588,000$

Potential benefit to copyright owners =  $68,995,520 \times £62 = £4,277,722,000$

Actual estimated benefits =  $(£6,347,588,000 + £4,277,722,000) \times 0.33 = £3,541,770,000$

Our estimated annual high end benefit is therefore  $£3,542\text{m} \times 0.7\% = £24.8\text{m}$

Our estimated annual low end benefit is therefore  $£3,542\text{m} \times 0.35\% = £12.4\text{m}$

Taking the average of the two estimates we arrive at our annual best estimate for option 1:  $(24.8\text{m} + £12.4\text{m})/2 = £18.6\text{m}$ .

### Summary of Costs and Benefits

Annual costs		
Stakeholder affected	Administrative costs	Revenue lost
Copyright owners	£0	£0
Libraries and archives	£0	£0
Museums and galleries	£0	£0

Annual benefits		
Stakeholder affected	Administrative savings	Revenue gained
Copyright owners	£10.4m	£0
Libraries and archives	£11.1m	£0
Museums and galleries	£4.4m	£0

#### Addition of future works.

Clearly, the number of works in a cultural institution's collection is not fixed, but increases every year as more works are obtained. It has not been possible for us to provide a robust estimate of the **future number of relevant works** likely to be added to the collections every year that will need preservation. This number is clearly non-zero, so benefits will continue to accrue over time, but we have been unable to estimate them and have not included them. This is another reason our estimate should be considered conservative.

#### **Non-monetised benefits**

In reality, the administrative cost of clearing every work for preservation purposes is so high that it is not always an option. We know from conversations with those in the sector that libraries and archives sometimes do not seek to clear works due to the high costs involved. If they do not seek clearance, they have two options: either to not copy the work and risk losing it, or to copy the work and infringe copyright, thus risking legal action.

In order to get a true picture of the benefits of this exception, identification of how many libraries archives fall in to each of these three categories is required:

- 1) Copying works with clearance (with a financial cost)

- 2) Not copying works due to the cost of copyright clearance (with a social and cultural cost)
- 3) Copying works without clearance (risking legal action, and with potential financial cost)

The first case is the situation considered in our monetised benefits section for works that would be archived even if the exception is not implemented.

In the second case, where preservation does not take place due to the cost of copyright clearance, the main benefit of this exception is allowing preservation to take place, preserving culture for future generations. This is a social and cultural benefit and is the primary motivation behind this exception.

In the third case, where preservation takes place despite copyright infringement, the main benefit will be the removal of the legal and financial risks associated with copyright infringement. We are unable to monetise this benefit and it will be difficult to do so as organisations are unlikely to publicly admit copyright infringement or the financial risk they think it represents. We note that cultural institutions tend to consider themselves risk averse and seek to avoid infringing copyright. However, the evidence above (under “Costs”) suggests that institutions that do copy works for preservation without permission are unlikely to be sued. Thus, the legal risks, and financial costs, of doing so without permission are likely to be low.

The consultation did not provide any reliable data on how many works fall into each of these categories. Such information was always presumed to be difficult if not impossible to attain, particularly given that 3) involves copyright infringement. An assumption has been made for the purpose of calculating administrative cost savings that at least 1/3 of relevant works that need copying for preservation will have their copyright cleared. Of the other 50% we expect that most will not be copied at all, and a small number will be copied illegally.

Finally, in addition to the above benefits, as institutions are expected to preserve more works then more will survive to be the basis for future products and services. For example, many archives and galleries make copies of works in their collection available for viewing by the public online. This exception will not permit them to do this without permission from copyright owners, but it will enable more works to be preserved so that, when their copyright expires, they can be made available to a wider audience. This will deliver further societal and cultural benefits, and potentially create additional revenue for cultural institutions.

### **Constraints, risks and assumptions**

We assume that copying for preservation has no impact on sales of copyright works, as it can only be done within the confines of authorised institutions and only if replacement copies cannot be bought.

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


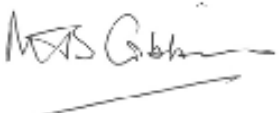
Under the “One In, One Out” rule, whereby a measure that has a net cost to business must have a measure or measures of equivalent cost removed in order to be implemented. We have estimated that there are annual savings to business of £24.4m. Therefore we have counted this as an OUT,

### **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.

RPC Opinion on next page:

 <b>Regulatory Policy Committee</b>	<b>OPINION</b>	
<b>Impact Assessment (IA)</b>	Extend exception for copying for research and private study	
<b>Lead Department/Agency</b>	Department for Business, Innovation and Skills	
<b>Stage</b>	Final	
<b>Origin</b>	Domestic	
<b>Date submitted to RPC</b>	06/07/2012	
<b>RPC Opinion date and reference</b>	30/07/2012	RPC11-BIS-1147(2)
<b>Overall Assessment</b>	<b>AMBER</b>	
<p>The IA is fit for purpose. Although the costs and benefits have not been monetised, the IA clearly explains the limitations and uncertainty around the available data to provide reasonable monetised estimates of costs and benefits. However, the IA should clearly separate the impacts of the two different parts (Options) of the policy.</p>		
<p><b>Identification of costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups and reflection of these in the choice of options</b></p> <p><i>Costs and Benefits.</i> The IA provides a reasonable assessment of the likely impacts of the two measures on different affected groups. Although the costs and benefits have not been monetised, the IA clearly explains the limitations and uncertainty around the available data, including that gathered during the consultation, to provide reliable monetised estimates of costs and benefits. However, prior to publication, the IA should be amended to provide a clearer summary of the overall impact, separating out the impacts of the two distinct parts (Options) of the policy (i.e. changing the scope of copyright law and introducing an exception).</p>		
<p><b>Have the necessary burden reductions required by One-in, One-out been identified and are they robust?</b></p> <p>The IA says that the proposal is a deregulatory measure that is likely to have a net benefit to business. As the Department have been unable to monetise the costs and benefits, no Equivalent Annual Net Cost to Business (EANCB) has been scored. Based on the evidence presented it appears reasonable to treat the measure as an OUT for One-in, One-out purposes.</p>		
<b>Signed</b>		<b>Michael Gibbons, Chairman</b>

