

EXPLANATORY MEMORANDUM TO
THE COPYRIGHT AND RIGHTS IN PERFORMANCES (PERSONAL COPIES FOR
PRIVATE USE) REGULATIONS 2014

2014 No. XXXX

THE COPYRIGHT AND RIGHTS IN PERFORMANCES (QUOTATION AND PARODY)
REGULATIONS 2014

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1. This Explanatory Memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Description of the instruments

2.1 These two instruments amend the Copyright, Designs and Patents Act 1988 (the “Copyright Act”) to make provision for the incorporation into UK law of exceptions and limitations to copyright and performers’ rights, which Member States may introduce into their law by virtue of Directive 2001/29 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (the “Infosoc Directive”). The instruments update the framework of exceptions to copyright and rights in performances, expanding the freedoms in copyright law that allow third parties to use copyright works (such as text, film or music) for a variety of economically and socially valuable purposes, without permission from copyright owners. The changes contain safeguards to ensure that a reasonable balance is maintained between the interests of creators, owners, performers, consumers and users of copyright works.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This section sets out the Government’s views on a number of issues which we know have been raised by stakeholders in past correspondence with the Committee, with regard to these SIs which were before this House (in their current form) in the previous Parliamentary session.

3.2 *Private copying exceptions: fair compensation*

3.2.1 In relation to the ability of Member States to introduce a private copying exception (such as the new Section 28B exception for the making of personal copies for private use) without providing for a system of rightholder remuneration such as a levy on devices and media. Article 5(2)(b) of the Information Society Directive says that Member State may provide exceptions to the reproduction right: *“in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned”*.

3.2.2 Recital 35 of the Directive explains that, while certain general principles apply when determining fair compensation and its payment, Member States have discretion over the details: *“When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.”*

- 3.2.3 To date, the ECJ has not ruled on what may constitute a minimal prejudice situation in the context of Recital 35. However, it has indicated that Member States enjoy a good degree of discretion over compensation systems. Cases such as the Amazon case (Case C C-521/11) set out how Member States have discretion over how they provide compensation, as long as a fair balance is struck between rights holders and users of the exception.
- 3.2.4 As the Government does not intend to introduce the levies or taxes on media and devices which exist in many other EU states (“private copying levies”) it has a policy of introducing private copying exceptions which do not cause harm (or which at the most would cause only minimal harm) to rights holders and so which (in accordance with Recital 35) do not require compensation to be provided.
- 3.2.5 This view is not inconsistent with the case law cited by the Committee since the Court in both cases recognised that the requirement to pay compensation is necessary where the right to take private copies causes “harm” to the rightholder.
- 3.2.6 Cases C-467/08 Padawan v SGAE and C-435/12 ACI Adam BV v Stichting de ThuisKopie, considered the requirement for fair compensation in the context of the private copying exception.
- 3.2.7 The Court in the ACI Adam case referred to the requirement in paragraphs 50 to 51 of its judgment:
- “**50** The purpose of such compensation is, according to the case-law of the Court, to compensate authors for private copies made of their protected works without their authorisation, with the result that it must be regarded as recompense for the harm suffered by authors as a result of such unauthorised copies (see, to that effect, Padawan EU:C:2010:620, paragraphs 30, 39 and 40).
- 51** Accordingly, it is, in principle, for the person who has caused such harm, namely the person who has made the copy of the protected work without seeking prior authorisation from the rightholder, to make good the harm suffered by financing the compensation which will be paid to that rightholder (see, to that effect, Padawan EU:C:2010:620, paragraph 45, and Case C-462/09 Stichting de ThuisKopie EU:C:2011:397, paragraph 26).”
- 3.2.8 As noted by the Court at paragraph 50, the purpose of the compensation is to “recompense the harm suffered by authors” arising out of the exception. This is consistent with recital (35) which provides that “When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question...in certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise”.
- 3.2.9 It is important to note that countries which provide levy systems in order to deliver compensation do so in the context of wide private copying exceptions which allow people to make copies for friends and family and from sources they may not own. The Government does not dispute that these wide exceptions may harm rights holders. If an exception allows individuals to lawfully make copies for friends, and to make copies from borrowed, rented or illegally distributed sources, then it seems clear that this could lead to lost sales, and that compensation is required in that context.
- 3.2.10 However, the new Section 28B exception has been drawn narrowly to ensure that no such harm is caused. It is limited to allow copying only by an individual who owns a copy and prohibits sharing of such copies. The archetypal activity which it will allow is the “format shifting” of an individual’s own CD’s to their own iPod. The Government’s impact assessment shows that this activity is unlikely to cause any harm to copyright owners (and may indeed provide a benefit, by making copies more useful and attractive to consumers). The effect of the exception on

rightholders, if any, will amount to no more than “minimal prejudice” which (in the words of Recital 35) accordingly does not require compensation.

3.2.11 It is also worth noting that the Copyright, Designs and Patents Act already provides three exceptions based on Article 5(2)(b) which take a similar “minimal harm” approach and in relation to which it was not felt necessary to introduce a compensation system upon implementation of the Directive in 2003. The most well-known of these is the “time shifting” exception (Section 70 CDPA) which allows an individual to record a TV program for later viewing without infringing copyright. These exceptions have not been challenged in the UK courts, or by the European Commission.

3.3 ***Private copying exceptions: applicability to distribution and communication rights***

3.3.1 Articles 2, 3 and 4 of the Information Society Directive (respectively reproduction, communication to the public including making available to the public, and distribution to the public) are implemented via Sections 17, 18 and 20 of the Copyright, Designs and Patents Act 1988. It is important to note that, although the reproduction right applies to private and public acts of reproduction, the communication and distribution rights apply only when works are communicated/distributed 'to the public'. Article 5(2)(b)(private copying) only permits Member States to make an exception to the reproduction right, not the communication to the public right. This is logical, given that it concerns private, not public acts.

3.3.2 Consistent with Article 5(2)(b), the Section 28B personal copying exception only provides an exception to Section 17 – the CDPA equivalent to the reproduction right (Article 2). This is clear because Section 28B refers only to “the making of a copy of a work”, and not to other restricted acts such as “issuing copies to the public” or “communicating copies to the public”. The “transfer provisions” (Section 28B (6) to (9)) do not provide exceptions to the communication/distribution rights but govern what can be done where those rights do not apply - in particular where copies are distributed in private (not restricted by Section 18) or where the right to control issue/distribution of copies to the public has been exhausted (per Section 18(3)(a)).

3.3.3 The transfer provisions essentially provide that one can still give a copy (eg. of a CD) to a friend in private, or resell that copy (to the extent that they entitled to under Section 18) but where they do so they cannot retain any personal copies they have made from it under the exception. Private distribution of personal copies is restricted, and public distribution and communication remains restricted by Sections 18 and 20.

3.4 ***Quotation – scope of the exception***

3.4.1 Article 5(3)(d) of the Directive permits an exception to copyright in relation to: “*quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author’s name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose.*”

3.4.2 Article 5(3)(d) of the Directive allows the introduction of a quotation exception “for purposes such as criticism or review.” The inclusion of the words “such as” make it clear that the exception is not limited to quotation for criticism or review, hence the use in the draft instrument of the words “or otherwise.”

3.4.3 The phrase “or otherwise” in regulations 3 and 4 is intended to ensure that UK copyright law offers as wide a quotation exception as is permitted by EU law and not one limited merely to criticism and review. It is clear that there are circumstances where use of a quotation will not be for the purposes of criticism or review. For example, a quotation from a speech made by a historical figure may be included in a history text book merely to establish what the figure had said and not for the purposes of criticising or reviewing the speech.

- 3.4.4 The Department is of the view that the Directive clearly permits the creation of a quotation exception that permits this sort of use, subject to the other requirements of Article 5(3)(d).
- 3.4.5 Moreover, the UK and other EU Member States have an obligation to provide such an exception, by virtue of Article 10(1) of the Berne Convention for the protection of Literary and Artistic works, which says: “*It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.*”
- 3.4.6 The WIPO Guide to the Berne Convention, written following its 1971 revision as a guide to interpretation by its contracting states, describes the term “quotation” in the following way:
- 3.4.7 “In the dictionary sense, a quotation is the repetition of what someone else has said or written; here it is used in the sense of including one or more passages from someone else’s work in one’s own work. In other words, quotation consists of reproducing extracts from a work either to illustrate a theme or defend some proposition or to describe or criticize the work quoted from. The use of quotation is not confined to literature: it may be from a book, a newspaper, a review, a cinematographic film, a recording or a radio or television programme.”
- 3.4.8 The Department is of the view that the new Section 30(1ZA) quotation exception is consistent with the UK’s obligations under both the Directive and the Convention.
- 3.5 ***Quotation - use of full quotations of photographs***
- 3.5.1 Neither the Convention nor the Directive expressly exclude photographs or other artistic works from the scope of the quotation exception.
- 3.5.2 Under Section 16(3)(a) of the Copyright, Designs and Patents Act 1988 (the CDPA) copyright is infringed where a person performs an act restricted by copyright, without the permission of the copyright owner, in relation to the whole of a work or any “substantial part” of it.
- 3.5.3 The permitted acts provided by Chapter III of the CDPA are exceptions to this general rule. Therefore, where an exception is provided, more than a substantial part of a work can be used.
- 3.5.4 The quotation exception is a fair dealing exception. This means that the amount of a work that can be taken will depend upon a general assessment of the fairness of the purpose for which it is used. Usually fair dealing will only allow the reproduction of only part of a work, but it may sometimes allow the whole of a work to be taken.
- 3.5.5 In ECJ case C-145/10 Painer, the Advocate General concluded that a “quotation” could be a “full quotation” of the work, so could apply to photographs: “... it would seem possible that a full quotation can also be a quotation within the meaning of that provision. In the case of this type of work, a complete reproduction may be necessary in order to create the necessary material reference back to the work. If only parts of photos could be published under Article 5(3)(d) of the directive, this would significantly restrict the application of that provision to photos.”¹
- 3.5.6 This is consistent with the interpretation by the WIPO Guide to the Berne Convention (above) and the general academic opinion on this provision.
- 3.5.7 However, as noted by AG Trstenjak, if a full work is being quoted, “particular importance” would be attached to the requirements that quotations are used “in accordance with fair practice” and in compliance with the three-step test provided by Article 5(5) of the Directive. These conditions are implemented by the “fair dealing” requirement in the Regulations. In practice, this means that, while it is possible to “quote” a whole photograph, it may be more

¹ Ibid, para 212.

difficult to do this in a way that is considered “fair dealing” when compared to the use of shorter extracts of other works.

4. Legislative Context

- 4.1 The relevant UK law on copyright is contained in the Copyright, Designs and Patents Act 1988 (“the Copyright Act”). Under the Copyright Act, the owner of a copyright work is entitled to control its use in various ways. They are able to permit or prohibit copying of the work, performing the work in public, issuing copies of the work, communicating the work to the public (e.g. over the internet), and other acts. Similar rights are conferred on performers in respect of recordings of their performances.
- 4.2 The Copyright Act includes certain exceptions to copyright, which permits third parties to do certain acts without infringing copyright in a work. For example, one existing exception allows an individual to record a television broadcast at home to watch at a more convenient time. Other existing exceptions allow copying for purposes such as: research and private study; criticism, review and news reporting; educational use; use by libraries and archives; public administration; and making accessible materials for those with visual impairment. Schedule 2 of the Copyright Act contains equivalent exceptions in relation to performers’ rights.
- 4.3 The relevant EU law is set out in the Infosoc Directive. The Directive provides for the harmonisation of the copyright laws and related performers’ rights in EU Member States.
- 4.4 The Directive also provides a list of 20 exceptions to copyright which may be implemented by Member States. Any exception must also comply with the “three-step test” set out in Article 5(5). This test requires that exceptions shall only be applied in certain special cases which do not conflict with a normal exploitation of the copyright work and do not unreasonably prejudice the legitimate interests of copyright owners.
- 4.5 This Explanatory Memorandum relates to two Statutory Instruments, each of which deals with one or more individual exceptions to copyright and performers’ rights. In determining the most appropriate way to group these regulations, the Government has taken account of several factors, including any relevant legal interconnections, commonality of themes, or policy objectives. Consequently these regulations are grouped as follows:

SI 2014 XXXX The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014.

SI 2014 XXXX The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014.

- 4.6 The planned de-regulatory changes are not possible without making changes to existing legislation.
- 4.7 A Transposition Note is attached as an annex to this Explanatory Memorandum. It sets out in tabular form how the objectives of each of the relevant articles of the Infosoc Directive corresponds to the provisions of the Statutory Instruments. Each of the exceptions provided by these Statutory Instruments falls within one or more of the categories provided by the Directive, and fulfils the Directive’s three-step test.

5. Territorial Extent and Application

- 5.1 These Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Viscount Younger of Leckie, Parliamentary Under-Secretary of State for Business, Innovation and Skills, has made the following statement regarding Human Rights:

“In my view the provisions of the Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 and the Copyright and Rights in Performances (Quotation and Parody) Regulations 2014 are compatible with the Convention rights.”

7. Policy background

- 7.1 These regulations are the culmination of over three years of discussion and consultation with all interested parties, which began with the publication of the Hargreaves Review report, *Digital Opportunity: an Independent Review of Intellectual Property and Growth* on 18 May 2011. The full report can be found at <http://www.ipo.gov.uk/ipreview.htm>.

- 7.2 In November 2010, the Prime Minister asked Professor Ian Hargreaves to conduct a review of IP and Growth. The purpose of the review was to examine how the IP framework could better contribute to UK economic growth.

- 7.3 Professor Hargreaves made ten recommendations, which the Government broadly accepted in its response published on 3 August 2011. The full response can be found at <http://www.ipo.gov.uk/ipresponse-full.pdf>. Recommendation 5, “*Copyright: exceptions for the digital age*”, recommended that the Government should modernise the copyright exceptions framework and extend it as far as possible within the confines of the EU copyright framework.

- 7.4 In December 2011, the Government issued its *Consultation on proposals to change the UK's copyright system*. This consultation closed in March 2012. Further informal consultation followed until December 2012, when the Government published its final policy in “*Modernising Copyright: a modern, robust and flexible framework*”. In a written ministerial statement, on 20 December 2012, the Secretary of State for Business, Innovation and Skills (Vince Cable) announced the Government’s intention to make changes to the copyright exceptions framework:

“The Government is committed to achieving strong, sustainable and balanced growth that is shared across the country and between industries. Following the Hargreaves Review of Intellectual Property and Growth, and an extensive consultation process, the Government believes that the copyright framework can be improved to make the UK a better place for consumers and for firms to innovate, in markets which are vital for future growth, without harming the UK’s valuable creative industries.

The Government has considered the responses to the consultation carefully, alongside the views of the Business, Innovation and Skills Select Committee and others. It intends to make changes to widen existing or introduce new exceptions for private copying; parody; education; quotation and news reporting; text & data mining; research & private study; preservation; disabilities; public administration and reporting. These measures take account of what the Government has heard from creative industries about the need to minimise potential adverse impacts of any change. The Government intends to make these changes via secondary legislation.”

- 7.5 In June 2012, the Business, Innovation and Skills Committee expressed its support for the copyright recommendations of the Hargreaves Review. The Regulatory Policy Committee indicated its satisfaction with the impact assessments on the Government’s proposals, which it reviewed in 2012.

- 7.6 Paragraphs 7.8 – 7.10 explain how the provisions in the Regulations deliver the Government’s policy as set out in the statement above and in more detail in *Modernising Copyright: a modern, robust and flexible framework*.

- 7.7 Regulations implementing exceptions in respect of research, education, libraries and archives, disability and public administration were approved by Parliament in May 2014.
- 7.8 **PERSONAL COPYING FOR PRIVATE USE – THE COPYRIGHT AND RIGHTS IN PERFORMANCES (PERSONAL COPIES FOR PRIVATE USE) REGULATIONS 2014**
- 7.8.1 The Statutory Instrument introduces a new exception to copyright allowing limited personal copying by individual consumers. It allows individuals to copy media they own, such as CDs or eBooks, from one medium or device which they own to another, for their own private use. For example, it will allow an individual to copy a CD they have bought onto their computer and then onto their mp3 player, or move an eBook they have bought from their old tablet or e-reader to their new one, without risk of copyright infringement.
- 7.8.2 The regulations implement Article 5(2)(b) and the second and fourth sub-paragraphs of Article 6(4) of the Infosoc Directive. The exception is narrowly drawn. To use this exception, an individual must have lawfully acquired a copy of a work such as a book, film or music on a permanent basis (i.e. they must have bought it or been given it as a gift, as either a physical or electronic copy). They can only make copies for their private use and for non-commercial ends, and cannot give those copies to other people (except with the copyright owner’s consent). This exception does not create a new right to resell digital content.
- 7.8.3 The exception does not prevent copyright owners from using technology measures to restrict copying – such as the copy protection found on DVDs and Blu Ray discs. It remains illegal (under Section 296ZA) to circumvent effective technological measures. However, where an individual is unable to make use of the exception as a result of the application of technological measures, they will be able to complain to the Secretary of State, who may take steps to give them access to the copy. When considering such a complaint, the Secretary of State will consider whether a technological measure is unreasonable having regard to the right of the copyright owner to limit the number of personal copies which may be made, and whether other copies that allow personal copying are commercially available on reasonable terms on the market. In line with the Infosoc Directive, the complaints mechanism will not apply to copyright works that have been made available to the public in such a way that they may access them at a place and time of their choosing.
- 7.8.4 This exception applies to all types of copyright works, and is technology neutral, permitting copying to all types of personal storage, including remote “cloud” storage. As the exception does not permit wider sharing of personal copies, an individual who lawfully makes a copy to their personal cloud is not allowed (when relying on the exception) to share it with a third party, for example by allowing friends and family to access the copy via their cloud.
- 7.8.5 An equivalent personal copying exception is provided in relation to the copying of a recording of a performance as regards performers’ rights.
- 7.8.6 In common with all of the exceptions covered by this Memorandum, the Statutory Instrument stipulates that to the extent that any term of a contract seeks to prevent or restrict the making of a personal copy in accordance with this exception, that term will be unenforceable.
- 7.8.7 The instrument contains a transitional provision which provides that where a copy of a work was made prior to the date on which the regulations come into force, if that copy would have satisfied the requirements of the new personal copying exception had it been in force at that time, then such personal copy shall be treated as a “personal copy” for the purposes of the exception with the result that further copies may be made of it in accordance with the exception.

7.9 **QUOTATION – THE COPYRIGHT AND RIGHTS IN PERFORMANCES (QUOTATION AND PARODY) REGULATIONS 2014**

- 7.9.1 UK copyright law has long allowed fair quotation of extracts from copyright works, that have been made lawfully available to the public, for the purpose of criticism or review, as long as there is sufficient acknowledgement of the source of the quotation.
- 7.9.2 This change broadens the provisions in section 30 in line with the flexibility allowed by the Infosoc directive to permit quotation from a work not only for the purpose of criticism or review, but for any purpose. The use made of a work must be a “fair dealing”. This will allow other minor uses of quotations, such as academic citation and use in examination papers, which do not undermine the commercial exploitation of copyright works.
- 7.9.3 Fair dealing is a concept that has been part of UK copyright law for over a century. When determining whether or not a specific use is a “fair dealing”, a court will consider how a fair-minded and honest person would deal with the work. This will always be a matter of fact, degree and impression in each case, but the amount of the work taken and the impact of the dealing on commercial markets for the work will be important factors. The presence of the fair dealing qualification ensures compatibility with the requirements of the three-step test in the Berne Convention, to which the UK is a signatory.
- 7.9.4 This quotation exception requires that, unless it is impossible, there should be acknowledgement of the source and author’s name. Assessment of whether it is impossible will be made taking account of all the circumstances of the case.
- 7.9.5 As with the existing criticism and review exception, the exception for quotation applies to all types of copyright work including film, broadcasts, and sound recordings, as well as to traditional text quotation. It should be noted that while EU case law acknowledges that there may be circumstances in which it may be permissible to ‘quote’ a whole photograph, in practice it is likely to be more difficult to do this in a way that is considered “fair dealing” when compared to the use of shorter extracts of other works.

7.10 **CARICATURE, PARODY OR PASTICHE – THE COPYRIGHT AND RIGHTS IN PERFORMANCES (QUOTATION AND PARODY) REGULATIONS 2014**

- 7.10.1 Many works that are made for the purpose of caricature, parody or pastiche, especially in this age of digital creation and re-mixing, involve some level of copying from another work. The Statutory Instrument introduces a new exception in section 30A to permit fair dealing for the purposes of caricature, parody or pastiche.
- 7.10.2 To date, creators in the UK have been liable for copyright infringement if even a small amount of copying takes place when making a parody work (for example). Rights holders may grant permission in some cases, but it may be refused or involve significant costs. Failure to secure relevant permissions runs the risk of legal action and potential damages. This new exception creates a limited basis on which caricature, parody and pastiche may be practised, without disproportionate costs, uncertainty and legal risk.
- 7.10.3 Although not a requirement under Article 5(3)(k) of the Infosoc Directive, the exception being introduced into UK law only permits use for the purposes of caricature, parody or pastiche to the extent that the use is “fair dealing”. This is an important limiting factor, ensuring that the use is reasonable and proportionate. For example, the use of a few lines of song for a parody sketch is likely to be considered fair, whereas use of a whole song is not likely to be considered fair and would therefore continue to require a licence. The fair dealing requirement also ensures that this exception is compatible with the Berne Convention’s “three-step test”.

- **Consolidation**

The Intellectual Property Office has made an informal consolidated copy of the regulations available online to the public (free of charge) by the time the changes come into force. This can be found through this link: <http://www.ipo.gov.uk/cdpa1988-unofficial.pdf>

8. Consultation outcome

- 8.1 These regulations are the culmination of over three years of discussion and consultation with all interested parties, which began with the publication of the Hargreaves Review report, “Digital Opportunity: an Independent Review of IP and Growth” on 18 May 2011.
- 8.2 An extensive formal Government consultation process took place, between December 2011 and March 2012, in light of the Government’s response to the Hargreaves Review of IP and Growth. A summary of the 469 responses to the consultation was published in June 2012 and is available at this link: <http://www.ipo.gov.uk/copyright-summaryofresponses-pdf>. This consultation process involved a number of outreach events across the UK.
- 8.3 The Government published “*Modernising Copyright*” in December 2012, setting out its policy response. A copy of that document is available at <http://www.ipo.gov.uk/response-2011-copyright-final.pdf>.
- 8.4 In June 2013, the Government took the additional step of publishing for technical review an early draft of the regulations. The purpose of the technical review was to provide a means for interested parties to review the draft legislation and to provide comments as to whether the text achieved the policy objectives set out in Government’s *Modernising Copyright*. The technical review enabled people to make representations through written submissions over an 8-week period for each exception, or by attending co-ordinated public meetings. A summary of the Technical Review responses is available on the website of the Intellectual Property Office. The Technical Review received over 140 responses.
- 8.5 Issues raised during the technical review included:
 - Whether or not certain terms such as “fair dealing” should be defined in more detail in relation to specific exceptions;
 - The extent to which the “contract override” clauses, which seek to ensure that users can rely on copyright exceptions despite contract terms to the contrary, had the required effect;
 - Whether or not the private copying exception was tightly enough drawn to prevent people making copies for third parties and undermining markets in original content.
- 8.6 These and other issues were considered when preparing the final draft regulations and in response to evidence from stakeholders the Government has made a number of amendments to the proposals. Examples include:
 - renaming the private copying exception, ‘personal copying for private use’;
 - clarifying that the private copying exception will not apply to computer programs as existing provisions made under the Software Directive already allow back-up copies of software;
 - responding to calls from the film and video industry to provide a mechanism that would mean consumers would only be able to appeal to the SoS if alternative copies are not available.
- 8.7 Peers have also had the opportunity to discuss the changes, as the copyright exceptions framework was the subject of a Question for Short Debate in the House of Lords on 3 December 2013. Proposed changes to the exceptions framework have also been discussed during the passage of the Enterprise and Regulatory Reform and the Intellectual Property Bills. They have also been considered by the Business, Innovation and Skills Committee and the Culture, Media and Sport

Committee. The Viscount Younger of Leckie, Minister for Intellectual Property gave oral evidence to the Secondary Legislation Scrutiny Committee (SLSC) on 6 May 2014 with regard to these SIs. The SLSC report was issued on 9 May 2014:

<http://www.publications.parliament.uk/pa/ld201314/ldselect/ldsecleg/180/180.pdf>.

- 8.8 In the process of developing the various changes to the copyright exceptions framework, the Government has also met with interested parties on over 250 occasions in an 18 month period, listening carefully to comments and recommendations for improvements. This extensive process of engagement, in the wider context of the Government's consultation and technical reviews has enabled the development of robust secondary legislation.

9. Guidance

- 9.1 The Intellectual Property Office has published a suite of 8 guides². This guidance will help businesses, creators and users of copyright works to understand exactly what is, and is not allowed under the new or amended copyright exceptions.
- 9.2 The guides can be accessed via the website of the Intellectual Property Office.
- 9.3 Guides are packaged for different sectors including: An overview of copyright exceptions; guidance for consumers; guidance for creators and copyright owners; libraries, archives and museums; accessible information for disabled people; education and teaching; research; and information held by public bodies.

10. Impact

- 10.1 Impact Assessments relating to the Statutory Instruments are published alongside this memorandum. The Government has worked hard to ensure the proposed changes are based on evidence. The Impact Assessments are based on the best evidence available and were reviewed and validated by the independent Regulatory Policy Committee. The Intellectual Property Office has reviewed and revised the Impact Assessments as appropriate to ensure that they are up-to-date at the time the Regulations are laid.
- 10.2 The Government's economic assessment suggests that these measures could contribute over £250m to the UK economy over 10 years, and this is considered to be a conservative estimate. The measures are likely to benefit innovation, competition, research, education and respect for the law. Economic gains are likely to come mainly from cost savings through reducing complexities of the copyright system, and from new business creation.
- 10.3 These changes update copyright law and performers rights, in line the Government's broader aims to reduce regulation, remove from the statute book a range of unnecessary rules and regulations.
- 10.4 The changes to the exceptions framework will benefit a wide cross-section of stakeholders. The changes are designed not to undermine business to business licensing. They will not harm the ability of content owners to provide new services to consumers in new and exciting ways. Consumers will find reassurance in the narrow exception for personal copying for private use, which makes lawful a practice that is very commonplace and regarded as reasonable by the public at large. The new exception for caricature, parody and pastiche will enhance freedom of speech and expression, benefiting, for example, charities, voluntary bodies, creators and artists. The quotation exception will benefit many people who need to reference copyright materials, including researchers, academics and others.

² The guidance also includes information on a changes made to other copyright exceptions, approved by Parliament during the third session.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 The extensive process of public consultation that supported the development of these Instruments included the views of many small businesses, who identified benefits and potential for growth. Regulatory Policy Committee has confirmed that the overall effect of these changes is de-regulatory and does not place burdens on business.

12. Monitoring & review

- 12.1 These Statutory Instruments are to be reviewed by the Intellectual Property Office no later than April 2019.
- 12.2 Monitoring and review will take due account of information set out in the Impact Assessment that accompanies each of the exceptions covered by the Statutory Instruments that this Memorandum addresses. In particular, account will need to be taken of any anticipated benefits set out in the Impact Assessment and a judgement reached on the extent to which they have been realised.
- 12.3 Anticipated benefits vary between exceptions, but by way of illustration, include outcomes such as reduced administrative costs; greater outputs from investment; reduced costs for licences; more efficient use of existing services and development of services.

13. Contact

Matthew Williams at the Intellectual Property Office can answer any queries regarding the instruments. Telephone: 01633 814809 or email: matthew.williams@ipo.gov.uk
