

COPYRIGHT TRIBUNAL CONSULTATION: THE VIEWS OF JISC

TO:

Secretary to the Copyright Tribunal
Intellectual Property Office

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Context

1. The Joint Information Systems Committee (JISC)¹ supports UK higher and further education by providing strategic guidance, advice and opportunities to use information and communication technologies to support teaching, learning, research and administration. JISC is funded by the UK Higher and Further Education funding bodies.
2. JISC is committed to ensuring that access to JISC-funded resources and projects is free to the community and in accordance with internationally recognised open standards. To this end, it encourages the use of Open Access models and, where appropriate, Open Source solutions. JISC works collaboratively with international funding bodies across the range of its activities, in support of its strategic priorities.
3. JISC's strategic aims include:
 - Delivery of innovative and sustainable ICT infrastructure, services and practice that support institutions in meeting their mission.
 - Promoting the development, uptake and effective use of ICT to support learning and teaching.
 - Promoting the development, uptake and effective use of ICT to support research.
 - Promoting the development, uptake and effective use of ICT within institutions and in support of their management.
 - Developing and implementing a programme to support institutions' engagement with the wider community.
4. HEFCE, through JISC and the HE Academy, is investing £25 Million over the next two years in open educational resources and online learning to ensure that the UK does not start to lag behind in generating and making available high quality modern learning and teaching resources.
5. This work supports the government's recent announcement on 23 June 2009 by Business Minister David Lammy regarding on-line distance learning and the statement made in September 2008 by John Denham:

*"Our aim should be the best by showing that online learning can offer those features of higher education which make our university world class today: Our challenge is to support students in developing their skills of evaluation, critical analysis and reflection, synthesis, problem-solving, creativity and thinking across discipline boundaries, as well as giving them any extra skills they need to make their use of IT fully effective."*²

¹ Further information about the JISC can be found at <http://www.jisc.ac.uk>

² Taken from the Secretary of State for Innovation, Universities and Skills, John Denham speech to the Universities UK Conference on 11 September 2008

General points about the consultation

6. JISC welcomes further discussion on developing an appropriate copyright regime for the 21st Century, and in particular, we are grateful for the opportunity to comment on the proposed modernisation and simplification of the Rules and Procedures of the Copyright Tribunal. It is important that the Copyright Tribunal represents a fair and reasonable system for users of extensive licensing schemes across Higher and Further Education, who include researchers, teachers and students.
7. Such licensing schemes operating across the educational sector include those established by the Copyright Licensing Agency (CLA), the Performers Rights Society (PRS) and the Educational Recording Agency (ERA), as well as others. Millions of pounds of tax payers' money is spent annually on these licensing schemes which are intrinsic to activities relating to teaching, learning and research activities across Higher and Further Education. It is vital therefore, that there are sufficient checks and balances in place to make sure that this investment provides the greatest benefit for our universities and colleges.
8. In 2001, Universities UK used the Copyright Tribunal to dispute the terms and costs proposed by the Copyright Licensing Agency relating to their Photocopying Licence. This was a costly and time consuming process, but subsequent to the judgement of the Copyright Tribunal in favour of Universities UK, the proposed costs of this licensing scheme were drastically reduced by the CLA.
9. We welcome all of the proposed changes, and the proposed wording of the Statutory Instrument.
10. We note in Annex C the list of organisations to which the consultation was sent includes a large number of sports organisations, but surprisingly few organisations directly concerned with copyright licensing, and wonder why bodies such as the Designs Artists Copyright Society and the Publishers Licensing Society were not included as bodies interested in licensing, or organisations such as the Chartered Institute of Library and Information Professionals, and the Society of Archivists, representing typical licensees, were not invited.
11. We regret that consideration has not been given at this stage to expanding the role of the Copyright Tribunal to, for example, examine the statements made by, and letters sent by licensing agencies to actual and potential licensees and to issue orders to amend or block such statements and letters where they are inaccurate in law.
12. Answers to the specific questions raised can be found overleaf.

**JISC Executive
June 2009**

General

Do you agree that the draft Rules will achieve the policy objectives set out above?

Yes.

Parts II – IV Commencing proceedings

- *Do you agree with the reduction of procedures to a single application system?*

Yes, this seems sensible.

- *Do you support the proposal for a simplified procedure for intervening?*

Yes.

Part V Allocation

- *Do you support the introduction of a small applications track?*

This is a very welcome idea, though of course details have yet to be announced.

- *Do you consider that it can achieve the objective of improving access for licensees and prospective licensees to the Tribunal?*

The cost and bureaucracy involved with current Tribunal proceedings are a major deterrent to the use of the Tribunal at the moment. Arguably, some licensees feel because of this that they cannot argue against what are perceived to be unfair terms and conditions.

- *If not, what alternative method would you propose for improving access, particularly for small-scale licensees, within the current legislative framework?*

N/A.

- *Do you agree with the criteria for determining allocation to the small applications track?*

The criterion is simply “where the financial value is small”. This is too vague to comment on.

Part VI Case management

- *Do you agree that the rules for the small applications procedure will allow for a quick, cheap and just resolution of cases?*

Again, there is insufficient detail given in the discussion paper to comment meaningfully.

- *Do you agree that, under the small applications procedure, each party should, as a matter of routine, bear their own costs?*

There seems to be no obvious rationale for this recommendation. It would be more appropriate for the Tribunal itself to make decisions about how costs should be apportioned.

- *Do you consider that Part VI of the draft Rules will achieve the policy aim of reducing the length and cost of proceedings before the Tribunal whilst allowing a just resolution of disputes?*

Yes, but it would be helpful if there was clear guidance regarding how long the Tribunal would normally take to dispose of small applications.

- *In particular, do you support the provision to the Tribunal of circumscribed powers to limit evidence?*

This is a good idea.

Part IX Appeals from the Tribunal

- *We would welcome comments on the provision that the Tribunal may agree to stay a decision or order during an appeal where all parties to an action have agreed on such a suspension.*

This is a sensible suggestion.

Part X Interim provisions

- *Do you agree that the Tribunal should only have power to make interim orders and awards in standard track cases? If not, please explain your reasons.*

On the assumption that small applications will indeed be dealt with expeditiously, then we have no objection to this idea.

Part XII Transitional and revocation

- *Do you agree that the new Rules should apply to cases which are part heard when they come into force?*

We have no views on this question.

Schedule I

- *Do you agree with the reduction of forms so that there is only one for an application?*

Yes.

Schedule II

- *Do you agree with the proposal to retain fees at a nominal cost aimed at deterring frivolous applications, increased over 1989 rates in line with HM Treasury's GDP deflator?*

Without knowing what that cost is, it is difficult to comment. "Nominal" to one organisation may be extremely high to another.

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