

**The Joint Information Systems Committee (JISC)
Response to the IPO Consultation on Moral Rights**

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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.

General points about the consultation

4. JISC welcomes the opportunity to comment on issues surrounding Moral Rights with specific reference to teaching, learning and research activities. We would however, like to note that the invitation to comment is somewhat confusing, because UK law only requires assertion in the case of the Moral right of Paternity, whereas the invitation as worded implies that it applies to all Moral Rights. We therefore take the opportunity to comment on both the requirement for assertion and the exemptions to paternity right.
5. Article 6*bis*(1) of the Berne Convention states that "Independently of the author's economic rights, and even after the transfer of the said rights, the author **shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to**, the said work, which would be prejudicial to his honor or reputation."² This wording is ambiguous. It is unclear whether it means that the individual has to claim, i.e., assert, authorship, or whether this should be automatic, as is the right to object to derogatory treatment. Another relevant provision of Berne is Article 5(2), which states that "the enjoyment and exercise of these rights³ shall not be subject to any formality."
6. The Copyright, Designs and Patents Act requires assertion of the paternity right (Clause 78 of the CDPA); this has not been objected to by WIPO, the United Nations body that

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

² Our emphasis

³ That means both copyright and moral rights

administers the Berne Convention. In addition, Clause 79 of the CDPA provides for exemptions to the paternity right, whereas the Berne Convention does not allow for any exemptions, and it is not clear why WIPO has made no objection to Clause 79. In particular, we note the exemptions under 79 (6) for materials that appear in newspapers, magazines, periodicals, encyclopaedias or other collective works of reference.

JISC's Response

7. In JISC's view, there are no practical benefits to anyone on the requirement to assert Moral Rights. These exemptions do not appear to have any justification, are becoming obsolete in a digital age, and seriously affect the attribution of many academics, researchers and students in Higher and Further Education who publish in journal articles, online but also in collective works of reference.
8. In an online environment, as digital tools facilitate searching, linking, cutting, sharing, pasting, text and data mining and skimming etc of content; citation, acknowledging provenance and the recognition of the authority of the information, becomes even more crucial.⁴ More over, across Higher and Further Education, citation and appropriate attribution are important as both reward mechanisms for staff as well as deterrents against plagiarism.
9. However, due to the need for assertion, authors may not realise they have to assert the rights and thus may miss out on gaining paternity right. If rights are assigned, the new rightsholder needs to take note of whether the author has asserted his/her Moral Right, which is a small, but added bureaucratic cost for the new rightsholder. The matter would be simplified if the default position was that the paternity right existed. Thus, the current requirement for assertion provides no benefits to any interested party and is arguably inconsistent with the Berne Convention.
10. JISC believes that whilst there is an arguable case that the assertion requirement conflicts with the Berne Convention, there is no question at all that the exemptions in CDPA 79(6) to the paternity right do conflict with *6bis* of the Convention. Similar exemptions in 81(4) of the CDPA are also in conflict with the Convention, and it is interesting to note that the Moral Right to object to false attribution contains no such exemption, making the UK law internally inconsistent.
11. JISC further recommends that exemptions to entitlement of Moral Rights in materials that appear in newspapers, magazines, periodicals, encyclopaedias or other collective works of reference be removed from the CDPA.
12. In conclusion, the JISC agrees with the comments by Cornish and Llewelyn⁵ that "Assertion...is arguably inconsistent with the requirement in Art 5(2) of the Berne Convention, so far as Convention nationals are concerned, that they should enjoy rights under British law without being subject to any formality. Assertion may have been necessary in order initially to secure the enactment of this Moral Right. Nevertheless it is a confusing complexity which achieves little. **It should certainly be abandoned in any legislative revision.**"⁶ JISC recommends that the requirement for assertion of paternity right be removed from the CDPA.

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⁴ <http://www.timeshighereducation.co.uk/story.asp?storycode=406309>

⁵ W. Cornish and D. Llewelyn, *Intellectual Property*, Sweet and Maxwell (2007), p.490

⁶ Our emphasis

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