

Copyright and AI: Striking a fair balance

Kate Vasili
Copyright Officer

<https://copyrightalliance.org/current-ai-copyright-cases-part-1/>

Copyright Law



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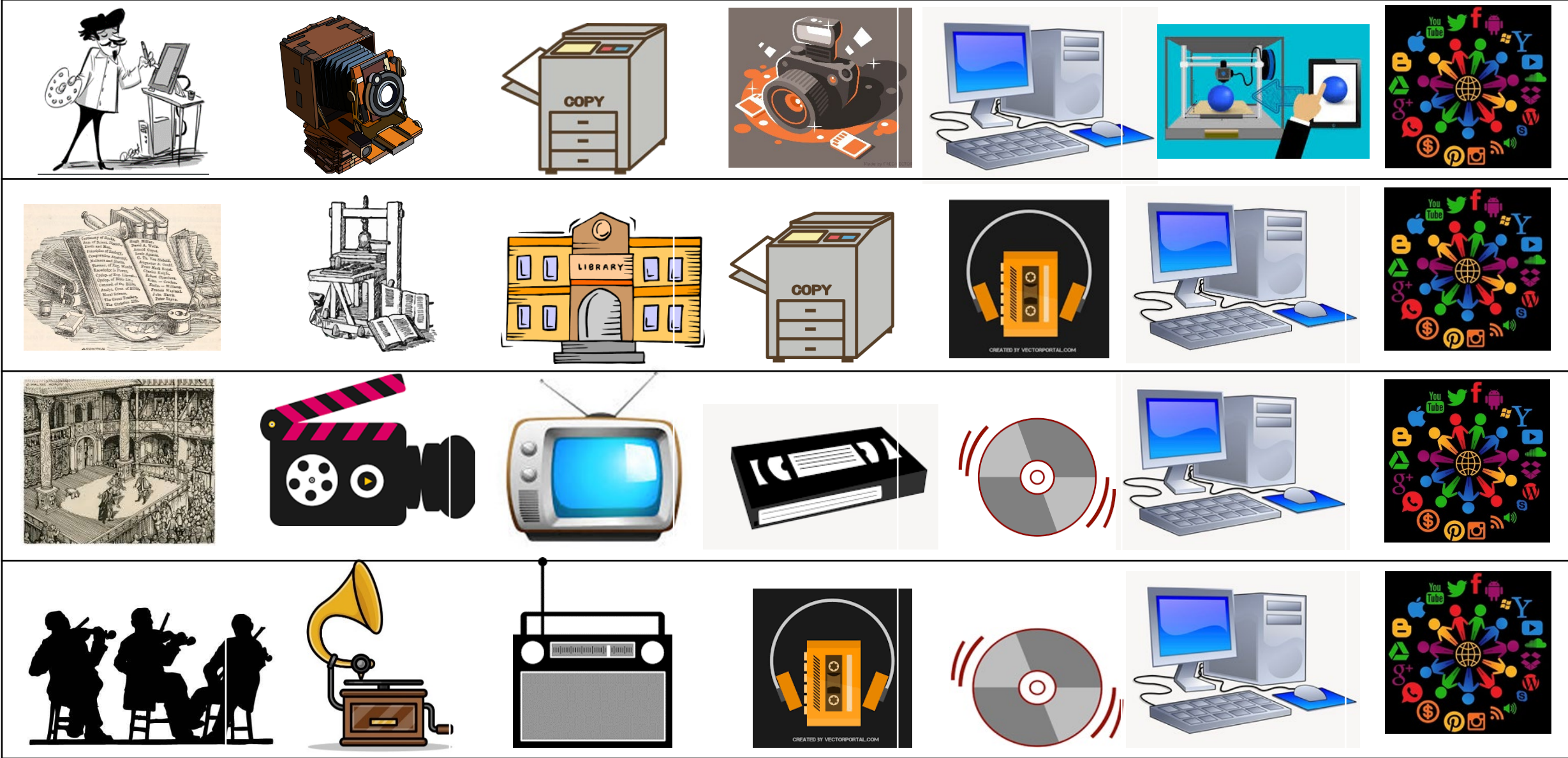
An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books, in the Authors or Purchasers of such Copies, during the Times therein mentioned.



Whereas Printers, Booksellers, and other Persons have of late frequently taken the Liberty of Printing, Reprinting, and Publishing, or causing to be Printed, Reprinted, and Published Books, and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their families: For Preventing therefore such Practices for the future, and for the

Encouragement of Learned Men to Compose and Write useful Books: May it please Your Majesty, that it may be Enacted, and be it Enacted by the Queens most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority of the same, That from and after the Tenth Day of April, One thousand seven hundred and ten, the Author of any Book or Books already Printed, who hath not Transferred to any other the Copy or Copies of such Book or Books, Share or Shares thereof, or the Bookseller or Book-sellers, Printer or Printers, or other Person or Persons, who hath or have Purchased or Acquired the Copy or Copies of any Book or Books, in order to Print or Reprint the same, shall have the sole Right and Liberty of Printing such Book and Books for the Term of One and twenty Years, to Commence from the said Tenth Day of April, and no longer; and that the Author of any Book or Books already Composed and not Printed and Published, or that shall hereafter be Composed, and his Assignee, or Assigns, shall have the sole Liberty of Printing and Reprinting such Book and Books for the Term of Four-

Previous Innovation



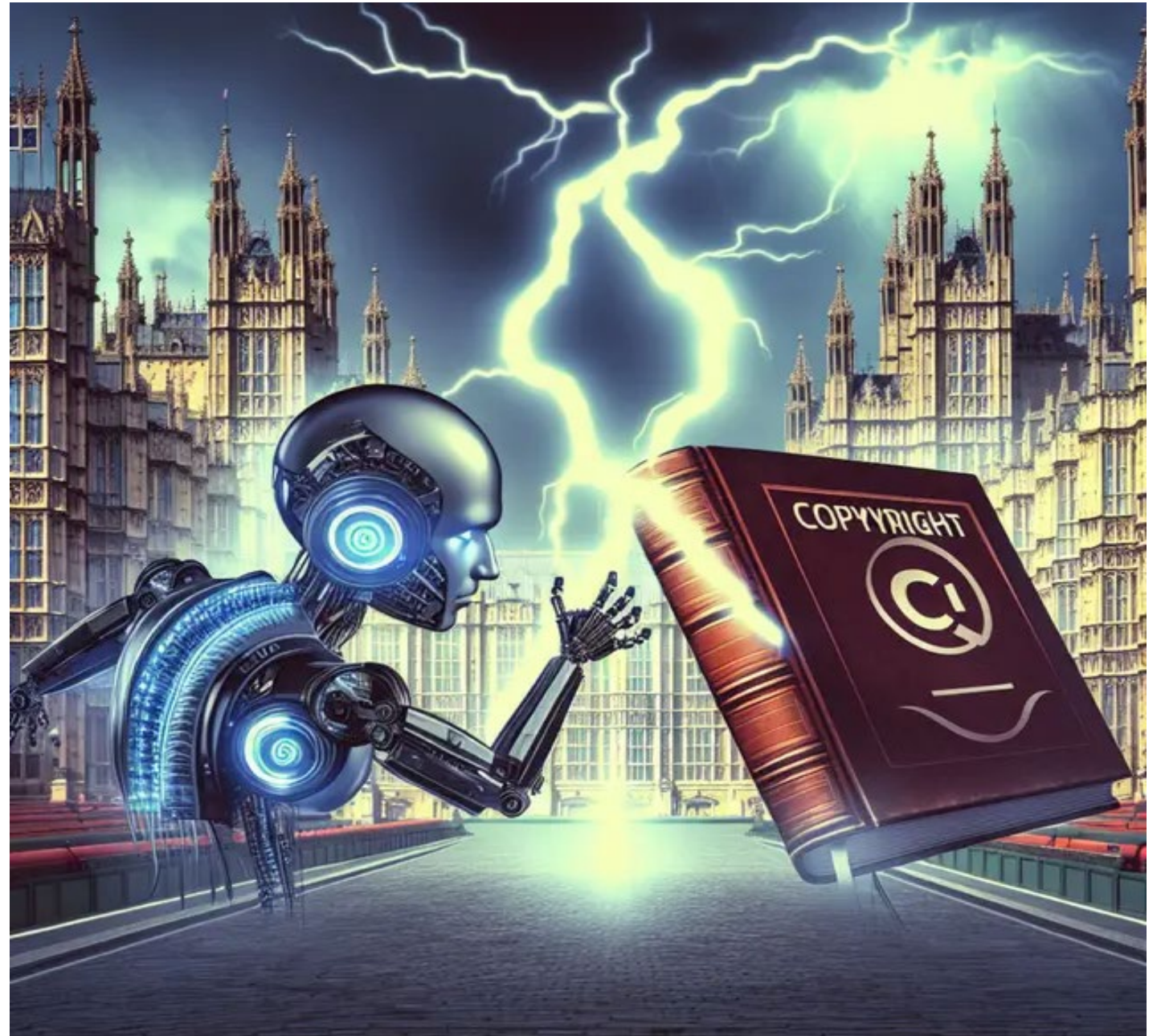






Copyright and AI: Consultation 2024

- Launched December 2024
- Closed for responses 25th February 2025
- 4 options proposed to amend exception S.29A - Copies for text and data analysis for non-commercial research aka 'Text and data mining'
- The questions consider the interests of only two sectors, the Creative industries and AI developers.





CDPA 1988 - 29A Copies for text and data analysis for non-commercial research

- (1) The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that—
 - (a) the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose, and
 - (b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).
- (2) Where a copy of a work has been made under this section, copyright in the work is infringed if—
 - (a) the copy is transferred to any other person, except where the transfer is authorised by the copyright owner, or
 - (b) the copy is used for any purpose other than that mentioned in subsection (1)(a), except where the use is authorised by the copyright owner.
- (3) If a copy made under this section is subsequently dealt with—
 - (a) it is to be treated as an infringing copy for the purposes of that dealing, and
 - (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.
- (4) In subsection (3) “dealt with” means sold or let for hire, or offered or exposed for sale or hire.
- (5) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.



Options for S.29A – Text and Data Mining

Option 0: Do nothing: Copyright and related laws remain as they are.

Option 1: Strengthen copyright requiring licensing in all cases.

Option 2: A broad data mining exception.

Option 3: A data mining exception which allows right holders to reserve their rights, underpinned by supporting measures on transparency.



Options for S.29A – Text and Data Mining

Option 0: Do nothing: Copyright and related laws remain as they are.

Already excludes commercial purposes but continued uncertainty of risks to developers and users.
Difficult for rights holders to reserve rights and seek remuneration.

Option 1: Strengthen copyright requiring licensing in all cases.

The worst possible outcome for Higher Education, Research and Innovation, adding licensing costs and deterring developers from the UK

Option 2: A broad data mining exception.

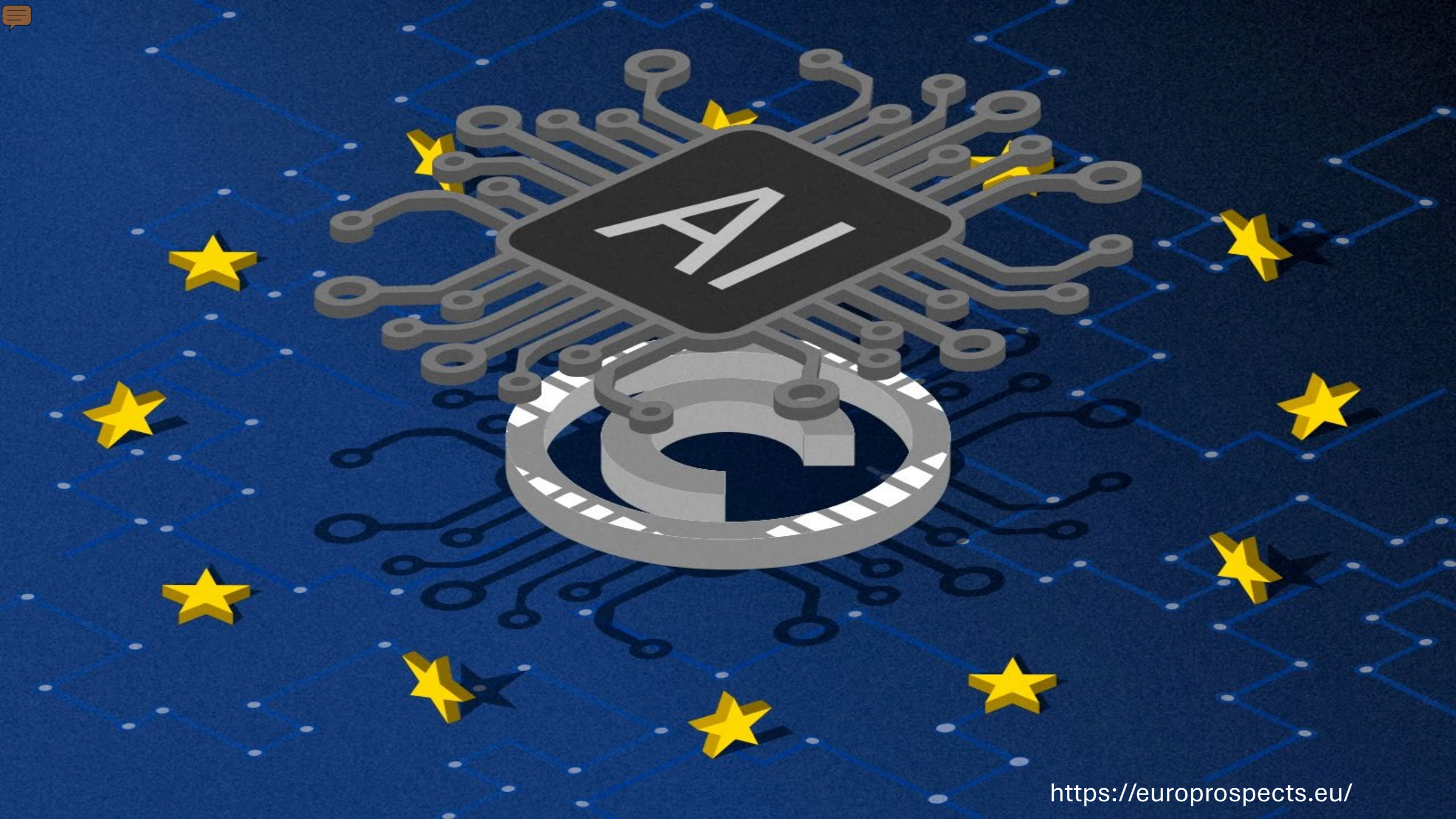
Previously explored in 2023 but abandoned due to fierce opposition from rights holders.

CNAC's preferred option but only with additional provisos:

- Permission, Licensing and Transparency required before outputs go to market for profit.

Option 3: A data mining exception which allows right holders to reserve their rights, underpinned by supporting measures on transparency.

The Government's preferred option mirroring the EU AI Act, but not very different from Option 1 as most rightsowners will most likely opt out.





Opposing sides

A broader data mining exception?

FOR

- Sir Nick Clegg, (former president of global affairs at Meta) who is for the changes, has argued that asking permission from all copyright holders would "*kill the AI industry in this country*".

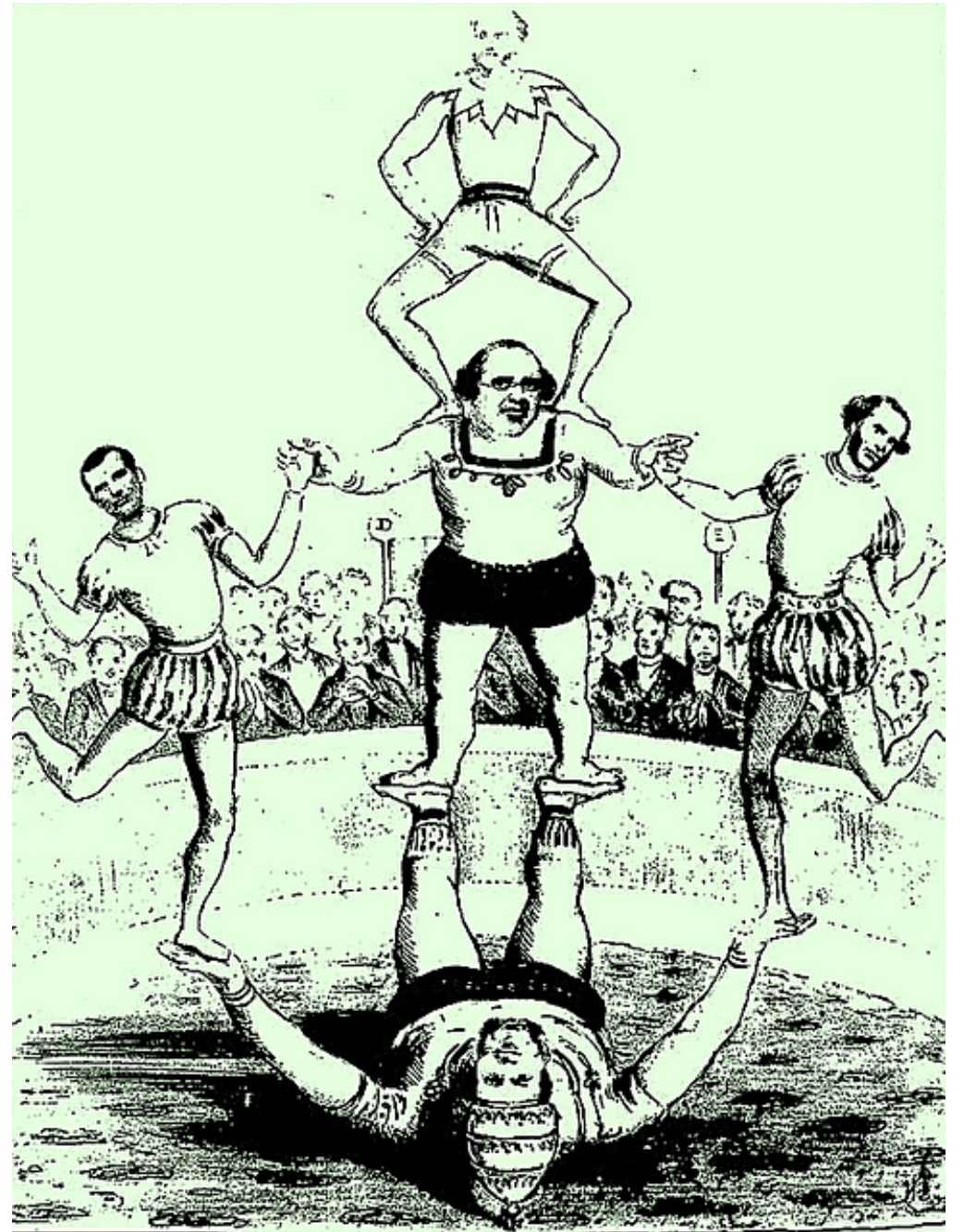
AGAINST

- Those against include Baroness Beeban Kidron, former film director, best known for making films such as *Bridget Jones: The Edge of Reason* says ministers would be "*knowingly throwing UK designers, artists, authors, musicians, media and nascent AI companies under the bus*" if they don't move to protect their output from what she describes as "*state sanctioned theft*" from a UK industry worth £124bn.

Zoe Kleinman, BBC Technology editor, Published 2 June 2025,
<https://www.bbc.co.uk/news/articles/clyrgv2n190o>

Balancing Interests

- Economy
- Creators, Artists, Rightsowners
- Innovation and AI Development
- Research
- Public Interest





Are AI tool users infringing ©?

Current UK legal exceptions that can apply:

S.28A Making of temporary copies.

S.29 Non-commercial Research or Private Study.

S.29A Text and Data Mining for non-commercial research purposes.

S.32 Illustration for Instruction for non-commercial purposes.

BUT

- None allow further dealing, adaptation or sharing with others,
- All require acknowledgement unless impossible or impracticable

See: [Copyright Designs and Patents Act 1988 \(CDPA\)](#)

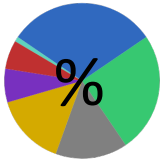


Fair Dealing Test

Before copying under the ‘fair dealing’ exceptions, you should always consider:



- How would a fair-minded and honest person have dealt with the work?



- Is the amount you are using reasonable, appropriate and absolutely necessary for your purpose?



- Would your use substitute for possible sales and cause the rights owner loss of revenue?



- Does the copying meet the provisos of the exception/s you are relying on e.g. purpose, acknowledgement?

<https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing>

See [IPO Guidance on Fair Dealing](#)

Dependant on AI Agreement/Terms

**Data Retained
by AI Tool**

= © infringement

**GEMA vs. OpenAI
(11/11/2025 Germany)**

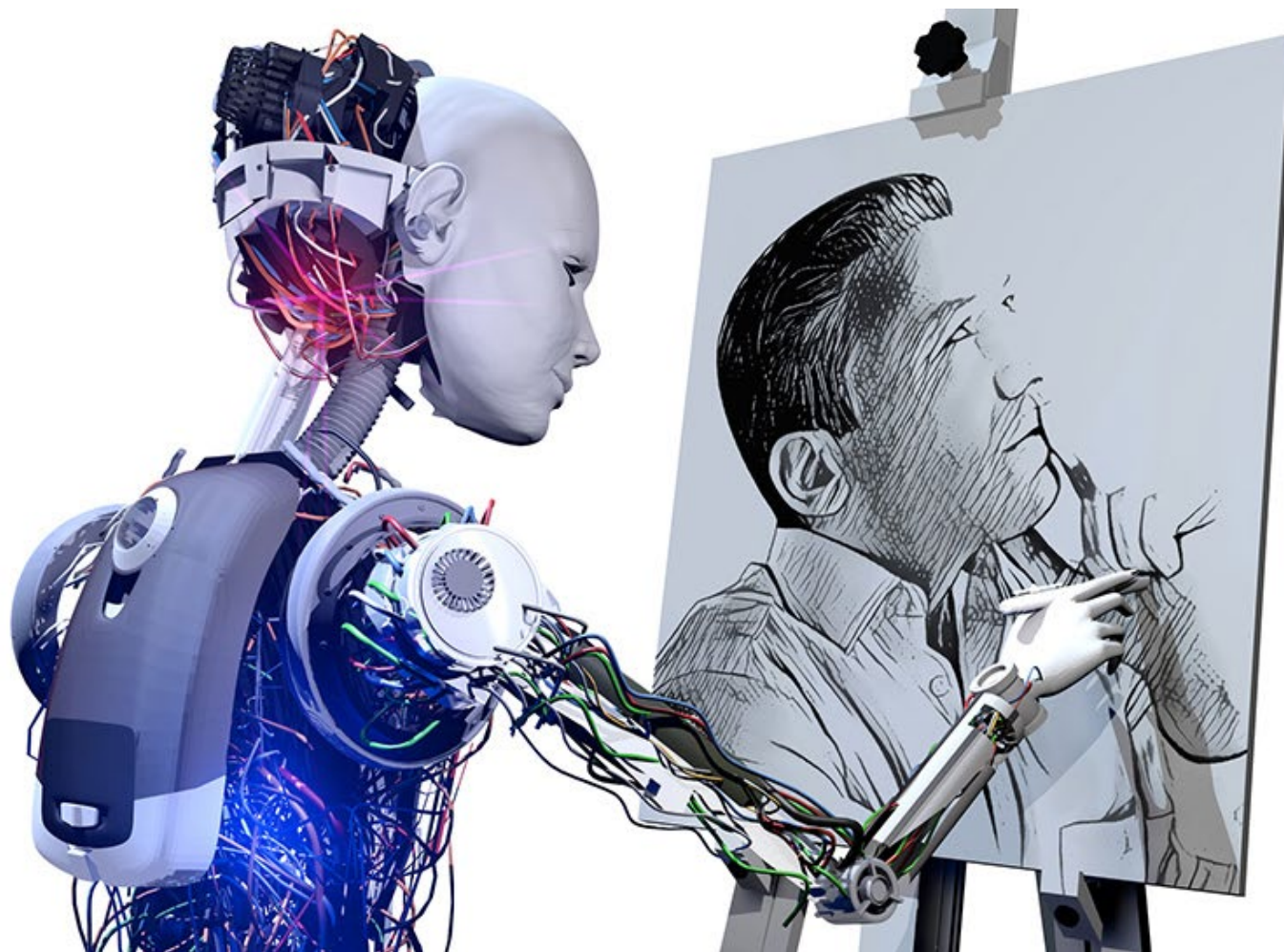
**Data Not Retained
by AI Tool**

**May be defensible under a fair
dealing exception**

**Getty Images vs. Stability AI
(4/11/2025 UK)**



In AI outputs



AI Generated Work

Copyright legislation varies across jurisdictions e.g.

Jurisdiction	UK	EU	US	CHINA
AI Tool	X	X	X	X
AI Developer	X	X	X	X
User/Person prompting	/	/	human generated creative content only	/
AI Tool Owner	Contract dependent	Contract dependent	Contract dependent on human generated creative content only	Contract dependent

Frequently used AI Tools

Copilot	Creates a new work from textual prompts
ChatGPT	Creates a new work from textual prompts
Claude	Creates a new work from textual prompts
Elicit	Finds, summarises and extracts info from papers
Research Rabbit	Finds and explores similar work, titles and authors from uploaded work.
Lex	Word processor with GPT 3 built in
Midjourney	Creates images from textual descriptions
DALL E2	Creates images and art from descriptions



Hallucinations



A report for the Australian government was found to have contained AI-generated errors leading to a partial refund of the AU\$440,000 (US\$290,000) contract and widespread public criticism.



Research conducted by OpenAI found that its latest and most powerful reasoning models hallucinated 33% (o3) and 48% (o4) of the time.



In *Ayinde v London Borough of Haringey*, the UK court found that five citations submitted by the claimant's legal team were entirely fictitious.



Expectations

Gen Z expect:

- transparent and rapid responses,
- fast delivery times for requests including interlibrary loans.



Libraries and Archives Exceptions

S.40A - Lending of copies by libraries or archives.

S.40B - Libraries and educational establishments etc: making a digital copy of whole works available through dedicated terminals

S.41 - Copying by librarians: supply of single copies to other libraries (*only articles without permission*). NCO

S.42 - Copying by librarians etc: preservation or replacement copies of whole works (*for reference only and if not 'reasonably practicable' to purchase*).NCO

S.42A - Copying by librarians: single copies of published works. *Declaration required. (1 article or a reasonable proportion)*. NCO

S.43 - Copying by librarians or archivists: single copies of the whole or part an unpublished work. *Declaration required*.

S.44A - Legal deposit libraries



S.42A Conditions

- (1) A librarian of a library which is not conducted for profit may, if the conditions in subsection (2) are met, make and supply a single copy of—
 - (a) one article in any one issue of a periodical, or
 - (b) a reasonable proportion of any other published work,
- (2) The conditions are—
 - (a) The request is from a person who has provided the librarian with a declaration in writing confirming the details required under (3) and
 - (b) the librarian is not aware that the declaration is false in a material particular.
- (3) The information which must be included in the declaration is—
 - (a) The name of the person who requires the copy and the material which that person requires,
 - (b) a statement that the person has not previously been supplied with a copy of that material by any library,
 - (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person, and
 - (d) a statement that to the best of the person's knowledge, no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person's request, a request for substantially the same material for substantially the same purpose.
- (4) If charges are applied, the sum charged must be attributable to the costs attributable to the production of the copy only.
- (5) Where a person makes a false declaration is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—
 - (a) P is liable for infringement of copyright as if P had made the copy, and
 - (b) the copy supplied to P is to be treated as an infringing copy for all purposes.
- (6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.



CDPA Exceptions – ILL Sharing Restrictions

S.42A and 43 Declarations

- a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and **will not supply the copy to any other person**, and
- a statement that to the best of the person's knowledge, **no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person's request, a request for substantially the same material for substantially the same purpose.**



CLA HE Licence Sharing Provisions

NHS Higher Education Licences Crossover – for research collaborations, placements, teaching and study purposes. <https://library.hee.nhs.uk/resources/copyright/nhs-higher-education-copyright#cla3>

- CLA must be notified of the Collaboration Project before sharing.
- Limits vary depending on purpose, who's making the copies i.e. under which licence and to whom they are sharing.

HE Licence Research Collaborations:

2.4 make available, or permit the making available of, Digital Copies to a Collaboration Partner, via a Secure Network, and to print out the same, during the course of and for the purposes of a current Collaborative Project only and **provided that** the making available of Digital Copies does not amount to a Document Supply service;

2.6 to make or permit the making by Authorised Persons of copies for a commercial purpose in connection with the research activities of the Licensee subject to the conditions of clause 9.

- Copying from CLA mandated works only
- Only the institution copying/providing needs to own/subscribe to the publication
- No reporting required.



CLA HE Licence Collaboration Definitions

Collaboration Partner: a higher education institution which holds either a CLA Higher Education Licence or a CLA Independent Higher Education Licence, as applicable;

Collaborative Project: a Research Project between the Licensee and one or more Collaboration Partner(s) involving Collaborative Project Persons only;

Collaborative Project Persons: those individuals defined in sub-sections (ii), (iii) and (iv) of the “Authorised Persons” definition above, and students of each Collaboration Partner who are engaged in postgraduate study at either a taught masters or research level;

Commercial Copies: copies made for a commercial purpose pursuant to clause 2.6 and which may take the form either of Paper Copies or of Digital Copies;

Research Project: a planned activity comprising experimental or theoretical work undertaken on a systematic basis in order to advance knowledge. Research undertaken by students as part of a Course of Study is excluded from this definition;



The Future for ILLs

Predictive Interlibrary Loans?

- Using analytics to predict which resources are likely to be requested at which time.



Thank You For Listening

Kate Vasili – Copyright Officer and Accessibility Officer

Email: k.Vasili@mdx.ac.uk or Copyright@mdx.ac.uk

Unless otherwise stated, all images contained in these slides have been used under the Fair Dealing exceptions of the CDPA 1988 as amended i.e. :

S.30 Quotation

S.32 Illustration for instruction