

Private copying

4. The exception is drafted as Section 28A of the Copyright, Designs and Patents Act. Subsection (1) defines who is permitted to make copies and under what conditions. These conditions include:

- The copier must be an individual, not a body corporate
- The individual must have lawfully acquired, on a permanent basis, the copy from which further copies are made
- The further copy must be made for the individual's private use, for non-commercial ends.

Q: Are these provisions an effective implementation of the Government's policy?

With regard to Artistic Works, "lawfully acquired" can mean a purchased limited edition print. Owning an artwork shouldn't mean the purchaser can copy it - copying would make a complete nonsense of limited editions and undermine the business models of many, many artists contributing to the UK economy. The whole notion of a 'limited edition' is predicated on the idea that a certain finite number of copies exist, and no more, which allows the price of the artwork to be both higher and stable. The ability to safely invest in artwork would be destroyed were copies of that work allowed. 86% receive up to 20% of their income from online and high street gallery sales¹.

"Lawfully acquired" can also mean images provided under contract, as in the case of wedding and portrait photography, where further copies would normally be supplied, on request and at a cost, by the photographer. Photographers who work in the wedding and portrait sectors rely heavily on the income from re-prints. Charging extra for prints allows the photographer to keep the initial cost of the sitting down, and so the subject can budget accordingly and only request, and pay for, the prints they need or want. Digital proofs are supplied to the commissioner to allow them to choose the prints they wish to have.

¹ Survey of AOP members 2011

The average final order of prints from a portrait sitting is £346

The average final order of prints from a wedding is £1700

Up to 75% of income comes from print and CD sales²

Additionally, postcards of artworks can be “lawfully acquired” by purchasing from Museums and Galleries – the postcards would be able to be scanned legally and the resulting copy put on a T’ shirt or mug, for example, for personal use. This would mean that merchandise no longer needed to be bought and income to the creator lost.

We believe for the above reasons that photographs and other artistic works should be exempted. However, the “lawfully acquired” needs to be re-thought to ensure it doesn’t include licensing which can be acquired on an in perpetuity basis.

There would appear to be an anomaly with the use of the word “permanent” – if the original can be sold/given at a later date, then this is not a “permanent” acquisition.

Q: Is it necessary to provide subsection (1)(c), or is Section 296ZA, which already prohibits circumvention of technological measures, sufficient?

Yes, we believe it is necessary to include it – keeping all the requirements in one place makes for easier reading and understanding in a tome of legislation as complicated as the CDPA 1988 (as amended).

6. Subsection (2) is intended to ensure the exception does not allow the making of copies for multiple people – either by transferring a copy made under the exception, or by transferring the original and retaining the further copy.

Q: Does this provision meet this objective?

As stated in previous consultation replies, we fail to see how this can be policed. However, the wording of the exception would appear to cover the objective.

7. Subsection (4) aims to clarify that an individual who makes a copy

² From a survey of members by the Master Photographers Association in 2011

under this exception is permitted to store that copy in any private place, including a private cloud or other remote electronic storage.

Q: Does this provision meet this objective?

8. Subsection (5) aims to prevent contract terms restricting use of this exception.

This wording would appear to meet the objective. However, this is not a usual concept in UK Law.

9. Amendments to Schedule 2 to the Act apply this exception to rights in performances to the same extent as it applies to rights in copyright works.

10. Amendments to Schedule 5A to the Act apply the Section 296ZE complaints mechanism to this exception. Under this mechanism, individuals who are unable to access the exception as a result of technological copy protection measures applied to a work can complain to the Secretary of State.

Q: Do these provisions meet these objectives?

Yes

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