Loughborough
University

This item was submitted to Loughborough's Institutional Repository (https://dspace.lboro.ac.uk/) by the author and is made available under the following Creative Commons Licence conditions.

For the full text of this licence, please go to:
http://creativecommons.org/licenses/by-nc-nd/2.5/

# Managing copyright clearance services in HE Libraries

## © Elizabeth Gadd

## Abstract

An investigation of centralised copyright clearance services in Higher Education Institutions based on the findings of a research project into copyright clearance in UK libraries. Based on a questionnaire survey and five case study interviews, it examines the reasons why services were established; how they were funded and staffed; and their overall remit. The relationship between the service and the HEI is looked at, as well as some of the problems clearance services face. Provides good practice guidelines in the establishment and management of services.

## Introduction

The management of copyright has always been a major concern to Higher Education (HE). There are concerns both about the protection of intellectual property produced in the course of employment in HE, as well as the use of third-party copyright materials in the education process. The former concern has recently been examined by Ralph Weedon in a study commissioned by the Joint Information Systems Committee (JISC) entitled "Copyright Policies in UK HEIs[1]". It is the latter issue - the use of third-party copyright materials in HE - with which this article is concerned. The fact is, that to include copyright works in many teaching and learning initiatives such as Distance Learning materials, Computer Aided Learning packages, and Electronic Learning environments – as well as in more traditional services like coursepacks – almost always requires copyright clearance. The Copyright Act of 1988 (CDPA88) as amended, allows a certain amount of copying for educational purposes. However, its inadequacy to meet the needs of the HE sector is evidenced

by the number of copyright licences produced by various groups of rights holders (authors, publishers, artists, newspapers, etc) for HE. However, the additional copying that such licences afford HE, is not enough in many cases. This necessitates clearance on an item-by-item basis either through a central "clearing house" such as the Copyright Licensing Agency's Rapid Clearance Service (CLARCS)[2], or directly with individual rights holders.

In order to investigate the copyright clearance activities of Higher Education, the author submitted a successful bid for the Elsevier/LIRG Research Award in 2000. The award of £1,000 governed the research methodologies that were possible. A two-pronged approach was taken: firstly a questionnaire to copyright clearers and secondly a series of interview visits.

**Research Methodology**

The questionnaire was drawn up in consultation with Dr Eric Davies, Director of the Library and Information Statistics Unit. It was then piloted on two practitioners, and alterations made in line with their comments. As the questions were numerous it was decided to make them as easy to complete as possible. This meant: a) encouraging respondents to answer as many questions as possible, but not demanding 'all or nothing'; b) allowing respondents to estimate where necessary; and c) allowing respondents to answer in their own measures – i.e. when giving the time spent clearing rights they could do so in hours, days, weeks or percentages. The final version of the questionnaire covered the following topics:

- Section A: The type of organisation worked for; where the clearance took place; and by whom;

- Section B: What rights were being cleared (i.e. for what purpose – Short Loan Collections etc);

- Section C: What materials were being cleared (i.e. book chapters, video clips, etc.)

- Section D: What licences were subscribed to; what clearing houses were used; and how the clearance process was managed;

- Section E: The costs and the charging mechanisms;

- Section F: The length of the clearance process;

- Section G: What the future holds for copyright clearance;

- Section H: Specific information about in-house copyright clearance services (units or posts).

The questionnaire was mounted on the project web site[3] with the option to either complete online, or to print off a MS Word version for completion by hand. The research and questionnaire was then advertised on five electronic mailing lists: lis-copyseek, lis-link, UPMG (University Print Managers list), lis-pub-libs, and lis-sconul-copyright.

As the responses came in, it became clear that some libraries' copyright work consisted solely in giving advice, and not in gaining clearances. In order to build up a picture of this activity, an email was sent to the same lists encouraging such advisors to contact me about their copyright advice work.

Respondents that answered Section H of the questionnaire about in-house copyright clearance services were asked if they would be willing to be contacted for interview. Fourteen agreed by giving their contact details. Five organisations were selected for interview on the basis of the number of years of their experience, their geographical location, the type of organisation (Old or New University) and whether the service was based in the library or elsewhere. The aim was to get a range of organisations with different experiences. A table describing the interview candidates' organisations is given below:

| Organisations selected for interview | | | | | |
|---|---|---|---|---|---|
| Organisation | Location of clearance service | Years experience | New or old HEI | Total students (1998/99) | Location of HEI |
| A | Library | 1 | Old | 4,020 | South East England |
| B | Library | 4 | New | 22,544 | North England |
| C | Library | 5 | New | 23,042 | North England |
| D | Elsewhere | 10 | Old | 19,571 | Wales |
| E | Elsewhere | 29 | Old | 148,675 | East England |

Table 1

Four of the interviews were conducted face-to-face and one was conducted by telephone. The purpose of the interviews was to gain a fuller picture of the variety of copyright clearance services offered in HEIs. The interview schedule covered the following main areas:

- How the copyright clearance services fitted into the larger intellectual property management structure in the organisation;

- Why the service was established and how it was funded;

- How the service was received by, and promoted to, the organisation;

- How clearances were processed;

- Views on the future of copyright clearance;

- How the service staff kept up-to-date with copyright issues.

**Questionnaire summary**

The full results of the questionnaire survey have been reported elsewhere[4]. However, in summary, it found that the average (mean) number of items cleared by HEIs per annum was 439. One-third of these permission requests required chasing, and on average requests would be chased twice. Successful permissions would take on average 2-4 weeks to arrive, however five per cent of requests would never be answered. The cost of permission fees varied tremendously according to the type of material, and the purpose to which it was being put. Respondents could be charged by up to six different charging mechanisms, and the terms and conditions could be different for each item. The number – and job titles - of staff dealing with clearance again varied from institution to institution. Sixty-three per cent of organisations involved at least two members of staff in rights clearance. However, the average amount of time spent clearing rights was almost a day a week over the year. This figure irons out seasonal fluctuations of which there are many.

Interviews revealed that the clearance process consists of a minimum of ten distinct steps. It is perhaps unsurprising therefore that eighteen (32%) of responding HEIs

had established an in-house copyright clearance service to deal with permission requests. Of these, eight were based in libraries and ten were based elsewhere in the organisation. This article examines the establishment of in-house clearance services in HE based on findings from the questionnaire and the five case-study interviews.

**Establishing an in-house clearance service**

**Reasons for setting up a service**

The questionnaire revealed a variety of motives for establishing an in-house copyright clearance service. One third of respondents (6) cited the desire to "stay within the law" as their primary impetus. One organisation had previously been fined for "selling illegal coursepacks" and had set up the service to ensure it didn't happen again. One person wrote:

> "The VC was frightened he was going to be jailed for unlicensed computer software and hired me to go to jail instead. I jest - I think!"

A proposal written by one interviewee for the establishment of a pilot service cited the legal benefits thus:

> "[A clearance service would] reduce the risk of legal action against the University and its employees for breach of copyright – failure to obtain the necessary clearances could result in legal action against the University, its

managers, and lecturing staff including, in extreme cases, the possibility of

criminal proceedings."

In actual fact there has been very little case law with respect to the breach of

copyright by educational institutions.  However, the fear of legal reprisals causes most

organisations to err on the side of caution.  The complexity of the law and associated

copyright licences seemed to be a major contributing factor to this fear.  One

respondent wrote:

> "I think the copyright situation is getting so complex now that real expertise is
>
> needed to keep legal. Specialist dedicated units need to be established within
>
> organisations who need a lot of clearance."

Another wrote:

> "Complexity of licences and material covered by copyright (eg all the electronic
>
> developments) means that we spend more time puzzling out what is legal and
>
> making sure we are applying the right rules."

The apprehension in evidence was not limited to a fear of breaking the law, but also a

fear of breaching the terms of copyright licences.  One respondent spoke of the

"aggressive" way that one licensing organisation was "pursuing non-members".  Four

respondents cited the CLA as one of their main reasons for setting up a copyright unit.

Two expounded on this: one said the unit was initially responsible for dealing with

CLA surveys, and the other said the unit was set up in response to the 1998 CLA HE

Licence with accompanying HE Copying Accord. Indeed four of the five services interviewed cited the CLA licence and/or CLARCS as one of the principle factors behind the establishment of their service.

It is certain that the establishment of such a service sends a very positive message about the intention of the organisation to operate within the law. However, the creation of a copyright post or service is not a requirement of the law, or of licensing organisations. Indeed it raises a question as to whether the fear of an overly complicated legal system or the fear of action from licensing organisations, is appropriate justification for such a considerable investment of resources. Staying on the right side of the law is not the only benefit of establishing a clearance service however. The increasing volume of clearances required by a variety of departments within HEIs means that there are economic advantages to centralising clearance operations. (The questionnaire revealed twenty-eight different activities for which respondents were seeking clearance). One interviewee's service proposal document stated:

> "[A centralised clearance service] enables experience and knowledge to be consolidated for the benefit of the whole University and enables the sharing of experience with similar services in other Universities. This should ensure that the University not only complies with copyright legislation but that the best value for money is obtained when negotiating clearances."

Economic benefits not only accrue through avoiding the duplication of services across the organisation, but through developing an understanding of "going rates" for

particular types of fee, and using that knowledge in negotiating a fair price.

Interestingly, four of the five clearance services interviewed operated in institutions

with 20,000 or more students.  The economic benefits of rationalising clearance

operations in such large organisations were perhaps particularly significant.

Apart from the economic advantages, an in-house clearance service offers a raft of

other benefits to the HEI.  Firstly it provides a centralised "point of contact for help

and advice" as one respondent put it.  The research showed that most clearance

services spend ten per cent of their time offering advice, although two services spent

fifty per cent of their time on this (see Figure 1).  Copyright advice clearly cannot be

separated from the copyright clearance process, and the visibility of a central service

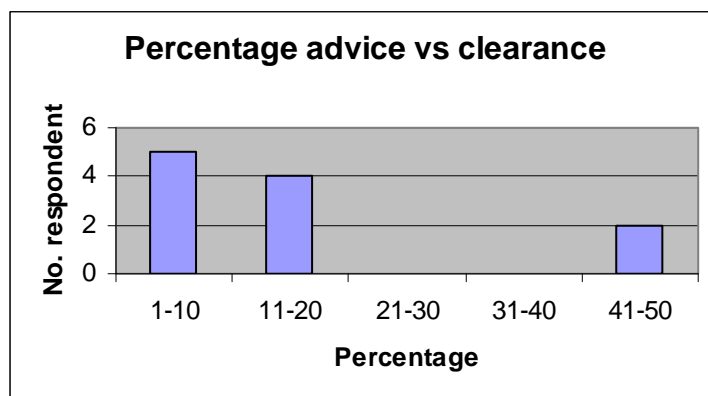makes it a good source for it.



Figure 1

A centralised service allows a small number of people to accumulate copyright

expertise who can in turn provide equality of advice across the organisation.  As one

respondent wrote, their reason for creating an in-house service was:

"To have an authority on Copyright to whom staff would be able to direct
queries in all aspects of Copyright. Also to ensure a standard procedure is
maintained across the University."

Standardised procedures are a natural result of the elimination of duplicate services,
and usually result in a more efficient service.

Finally, a considerable benefit of a visible in-house clearance service is, as one
organisation noted, that it "raises awareness of how copyright material can be used
imaginatively and legitimately to support students' learning."  This in turn
"improve[s] the educational experience of students".

**The age of clearance services**

Sixteen of the eighteen questionnaire respondents stated when their unit or post was
established.  This information is tabulated below.

| "Age" of the clearance services | | |
|---|---|---|
| Year established | Years in existence | No. of services |
| 1971 | 29 | 1 |
| 1984 | 16 | 1 |
| 1988 | 12 | 2 |
| 1989 | 11 | 1 |
| 1990 | 10 | 1 |
| 1997 | 3 | 2 |
| 1998 | 2 | 3 |
| 1999 | 1 | 4 |
| 2000 | 0.1 | 1 |

Table 2

It can be seen that the majority of units were set up in the last four years, although a fair number have been in existence for over ten years. All but one service was set up after the creation of the CLA in 1982. This was interesting to note after some services stated that they had been established in response to the "CLA". No services seemed to have been set up immediately after the introduction of CLARCS in 1993. However, it is a fair assumption that the seven services introduced in 1998 and 1999 may have been influenced by the publication of the Higher Education Copying Accord (HECA)[5][4] in October 1998. The HECA introduced new definitions of what constituted a "coursepack" and what could and could not be placed in a Short Loan Collection, which placed a heavier demand on transactional clearances. The British Library's Copyright Cleared Service, for example, saw a three-fold increase in requests from the HE sector between 1997/8 (6,859 requests) and 1998/9 (16,968 requests)[5].

Other factors influencing the establishment of services may include electronic developments in teaching and learning as inspired by the Teaching and Learning Technology Programme[6] which began in 1992, the Fund for the Development of Learning and Teaching[7] set up in 1995, and the Electronic Library programme[8] which began in 1995.

**Funding clearance services**

Questionnaire respondents were asked how their clearance service was funded. Sixteen answered this question and the responses are given in the graph below.
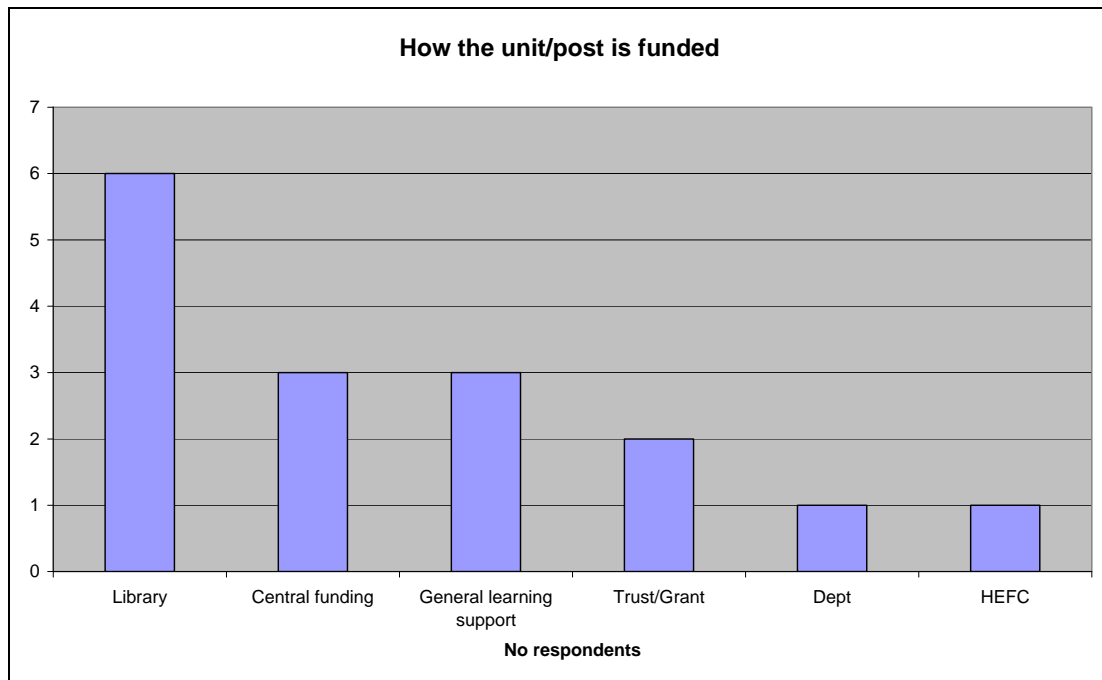
**How the unit/post is funded**



Figure 2

Responses were not full enough to draw any detailed conclusions. However, the majority of posts (one third) were funded out of a library (or information services) budget. A further third were funded either centrally or through a generic learning support budget. Two respondents mentioned funding from a trust or grant but no further details were given. It was interesting to note that no service aimed for self-sufficiency by charging running costs back to internal customers as well as clearance fees.

The situation was exactly the same with the interviewees: all received top-sliced funding from the institution. In all cases copyright fees were charged back to internal customers, but not administration charges. At Institution A, funding for the Copyright Librarian and a small budget of £1000 p.a. forms a part of the Librarian's annual budget bid to the Institution. The budget paid for stationery, training courses, and for some interim copyright fees before the monies were reclaimed from departments. At

Institution C, the central funding for the copyright unit also covers the main institution-wide copyright licence fees (CLA, NLA, DACS, ERA, and OU).

At Institution B, the establishment of a campus bookshop by the Library created surplus income that was used initially to fund the clearance staff during the pilot stage of the service. During recent restructuring, the clearance service was fully incorporated into the Learning Support Services structure. Some departments at this Institution sold coursepacks to students through the Campus Bookshop. Originally the bookshop earned £2 on each pack sold. However, the new management of the bookshop had instead decided to add 10% commission in the first year. The clearance service invoiced the bookshop for the copyright fees for the packs, and all unsold packs had to be purchased by the Department. Last year almost £6,000 was lost through unsold coursepacks. However, it is understood that the CLA intend to investigte a "sale or return" coursepack scheme that may eliminate such losses.

**Staffing clearance services**

The number of staff working for the clearance services that responded to the questionnaire ranged from 0.2 FTE to 24. The mean was 2.4 FTE staff but the median and mode were 0.5 FTE staff. Of those interviewed, three clearance services had a service manager (either full or part time) and a part-time administrative assistant. One service had a full-time Copyright Librarian at a Senior Library Assistant grade, and the other had 24 full-time clearance staff. The latter case was unusual. The service serves a very large university with almost 150,000 students, all of which study at a distance. The service is involved not only with the creation of re-published text works to support courses, but also in the commissioning of actors, artists and musicians to create audio-visual and multi-media works.

It is clear that there is no standard method of staffing a clearance service. A major factor in the staffing decision is the demand for copyright clearance in the organisation. However, all of the services interviewed stressed the importance of having someone available full-time to answer copyright queries, even if the clearance work is not dealt with on a full-time basis. This is because while customers expect to wait for permissions to come through, they do not expect to wait before they can ask a question. Some interviewees expressed concern that if enquirers couldn't get an immediate answer, they might act on instinct rather than wait for advice.

Another factor in the staffing decision is the type of clearance work taken on by the unit. Text clearances (for coursepacks or short loan for example) can be fairly routine, and may easily be taken on by a good administrator. However, if the service aims to proactively negotiate clearances rather than simply accepting or rejecting offers as they come through, negotiation skills will obviously be needed. If the service is to take on audio-visual (AV) clearances, administrative skills alone may not be enough. One clearance service that dealt with a large proportion of AV clearances indicated that film and music clearances demand "strong negotiators". Also "strong persuasive skills" are required of those attempting picture clearances in the digital environment "as rights holders are often nervous about the level of protection they are offered against infringement". Legal expertise may also be required for some clearances as the interviewee confirmed:

> "when clearing for non print media…the sources from which material is chosen
>
> are increasingly based overseas (e.g. software owners are often in the US etc)

and staff are required to deal with differing practices and onerous contracts.

These require knowledge of other laws that UK in order to judge acceptability."

This service noted that finding the right combination of skills in an individual for AV clearances could be difficult. This is because they need both the ability to negotiate and drive a deal through, and an attention to detail for contractual work. In their experience, people usually have one or the other, not both.

**Running an in-house clearance service**

The table below illustrates the responsibilities of the five clearance services interviewed.

| Responsibilities of the Clearance Services | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Organisation** | **Copyright awareness raising** | **Advice on use of third party copyright** | **Clearance** | **Copyright Licences - Designated contact** | **Main Copyright Advisory Centre for HEI** | **Negotiate electronic resource licences** | **Protection of Univ IP** | **Data protection** |
| **D** | Y | Y | Y | Y | Y | Y | N | Y |
| **E** | Y | Y | Y | Y | Y | Y (in conjunction with Library) | Y (Owns © in Univ. teaching materials | N |
| **C** | Y | Y | Y | Y | Y | N | Y (advice only) | N |
| **B** | Y | Y | Y (except music/ film) | N | Y | N | N | N |
| **A** | Y | N | Y (course packs only) | N | N | N | N | N |

Table 3

It can be seen that the remit of the services varied greatly. The "youngest" clearance service in Institution A had the most closely defined remit. This service was responsible for coursepack clearance and some awareness raising. It may be that this role will expand once the service becomes more established. All the other services acted as the main copyright advisory centre for their organisation, and as such gave advice on the use of third-party copyright. Only two services, E and C, offered advice to the institution on the protection of it's own intellectual property. Services C, D, and E acted as the designated contact for institution-wide copyright licences. Some respondents had difficulties in getting hold of copies of such licences if the designated contact was a senior member of institution management. The services that acted as designated contact therefore benefited from this arrangement. Institutions D and E

harnessed their clearance services' licence negotiation skills in the negotiation of licences for electronic resources (e.g. databases and electronic journals). As more information is made available electronically and HE Libraries move from holding to access, the terms of the licences governing such access become increasingly important. It is logical, therefore, to utilise existing expertise in this way.

Only the clearance service at Institution D also managed their organisation's data protection issues. This Institution had recently merged its computing and library service and a new post "Copyright, Data Protection and Licensing Officer" was created out of the restructure. As the job title suggests, the postholder was intended to oversee all the legal issues relating to information and computing services.

One legal matter that wasn't managed by any of the interviewees was that of patents. The table below illustrates who did take on this responsibility, along with eight other IP categories, in the interviewed organisations. Overall responsibility for intellectual property management, and the management of university contracts were the only two other areas that were beyond the remit of the clearance services interviewed.

| Other IP responsibilities | | | | | |
|---|---|---|---|---|---|
| | **A** | **B** | **C** | **D** | **E** |
| **Overall IPR responsibility for HEI** | Institution Secretary | University Secretary and Licensing Co-ordinator | Pro Vice Chancellor (Research & Business Dvlpmnt) | Research and Consultancy | University Secretary |
| **Protection of HEI IP** | Institution Secretary | University Secretary and Research Centre | Business Dvlpmnt Office | Research and Consultancy | Clearance Service owns most HEI IP |
| **University contracts** | Institution Secretary | University Secretary and Licensing Co-ordinator | Business Dvlpmnt Office | Research and Consultancy | Finance Dept |
| **Copyright licences designated contact** | Institution Secretary | University Secretary | Clearance Service | Clearance Service | Clearance Service |
| **Data protection** | Institution Secretary and Circulation Librarian | Head of Computing and Communication Services | Planning Support Office | Clearance Service | Data Protection Co-ordinator |
| **Patents** | N/A | University Secretary and Research Centre | Business Development Office | Research and Consultancy | Finance Dept |
| **Licensing electronic resources** | Head of Public Services (within Info. Services) | Library Electronic Resources Co-ordinator | Library Collection Dvlpmt Manager | Clearance Service | Clearance Service |
| **Other clearances** | Dept'l administrators | Learning and Technology Services – clearance for use of film and music in student projects | N/A | Some depts may clear their own rights | N/A |
| **Other advice** | Media Services Librarian | N/A | N/A | Graphics Unit; Library | N/A |

Table 4

It can be seen that in four of the five institutions, overall IPR responsibility lay with a senior member of administration staff. In two of the five institutions, a research division managed the organisation's own intellectual property. In two other cases the clearance unit took on this role. University contracts were managed by a variety of different departments ranging from the Institution Secretary through the Business Development Office to the Finance Department. The designated contact for institution-wide copyright licences (when not the clearance service) was the institution secretary. A wide range of different university departments managed data protection. This may have been because the legislation has recently changed, causing the data protection issue to be revisited by organisations. In the three cases where clearance services were not involved in the negotiation of electronic resource licences, this was the responsibility of library staff. Two services indicated that other parties within the institution also cleared their own rights. In Institution B a specific service (entitled Learning and Technology Services) were responsible for a specific subset of clearances, namely, clearance for the use of film and music in student projects.

The remit of the various clearance services depended partly on where they sat within the organisation's structure, and the relationship they had with the organisation. There was a direct correlation between the age of the service and the number of responsibilities it had. The older, more established services in Institutions D and E had seven main responsibilities. The services in Institution's B and C that were four and five years old respectively, undertook four and six activities. The newest service had just two responsibilities. This may imply that the longer a service has been established in an organisation, the higher its profile, and the more roles it is asked to take on. It was also interesting to note that the services in Institutions D and E, as

well as being the oldest, were also sited outside the Library.  This may have been a contributing factor to the diversity of their roles, as organisations may have a limited view of the tasks it is appropriate for a library clearance service to perform.

**Relationship between the clearance service and the organisation**

The relationship between a copyright clearance service and the organisation it serves is an interesting one.  At the same time the service can be seen to be both erecting barriers to the use of copyright materials by raising awareness of copyright law, and dismantling those barriers through the provision of a one-stop-shop clearance service. This uncomfortable "middle ground" was commented on by a number of questionnaire respondents.  One wrote:

> "Students and lecturers get frustrated and I feel like a bureaucrat which is not why I chose a career in librarianship. (I had one instance where a law lecturer here had written an article (about music copyright) and wanted it to go into the short loan - the publisher refused permission and I had to tell him he couldn't put his own article into the collection! Ridiculous!)"

The most successful services seemed to be those that marketed themselves as a solution to the copyright problem, rather than organisational "copyright police". Institution E felt this positive attitude was very important. They never liked to say "no" to a request outright, but aimed to provide alternative options for their internal customers. Rather than picturing rights as another hurdle over which academics must leap, they offered to "take the problem off [academics'] hands" so that it would be "one less thing for them to worry about".  The organisational culture at Institution E

did assist their approach. Rights are seen as an essential part of the teaching materials production process and course managers are advised to set aside a certain proportion of their budget for rights clearance from the start. Also, the Rights Manager has the authority to prevent publication of materials if he is not satsfied that all the rights issues have been properly dealt with. Needless to say no other institution had this level of control over copied materials at their organisation.

The clearance services interviewed used a variety of methods to promote their services to their organisation. These included web pages, printed leaflets, meetings with course leaders and heads of schools, email advertisements and memos when licence terms changed. Two services ran internal training courses and presentations on copyright. Another service placed notices by photocopiers explaining what constitutes coursepack copying, and advertising the clearance service. One service was advertised in the University Handbook. At Institution B Subject Learning Advisors promoted the service to the departments with which they regularly liaise.

Four of the five services interviewed received positive informal feedback from their internal customers. At Institution C the number of enquiries and requests were growing and this is taken was a positive sign. However, at one institution, there was some confusion and wariness at training sessions (mainly disbelief at the various terms and conditions), and a small amount of negative feedback had been received concerning the cost and the length of time it takes to prepare and clear a course pack.

**Problems faced by clearance services**

Despite even the best efforts at marketing a clearance service as a problem solver the fact remains that copyright clearance is fraught with difficulties, time delays and expense. The first problem area highlighted by the research was that of getting requests from internal customers. As responses from rights holders could take months, interviewees imposed a lead-in time for clearance requests of anything between four weeks and six months. Perhaps unsurprisingly customers usually flouted this rule. The bibliographic information provided was often inaccurate or incomplete, and services spent a lot of time searching for correct references. As a result of tight time scales, services found they didn't have time to check permission requests to see whether items were available electronically on the full-text databases or e-journals to which they subscribed. However interviewees were concerned that they may have been seeking permission for items they already had in "multiple access" format. The second problem area was that of actually tracing rights holders. Publishing is a dynamic industry and publishers merge, sell-up, and cease trading with alarming frequency[9]. Locating smaller publishers, overseas publishers, and individual authors or creators could be very difficult, and yet an essential part of the clearance process.

The third problem area, having identified the rights holder and how to contact them, was rights holder response times. The average response time cited by questionnaire respondents was 2-4 weeks, however waiting for two to three months was not uncommon, particularly when applying direct to overseas rightsholders. In an attempt to reduce the delays, most clearance services chased rights holders for a response. This added another layer of administration to the process. In some cases of course, responses did not come – or when they did, they were refusals. This meant internal

customers had to find replacement material, and had a reduced timeframe in which to obtain the permission to use it.

The fourth problem area arose even when requests were successful: the matter of dealing with the different terms and conditions relating to each permission. By no means the least of these conditions was the permission fee. Respondents identified six different mechanisms by which they had been charged for permissions. The fees themselves varied according to the use to which the material was to be put. The highest fee noted by a questionnaire respondent was several thousand dollars to mount a journal article on CD-ROM. The average fee faced by the BUILDER Project for making materials available in an "Electronic Reserve" collection was £70-75 per item[10]. One interviewee reported that the average price they had paid for a coursepack item in 2000 was £61.68. Considering the average academic book price in 1999-2000 was £41.07[11], and a book has a much longer life-span than a one-year coursepack licence, organisations have to think carefully about the cost-benefits of these different methods of information provision.

The final issue that clearance services faced was the ongoing process of keeping up-to-date with new or changing legislation and licence terms, and of finding solutions to a wide variety of copyright problems. This was particularly difficult for services that had only enough staff to apply for and receipt copyright permissions. One copyright advisor wrote "I would say I am rarely consulted, perhaps 4/5 times a year, but that some of the questions can take an inordinate amount of time to resolve." Another highlighted that it wasn't just the copyright advice that occupied her, but the time spent "learning up about copyright".

The various means of keeping up-to-date with copyright cited by the interviewees are listed below.

- Attendance at conferences/seminars;

- Library Association web site;

- CLA/CVCP correspondence (which gets copied to the Copyright Librarian);

- EU IPR HelpDesk;

- Mailbase lists such as lis-copyseek, lis-sconul-copyright and e-collections;

- Internet – any project reports or latest updates posted by JISC, etc.;

- Newsletters and journals (e.g. European Intellectual Property Review);

- Copyright textbooks such as the continually updated Aslib Guide to Copyright.

For specific copyright advice the interviewees again cited a variety of different sources.  At Institution A the Media Librarian provides copyright advice to the clearance unit.  The clearance staff at Institution B also speak to their line managers, as well as consulting textbooks, emailing one of the discussion lists, or consulting directly with either a clearance colleague at another institution or with a recognised library copyright expert such as Graham Cornish, Sandy Norman, or Charles Oppenheim.  Rarely but occasionally she may approach the CLA directly.  At institution C the same experts were cited as a source of copyright advice.  However staff there may also consult the CVCP for an interpretation of the CVCP-negotiated CLA licence.  Only Institution E mentioned lawyers as a source of copyright advice. However in the last ten years, they have only had to consult a lawyer three or four times.  As the consultation process is extremely expensive, they don't undertake it

lightly.  They have also found that lawyers will not advise you whether or not to pursue a case, they will only advise you on your options.

**Good practice for clearance services**

The interviewees were asked how they would advise other organisations on the establishment and management of a clearance service.  Their responses were formulated into the "Good practice guidelines" below.

**Recommendations for those establishing a new clearance service**

- In writing a proposal document for a new service, it may help to stress the benefits of such a service in terms of avoiding duplication, saving money, offering a better service to internal customers, staying legal, encouraging the development of innovative teaching and learning methods, and thus enhancing the student experience.

- It is recommended that any new service begin as a pilot project in order to gauge the demand and staffing levels required.

- It is recommended that any clearance service has a dedicated member of staff. This is because even when there is no clearance to be done, there are always new developments and issues to keep up-to-date with.

- If it is impossible to have a dedicated member of staff, it is still important to have someone available full-time to answer queries, even if the person answering queries does not spend all their time on copyright.

- The skills required of a copyright clearer include: excellent administration skills; negotiation skills; the ability to network and create contacts (people skills);

problem-solving skills; the ability to read and interpret the fine print of contracts and licences; and most importantly a grasp of the concept of intellectual property.

- Establish the service as a "problem solver" rather than a "problem creator".

**Good practice guidelines for clearance services**

- Become familiar with the copyright policies of the organisation as a whole.  Find out where the service "sits" in relation to the other IPR procedures.

- Establish good administrative systems from the outset.

- Document everything  - in such a way that it still makes sense when you refer back six months later.

- Provide clear literature to internal customers on the clearance procedures.

- Encourage teaching staff to prepare well in advance and incorporate the copyright clearance process into their timetable.

- Stress the importance of a six-week lead-in time for requests.

- Create a clearance request form template for internal customers.

- Ask internal customers to indicate if a member of the organisation wrote a requested item.

- Date stamp all requests so they can be dealt with on a first come first served basis.

- Check all requests to see whether the materials actually require clearance by considering whether the copying falls within the fair dealing or insubstantial use exceptions of the CDPA88.

- Always remain one step ahead of internal customers and have alternatives at hand for those that make difficult clearance requests (e.g. be aware of sources of library music, and copyright-free graphics, etc)

- Design standard proformas for correspondence (letters and forms etc)

- When approaching a rights holder direct that has already mandated CLARCS, make it explicit why you need to approach them directly.

- If possible create a clearance management database to keep electronic records of all the different aspects of the clearance requests (customers, items requested, publishers, addresses, etc). Remember that a database allows searching, unlike paper files.

- If designing a database from scratch, make sure you consider all the information you'll need and all the options it should offer. For example, can you search by rights holder/date/requester? How do you record chases? How do you know when a request needs renewing?

- Keep a record of any advice you give, to cover yourself.

- If you are working alone, ensure you have a clearance email-box as well as a personal one. This allows colleagues to keep an eye on requests when you are off.

- If in doubt –ask. Get on the relevant mailing lists.

- Use the Internet – it can be very useful for publisher/company/institution information. It can also be useful for keeping up to date on new copyright developments and the progress of related projects

- Attend as many courses as possible and always keep the copyright "bibles" at hand e.g. Cornish,G. P. (Graham Peter),1942- *Copyright : interpreting the law for libraries, archives and information services*. 3rd ed. London : Library Association Publishing,1999. Norman, Sandy. *Copyright in further and higher education libraries*. 4th ed., London : Library Association,1999; *The Aslib guide to copyright.* London : Aslib.

- Get support from colleagues –use librarians/learning advisors to help raise awareness

- Create a file of FAQs based on what you learn from discussion lists and in-house queries.

- Regularly assess average fees for particular types of material and keep to hand. Such information can be useful when negotiating with rights holders.

- Ensure that the organisation's payment system is accurate and fast. Good payers build up good will with rights holders. As one interviewee said, "£50 now is worth a lot more than £50 later on".


Copyright clearance is certainly not a straightforward exercise, and establishing a clearance service could not be considered plain sailing. However, it is precisely because clearance is not straightforward, that many organisations have established centralised clearance services to create a centre of skills and expertise. This article has outlined the benefits of doing so, and some of the practical ways in which such services may work effectively. However, it is still to be hoped that one day the bulk of the clearance load might be lifted from Higher Education through some national solution to the clearance problem – perhaps through our increasing dependence on electronic information which brings with it a whole new approach to the rights issue. HE Libraries must not only watch with interest, but also become actively involved in securing a better copyright future for our users.

Word count: 6,437

---

**Footnotes**

[1] Weedon, Ralph, *Policy approaches to copyright in HEIs : a study for the JSC Committee for Awareness, Liaison and Training (JCALT)* (Glasgow, Centre for Educational Systems, 2000)

[2] Copyright Licensing Agency Rapid Clearance Service.  URL: http://www.cla.co.uk/clarcs/index.html (Accessed 18 January 2001)

[3] Clearing the way: copyright clearance in UK Libraries. URL: http://www.lboro.ac.uk/library/clearing.html (Accessed 18 January 2001)

[4] Gadd, Elizabeth, An examination of copyright clearance activities in UK Higher Education. *Journal of Librarianship and Information Science*, (2001) **In Press**.

[5] Copyright Licensing Agency Higher Education Copying Accord.  URL: http://www.cla.co.uk/have_licence/support/he-support-accord.pdf (Accessed 18 January 2001)


[5] Figures provided by the Head of Publisher Liaison at The British Library through correspondence.  26 April 2000

[6] The Teaching and Learning Technology Programme URL: http://www.ncteam.ac.uk/tltp/  (Accessed 5 January 2001).

[7] Fund for the Development of Teaching and Learning URL: http://www.ncteam.ac.uk/fdtl.html (Accessed 5 January 2001)

[8] The Electronic Library Programme, URL: http://www.ukoln.ac.uk/services/elib/ (Accessed 5 January 2001)

[9] Gadd, Elizabeth,  Copyright clearance for the digital library : a practical guide. *Learned Publishing*, 10(3) (1997) 255-259.

[10] Hampson, Andrew, *Digitisation in the Hybrid Library*. [Unpublished paper presented at the JUGL Digitisation in Practice Seminar, OU Conference Centre, London, 2001.]

[11] Creaser, Claire et al, *LISU annual library statistics 2000* (Loughborough, LISU, 2000).

**References**

- E. Carmel, and E. Collins, Impact of copyright management on multimedia markets. *Telematics and Informatics,* 14(1) (1997) 97-109.

- Commission of the European Communities. *Amended proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society.* CE COM(1999)0250

- Copyright Licensing Agency, *A year of growth : the Copyright Licensing Agency : a review 1999.* (London, CLA, 1999)

- G.P.Cornish, *Copyright : interpreting the law for libraries, archives and information services.* 3rd ed. (London, Library Association Publishing,1999)

- E. Gadd, Then and now : the changing process of copyright clearance with the advent of the electronic era, *Copyright and New Media Law newsletter* 1 (1) (1997) 6-9 .

- E. Gadd, R. Goodman, and A. Muir, CLEAR design : developing an electronic copyright management system for Project ACORN. *The Electronic Library,* 16(4) (1998) 253-259.

- E. Gadd, Copyright clearance for the digital library : a practical guide. *Learned Publishing*, 10(3) (1997) 255-259.

- A. Hampson, *Digitisation in the Hybrid Library.* [Unpublished paper presented at the JUGL Digitisation in Practice Seminar, OU Conference Centre, London, 2001.]

- E. Hewett, *The impact of the electronic delivery of learning materials in UK Higher Education.* URL: http://builder.bham.ac.uk/reports/html/stakeholder.asp (Accessed 5 January 2001)

- R. McCracken and M. Gilbart, *Buying and selling rights : print, broadcast and multimedia.* (London, Blueprint, 1995)

- S. Norman, *Copyright in further and higher education libraries.* 4th ed., (London, Library Association,1999)

- Okerson, Ann. Copyright or contract? *Library Journal* 122(14) (1997) 136-137,139.

- C. Oppenheim, H. Rosenblatt, and R. Wall (eds), *The Aslib guide to copyright.* (London, Aslib, 2000)

- K. Patel, Copyright laws causing chaos. *Times Higher Education Supplement.* 6 November 1998.

- K. Patel, Libraries unite over copyright. *Times Higher Education Supplement.* 26 May 2000.

- K. Patel, Team finds way round copyright. *Times Higher Education Supplement.* 25 February 2000.

- R. Weedon, *Policy approaches to copyright in HEIs : a study for the JSC Committee for Awareness, Liaison and Training (JCALT)* (Glasgow, Centre for Educational Systems, 2000)