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CLEARING THE WAY

COPYRIGHT CLEARANCE IN UK LIBRARIES

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1.0   Introduction

1.1   The problem of copyright

Libraries today face a problem. Their raison d'etre: to provide access to information for their users is on the one hand being enabled by new technologies and developments, and on the other is being hindered by copyright restrictions. New developments in libraries, learning and teaching, such as electronic short loan collections, computer aided learning packages, distance learning packages and so on, all seek to provide better educational support for students. However to include ready-published material in all these services requires copyright clearance.

Quotes such as "Copyright was seen as a major barrier to the scaling up of electronic short loan"[1], and "one of the most taxing concerns for courseware developers…is to...obtain the legitimate use of existing copyright works to include in new products"[2] abound in the library and related literature.

In fact, the current legal and legislative framework makes copyright clearance an essential library activity.

1.2   The law

The Copyright, Designs and Patents Act of 1988 basically performs two functions. Firstly, it spells out what rights belong to the creators of original works (rightsholders). Secondly, it lists exceptions to those rights, allowing users the ability to make certain copies of those works for certain purposes. The exceptions relating to libraries can be found in sections 38-44 of the Act and have been called the "Library Privileges". These privileges allow libraries to make copies for providing various library services.   However, the privileges are an exhaustive list. Should libraries wish to copy more than is permitted by the Act, they *would* have had to have approached rights holders individually for permission every time – were it not for the provision made in the Act for the establishment of licensing bodies.

1.3   Licences

The existence of licensing bodies saves rights holders from being deluged with requests from organisations for permission to make more copies of copyright material than the Act allows. Licensing bodies represent groups of copyright holders (artists, publishers, musicians, etc), and licence additional rights (for a fee) to organisations wishing to make additional copies of their work. There is a wide range of licences now available. It would be nice to be able to say that they make the Librarian's job a whole lot easier. In fact, they leave something to be desired. Many libraries' activities are not covered by these (often expensive) licences, and thus still require individual clearance. A positive development however has been the design of licences for electronic full-text sources. Such licences are often developed through much user consultation, and include provisions for using electronic materials in printed course-packs and for other educational purposes. A good example of this is the NESLI (National Electronic Site Licence Initiative) model licence[3].

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[1] HEWETT, Elizabeth. *The Impact of the Electronic Delivery of Learning Materials in UK Higher Education*. November 1999. URL: http://builder.bham.ac.uk/reports/html/stakeholder.asp

[2] *Copyright Guidelines for the Teaching and Learning Technology Programme*. Bristol : TLTP, 1994

[3] NESLI Model Licence. URL: http://www.nesli.ac.uk/ModelLicence8a.html

1.4 Copyright clearance

When it comes to copyright clearance libraries have two options: they can identify rights holders themselves and approach them independently, or they can use a central copyright clearance service (termed "clearing houses" in this report to distinguish them from organisations' in-house clearance services). In the UK there are three such clearing houses. The first is the Copyright Licensing Agency's Rapid Clearance Service[4] (CLARCS) for both print and, more recently, electronic clearances. The second, for the purchase of copyright-cleared journal articles, is the British Library Document Supply Centre[5]. And the third, and newest, service is HERON[6] (Higher Education Resources ON-demand), a JISC-funded service still in its project-phase, offering electronic copyright clearance and digitisation.

Until the advent of HERON and the CLA Digitisation Licence (and accompanying electronic clearing house), libraries had no option but to clear rights to make electronic copies directly with individual rights holders. The experience of eLib projects[7], many of which were at the fore of this activity, has shown how difficult this can be[8].

Unfortunately, just as licences did not solve the difficulties arising from the 1988 Copyright Act, clearing houses have not proven a panacea to the problems left unsolved by licensing. No centralised clearing house represents every rights holder, so there is always the need to approach some individually. Finding out who owns the rights in a copyright work can be complex, locating them even more so. In the digital arena, some publishers are nervous that they don't in fact own electronic rights, and are therefore reluctant to license them on.

1.5 Signs of the times

Such is the complexity of the situation that more and more organisations are dedicating human resources to deal with it. We are now seeing Copyright Librarian posts being advertised in the LA "Appointments" supplement, for example[9]. Indeed, in a recent issue of Appointments, there were no less than three posts that involved copyright clearance duties[10]. Also, the mailbase discussion list, "Lis-Copyseek", set up for the discussion of copyright clearance issues amongst librarians, has recently reached a record 190 members. What compounds the situation is its fluidity. New technologies have in some cases been answered by new intellectual property legislation – such as the Copyright and Rights in Databases Regulations introduced in 1998[11]. And new licences, or amendments to licences seem to appear with alarming regularity. The Higher Education Copying Accord, introduced in October 1998 in addition to the CLA's HE Licence is one example. Each new regulation sends librarians back to the drawing board to assess the legality of their current collections

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[4] CLARCS Homepage http://www.cla.co.uk/www/clarcs.html
[5] BLDSC Homepage http://www.bl.uk/services/bsds/dsc/
[6] HERON Homepage http://www.stir.ac.uk/infoserv/heron/
[7] eLib Projects. http://www.ukoln.ac.uk/services/elib/projects/
[8] GADD, Elizabeth. 'Copyright Clearance for the Digital Library : a practical guide', *Learned Publishing*, 1997, 10 (3), 255-259
[9] [Advert for Copyright Librarian, Information Services, Institute of Education] *Library and Information Appointments*, 2(25), 3 December 1999.
[10] *Library and Information Appointments*, 3(20), 22 September, 2000. Pp470, 472, and 474.
[11] *The Copyright and Rights in Databases Regulations 1996*. SI 1996 No. 3032

and practices[12]. Librarians are currently facing another seismic shift in the form of the Copyright and Related Rights in the Information Society Directive being finalised in Europe as part of the EU legal harmonisation process. At the time of writing the final text of the directive has not been agreed. However there are still concerns in the library community as to whether the balance will be weighted in favour of the vociferous rights holder lobby. The other impending change is the renegotiation of the CLA's HE Licence including the Accord. These are due for renewal in January 2001. Again, at the time of writing the CVCP has referred the CLA licence renewal to the Copyright Tribunal. The CLA have responded and both parties now await the response from the Tribunal[13].

1.6   Prepared and informed

In order to prepare for these changes, there is currently a great deal of activity in the Library Sector. The Library Association has funded a six-month research project into the costs of copyright generally to the Further and Higher Education sectors. The Library and Information Statistics Unit[14] at Loughborough University are undertaking this. Also in the HE sector, a group of academic lawyers recently founded the Copyright in Higher Education Working Group (CHEW)[15]. Their first campaign is the reform of the Higher Education Copying Accord (HECA) that accompanies the CLA HE Licence. This research into the copyright clearance activities in UK Libraries occupies a position between these two projects in that it focuses on the whole library sector (not just FE and HE) and is looking at copyright *clearance* which includes costs, but is not solely occupied with them. Also, while it aims to inform the creation of library-friendly legislation and licensing, this is just one of its goals.

1.7   Copyright clearance in UK Libraries

The aims of this research were to:
- Raise awareness as to the volume of clearance that needs to be undertaken in libraries as a result of current copyright legislation and licensing
- Inform centralised clearing houses and licensing organisations in the establishment of library-friendly services
- Gain a better understanding of the main areas of confusion surrounding copyright law and library services

In order to achieve these aims, the following objectives were set:
- To provide an overview of the copyright clearance activities being undertaken within different library sectors;
- To provide a comprehensive survey of current UK practice with regard to copyright clearance;
- To distil best practice guidelines to libraries undertaking copyright clearance.

Although the research was interested in building up a picture of the entire library sector, it was to decided to focus on Higher Education. This was partly because the HE sector has had a great deal of experience in this area and would therefore

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[12] Patel, Kam. Copyright laws causing chaos. *Times Higher Education Supplement*. 6 November 1998.

[13] See: Copyright Tribunal Reference on the Copyright in Higher Education Working Group web site at: URL: http://www.ukcle.ac.uk/copyright/ctref.html

[14] The Library and Information Statistics Unit. http://www.lboro.ac.uk/departments/dis/lisu/lisuhp.html

[15] The Copyright in Higher Education Working Group http://www.law.warwick.ac.uk/ncle/Copyright/

constitute an interesting study focus. Practicality also dictated that a small-scale piece of practitioner-based research couldn't hope to cover the wide range of library sectors in any detail. It also became clear that a study of copyright clearance activities couldn't be limited to libraries only, as many different departments were assuming clearance responsibilities. Therefore anyone undertaking clearance was encouraged to participate in the research.

2.0   Methodology

A two-pronged methodology was adopted: firstly a questionnaire to copyright clearers in libraries generally and in Higher Education in particular; and secondly a series of interview visits.

The questionnaire was drawn up in consultation with Dr Eric Davies, Director of the Library and Information Statistics Unit. Dr Davies' experience as a researcher, and his knowledge of copyright, alongside his role as Director of the Library Association-funded research into the costs of copyright in FE and HE, made him an ideal consultant for this purpose. The questionnaire was then piloted on two practitioners known to the project researcher, 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 is given in Appendix 1, but in summary it 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 Copyright Clearance Services (Units or Posts).

The questionnaire was mounted on the project web site with the option to either complete online, or to print off a 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 answering Section H of the questionnaire about Copyright Units or Posts 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 Unit was based in the Library or elsewhere. The aim was to get a range of organisations with different experiences. Four of the five interviews were conducted face-to-face; one was conducted by telephone. The interview schedule is given in Appendix 2.

3.0   Questionnaire results

Fifty-seven questionnaire responses were received plus 11 separate emails about copyright advice work. That makes a total of 68 copyright clearers and advisors. The results have been analysed separately.

3.1   Respondents' organisations

Fifty-one (89%) of the respondents classed their organisation as a Higher Education Institution. Only two respondents stated they were from Further Education, and two were from Public Libraries. Of the two "other" respondents, one worked on a project based in a public library, and the other worked for a NHS Trust running post-graduate courses.
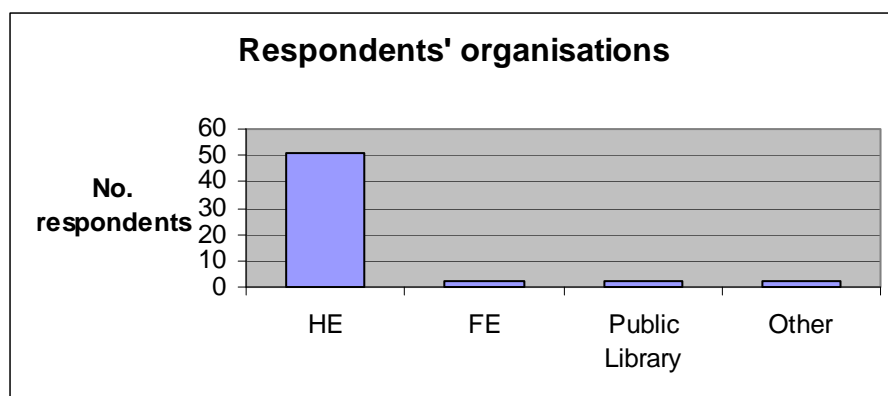
Figure 1

The high proportion of respondents from HE could be due to a number of factors. Firstly, the questionnaire was primarily advertised via Mailbase discussion lists, and Mailbase was initially established by and for the HE community. Secondly, as mentioned in the introduction, Higher Education libraries are very experienced in copyright clearance as many of their services depend upon it. Conversely, other sectors have previously had less experience in this area, although the climate is now changing. Thirdly, the project website stated that the main focus of the research was on the Higher Education community, so this may have particularly encouraged HE respondents – or deterred non-HE respondents.

The 51 HE respondents represent 30% of the total 169 HEIs[16]. However, as the respondents were a self-selecting sample, it would be inaccurate to infer any statistical significance from the results. The very small number of non-HE respondents has

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[16] 1998/99 figure taken from the Higher Education Statistics Agency (HESA) http://www.hesa.ac.uk/

made it impossible to draw any conclusions about copyright clearance in those sectors.

3.2 Where the clearance takes place

It was not assumed that respondents would all be based in libraries, so the question was posed: "Where does the majority of your organisation's copyright clearance activities take place?". There were 56 responses to this question. Nineteen (37%) stated that the majority of their organisation's copyright clearance took place in the library by library staff. The two Public Library respondents fell into this category. Ten further respondents (18%) indicated that clearance took place in the library by dedicated copyright staff/units. In total 55% of respondents said clearance was done in the Library. The remaining 45% indicated that copyright clearance was undertaken elsewhere. Twenty respondents (35%) stated that this was done by individuals, and five (9%) by dedicated copyright units, elsewhere in the organisation. The two FE respondents fell into this latter category.
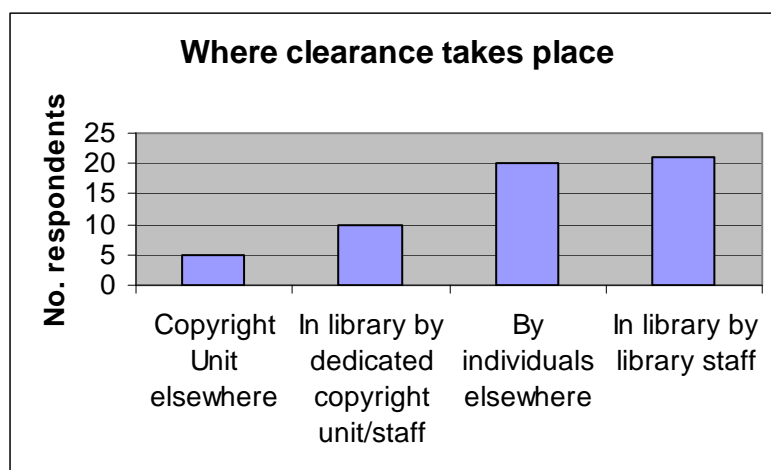
Figure 2

Although these responses gave an indication as to where the *majority* of clearance was undertaken, seven respondents (13%) commented that responsibility for clearance was shared with other parts of the organisation. One HE respondent stated that clearance was done both "in the Library by Library staff and by University Departmental Staff for Departmental material". This was a common occurrence, as someone else concurred "Library staff clear material for stock (i.e. offprint collection) but academic depts clear for study packs." Another stated that "clearance for CLARCS is undertaken by a separate dept."

Where respondents indicated that individuals elsewhere in the organisation (20 respondents) undertook clearance, 14 stated who took on that role.

Individuals undertaking clearance elsewhere in the organisation	
Job title	**No.**
Project staff	1
Central Copyright/Licensing Officer	2
Dept'l Secretaries/Administrators	5
Academic staff	6

Table 1

Its interesting to note that in most cases cited, academics are expected to undertake their own clearance. However, from the large number of departmental secretaries and administrators listed as clearers we may infer that many academics delegate this work to departmental staff. The two central copyright/licensing officers cited exposed a flaw in the questionnaire, in that copyright staff *or* units were library options, but under "elsewhere" only copyright units were mentioned.

3.3 Who takes on clearance

There were 52 responses to the question, "As far as you know, how many people in your organisation clear rights?" and the request to give their job titles, and the proportion of their time they spend clearing rights. However five of these responses were comments suggesting this was "impossible to answer" due to the large number clearing rights in various parts of the organisation. Another raised the point that more and more staff are taking on many different roles and therefore often have multiple job titles!

3.3.1 Number of staff clearing rights

There were forty-three responses from which the number of clearance personnel could be measured. For analysis purposes a figure of >1 was entered where the respondent hadn't given a number but where it was clear there were multiple clearance staff. The ">4" was entered on the basis of the job titles specified. The responses are given in the figure below:

Figure 3

Sixteen respondents (37%) thought that they were the only one in their organisation that cleared rights. The remaining 63% of organisations committed at least two members of staff to this activity. Indeed three organisations had five staff clearing rights, and two had 24 rights clearers. This latter category included an organisation that offers courses by part-time and distance learning, and an organisation that has one rights clearer for each of its 24 schools.

3.3.2 Percentage of time spent on rights clearance

Perhaps a more significant measure of the staff intensity of rights clearance is not the number of staff clearing rights, but the time they spend doing it. There may be two staff clearing rights, but if they each just spend five hours a week on it, this amounts to just under one-third of a FTE staff member. The data was therefore analysed by converting responses into percentages of a staff member's time, using an average 35-hour week, and a 20-day month.

Thirty-nine respondents (68%) estimated the amount of time they and their colleagues spent on rights clearance. The responses are illustrated in the figures below.
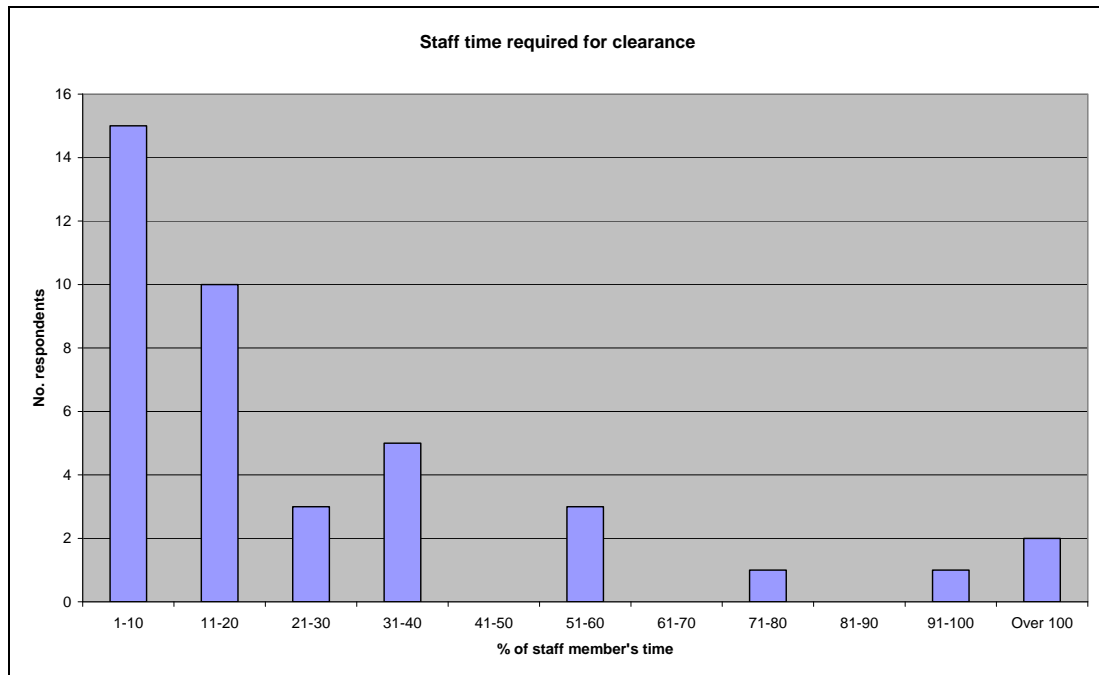
Figure 4

Figure 4 plots the percentage of a full time staff member required for clearance, against the number of respondents citing that figure for their organisation. The median amount of time spent clearing rights is 15% or five and three-quarter hours (almost a day) a week over the year. The mean number of hours per week (excluding the HEI that had 24 full-time clearers) is 30% or ten and a quarter hours (a day and a half) per week over the year. However, as many respondents commented, clearance work is very seasonal. "The time spent depends on the time of year" said one respondent, "Late August, September, December and January I could be spending at least the equivalent of a working day a week clearing rights if you count advising tutors and ringing CLARCS with alterations to the original lists." Also, where the respondent knew there were a large number of clearers at their organisation, they often only counted the clearance done by their department, or made no estimate at all. This makes the resulting figure artificially low.

3.3.3 Job titles of staff undertaking clearance

Thirteen different job titles were specified as those with clearance responsibilities. The list, together with the number of times they appeared in responses, given in the table below.

Job Titles of staff undertaking clearance	
Job Title	**No.**
Dedicated Copyright personnel	32
Library Asst	9
Subject Librarian	9
Admin. Assistant	7
Senior Library Asst	5
Media Librarian	3
Contracts/Legal Advisor	2
Director LIS	2
Course Managers	2<
Academic	1
Editorial Asst	1
Students Services Librarian	1
Technician	1

Table 2

The most frequently mentioned group were dedicated copyright personnel, although this figure is perhaps artificially inflated by the team of 24 dedicated copyright clearers at one institution. Disregarding this 24, there remained eight clearers with job titles such as Copyright and Licensing Officer, Copyright Librarian and Copyright Assistant. Interestingly, Subject Librarians and Library Assistants occurred equally frequently, and Administrative Assistants were cited as copyright clearers in eight organisations. The three occurrences of "Media Librarian" indicate a departure from traditional library posts, illustrating the new emphasis on the range of media with which libraries now work.

3.4 What rights are being cleared?

Section B asked respondents to select from a list the purposes for which they were clearing copyright. There were 13 options including an "other" category. These are listed below:

- Short Loan Collections (print)
- Other Library Collection (print)
- Electronic Short Loan Collection
- Coursepacks (print)
- Distance Learning materials (print)
- Distance Learning materials (web)
- Distance Learning materials (CD)
- Electronic Learning Environment (internal)
- Computer Aided Learning (CAL) packages
- Digitisation of unique/important collections
- Current Awareness Service
- Staff members' own publications
- Other

Fifty-three responded to this question. Only "current awareness service" did not appear amongst the responses. Figure 5 shows the *number* of services or purposes for which respondents were clearing rights.
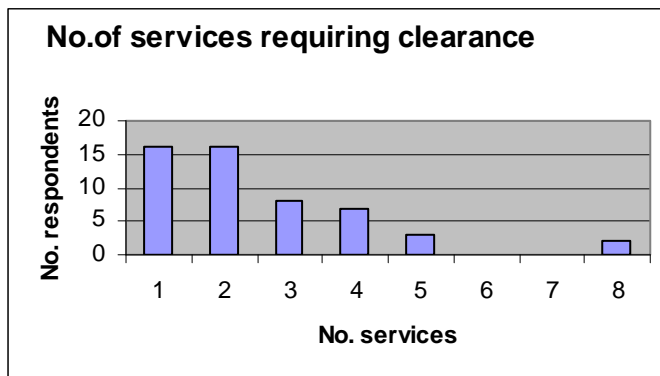
Figure 5

It can be seen that the majority of respondents (60%) clear rights for only one or two services. Just under 30% needed to clear rights for three or four services, and 10% had over five services for which they undertook clearance. Figure 6 illustrates the different types of service or purpose for which the respondents cleared rights.

3.4.1 Services requiring clearance
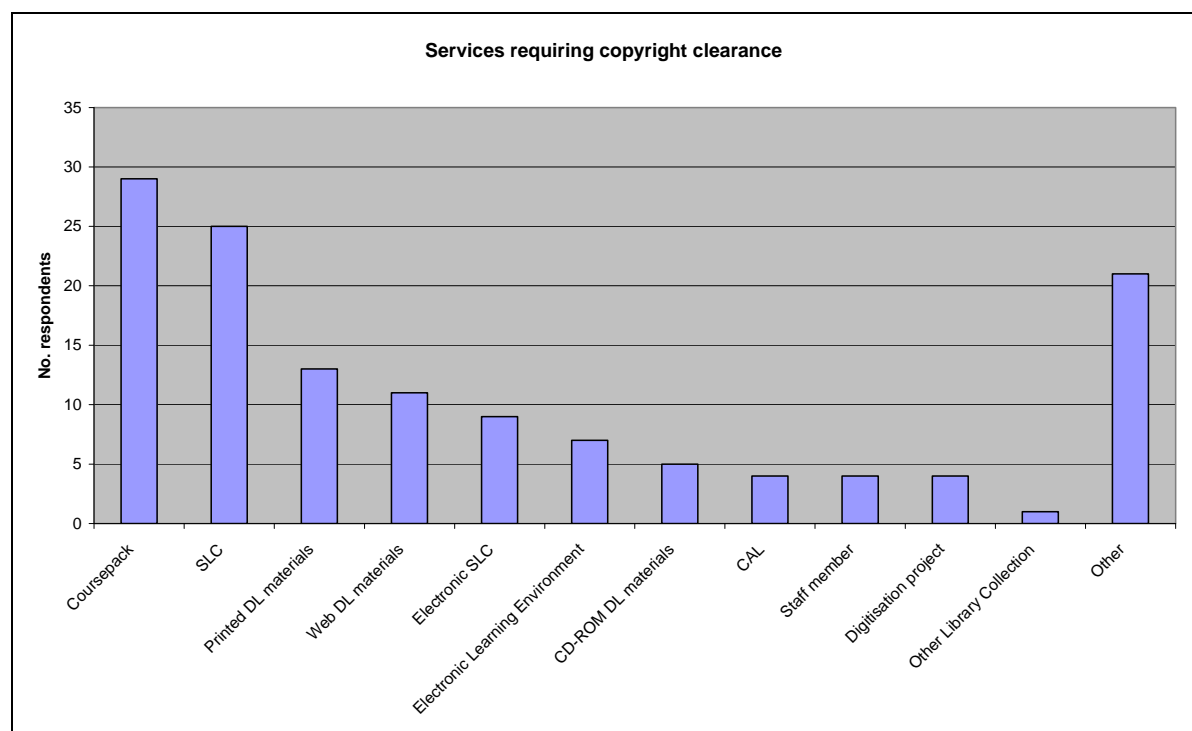
Figure 6

The purpose for which the largest proportion of respondents cleared rights was the creation of coursepacks. Indeed 55% of respondents (29) undertook this activity. As coursepacks are not usually cleared for library collections[17] but for classes of students, further analysis was performed to see whether it was the library-based clearers who were undertaking the clearance. For 16 of the 29 organisations (55%) coursepack

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[17] Indeed under the CLA Licence, it is not permitted for coursepacks to be placed in the Library Short Loan Collection.

clearance was done in the library, leaving 13 institutions (45%) where coursepacks were cleared elsewhere. This ratio correlates exactly with the overall numbers of copyright clearers within and without libraries as given in section 3.2.

Following closely behind coursepack clearance was clearance for Short Loan Collections with 47% of respondents undertaking this activity. Only one respondent mentioned clearance for other library collections.

Clearance for distance learning activities was very common. Overall 20 (38%) respondents indicated that they cleared rights for distance learning course materials of some kind. Interestingly printed distance learning materials were the most popular. They were cleared by 25% of respondents. Distance learning materials for web delivery were cleared by 21% of respondents and for CD-ROM delivery by 9%. Electronic Short Loan Collections were cited by nine respondents (17%) as a service requiring clearance, and Electronic Learning Environments by seven respondents (13%). Other electronic developments such as computer aided learning packages and digitisation projects were mentioned by a small number of respondents, as was clearance for individual staff members' own publications.

Twenty-one respondents (40%) said they cleared rights for purposes other than those listed. These included theatrical productions, slide collections, clearance of individual pages for journal binding, "Village packs of historical material", TV, AV and video, exam paper collections, software and film footage. One large clearance unit cited a long list of additional clearance activities thus: "TV, Video, Audio, Collaborative packages, University publications, actors, film footage, scripts, sound recordings, presenters, musicians etc."

3.4.2   The main clearance activities

Respondents were asked to indicate which was their main clearance activity. For organisations only undertaking one activity this was an easy question to answer! Of the 16 respondents in this category, eight (half) cleared for Short Loan, and five (just under a third) cleared coursepacks. The full picture is illustrated below:
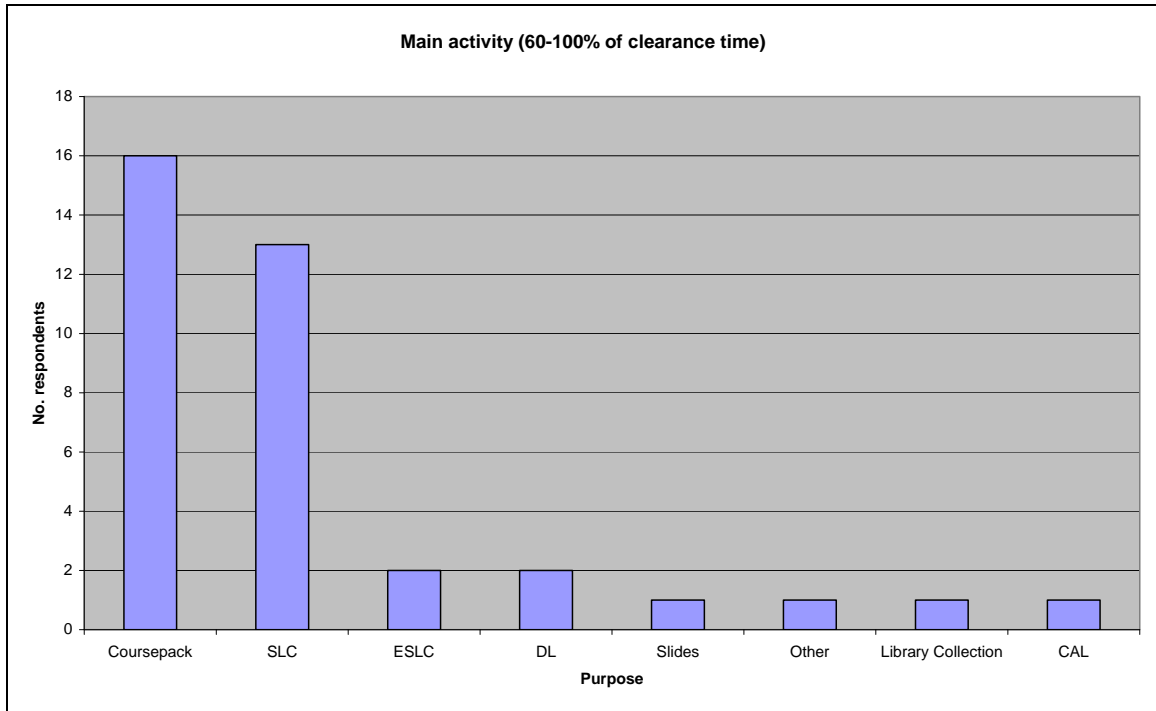
Figure 7

Coursepack and Short Loan clearance is the major activity for most respondents, although clearance for Electronic Short Loan and distance learning materials constitute the main activity for a small number of respondents.

3.5 What materials are cleared

Having asked respondents to list the services for which they cleared rights, Section C asked which material types were being cleared. Thirteen options were given including an "other" category. Figure 8 lists the responses to this question.
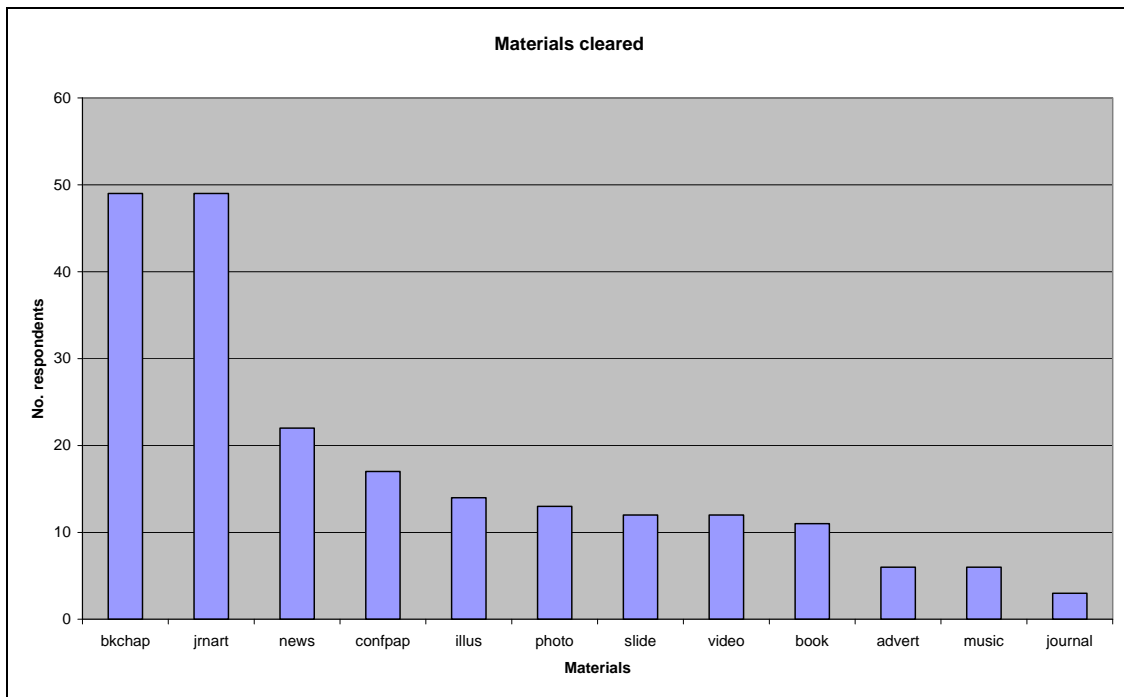
Figure 8

Ninety-four per cent of respondents said that they cleared book chapters and/or journal articles. Less than half this figure (42%) cleared the next most popular category of materials: newspaper articles. Visual materials such as illustrations, photographs, slides and video were cleared by between 23-27% of respondents. Interestingly just over one fifth (21%) of respondents stated that they attempted to clear whole books. Adverts were cleared by 11% of respondents, as was music.

3.6 Licences

Section D focussed on how the clearance was done. The first question asked respondents to indicate which copyright licences they took out from a list of eleven (including an "other" category). Fifty-four organisations responded. The results are given in Figure 9.
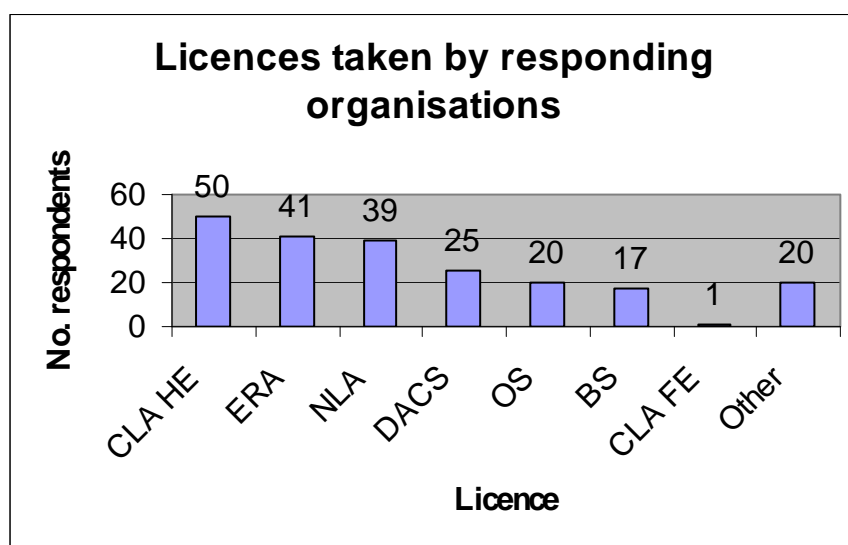
Figure 9

As the largest group of respondents (89%) were from Higher Education it is not surprising that 93% of those responding to this question took the CLA's HE Licence. The Educational Recording Agency (ERA) licence and the Newspaper Licensing Agency Licence were subscribed to in fairly equal numbers. Between 31-46% of respondents took out Design and Artists Copyright Society (DACS), Ordnance Survey (OS) and British Standards (BS) licences. Thirty-seven percent of respondents indicated that they took "other" licences. These are listed in the table below:

Other licences taken by respondents	
Licence	No. subscribing
OU Off-Air Recording Scheme	8
Licences with individuals	4
CLA Artistic Works Protocol	3
Performing Rights Society	2
Mechanical Copyright Protection Society	2
Electronic database licences	2
TV	1

Table 3

Fifteen per cent of respondents stated that they subscribed to the Open University Off-Air Recording Scheme. Four respondents said they drew up licences with individual rights holders, presumably because generic licences were not available. Three stated that they had taken out the CLA's new Artistic Works Protocol.

3.7 Clearing houses used

Respondents were asked to indicate which clearing houses they used and what their experiences of them were. Forty-four of the 57 respondents (77%) indicated that they used some form of clearing house. That left a large proportion – almost one-quarter (23%) that didn't rely on clearing houses at all. Figure 10 shows the services used.
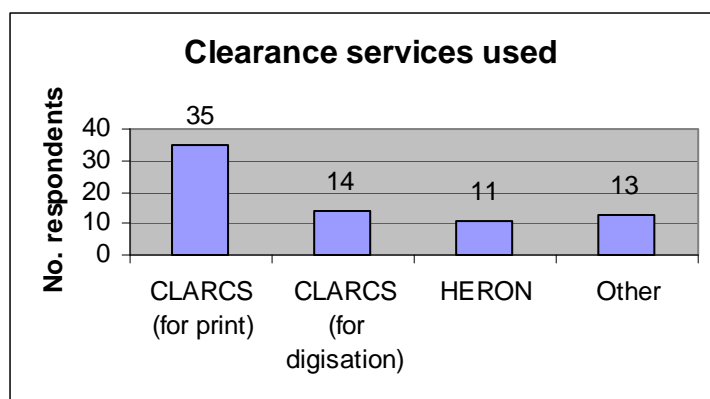
Figure 10

Corresponding with the large number of respondents clearing printed coursepacks (section 3.4) CLARCS was the most frequently cited clearing house. Interestingly the new Digitisation clearing house was fairly well used too. The pilot HERON service was in use by one-quarter of the clearing house-using respondents. Of the "other" responses, six mentioned the British Library Copyright-Cleared Copy Service. This was omitted from the services listed as options because the primary focus of the service is document delivery. However, many organisations use the copyright-cleared facility and in retrospect it would have been useful to have included it on the list. The US Copyright Clearance Center (CCC) was cited by two respondents as a service they use.

3.8 Experiences of clearing houses

3.8.1 CLARCS

Thirty-five respondents commented on their experience of the CLARCS service.
Responses were analysed and categorised as positive, mixed or negative, to get an
overview of the community's experience. The results are below.

Experiences of CLARCS
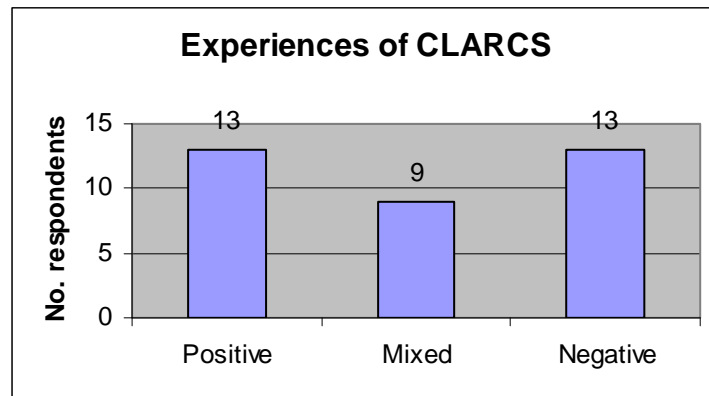
Figure 11

Opinion is clearly split about CLARCS. The positive comments included two that
rated CLARCS as either "excellent" or "very good". Eight were broadly positive with
comments such as "In general good", "OK on the whole", and "Quite good, some
non-replies". Two praised the speed of the service as "quick" while three applauded
the staff with comments such as "staff very courteous and helpful even when under
duress". Another wrote:

> CLARCS is a very good service, especially the web-based database for initial
> checking of clearance prices. I have had very positive experiences dealing with
> the CLARCS operators; they are efficient and tend to respond very quickly to
> enquiries (same day for phone calls and within 2 days for faxed queries).

The "mixed" responses consisted of those that found the service changeable, and
those that saw a good and a bad side to the service. In the first category there were
comments like: "Recently been a bit slow, but generally good", "Previously bad but
have since improved slightly", and "It varies. Sometimes good, at other times not so."
In the second category comments were of the "good but…" variety, with complaints
about "the high costs for study packs", CLARCS not giving "advice" or giving poor
advice, "offhand" staff and "problems getting through to CLARCS and …long delays
in receiving quotes."

The negative comments were strongly worded using verbs such as "appalling",
"dreadful" and "terrible". Many complained about "a very poor level of customer
service". One person described it as "bureaucratic, old fashioned, not designed with
users needs in mind [and] wasteful of resources", another as "very slow and
cumbersome". One respondent found the CLA a prohibitive intermediary between
library and publisher:

> "[CLARCS is] inadequate for my needs, quite often the CLA is unable to clear
> the quantity I require or clear for electronic use. So time is often wasted going

between the CLA and the publisher. The publisher doesn't want to know and the CLA can not move without the publisher amending their original contract!"

There were also complaints of an "unhelpful attitude", amongst staff. One respondent wrote:

> "their staff do not always know what they are doing and they have a "the customer is always wrong" attitude."

Another wrote, "the 'front desk' of CLA is intellectually not up to the job".

The length of time taken for clearance was bemoaned by a number of respondents with comments such as "slow to respond to emails", "poor response time – takes several days", and "takes weeks in busy periods". One respondent pinpointed specific delay problems with the introduction of new licence clauses.

> "CLARCS printed material service was appalling just after the 1998 re-negotiated licence came into force. CLARCS printed material service evidently could not cope with the volume of requests from all HEI institutions at the start of the current academic year, in October 1999. My institution signed up to the CLA Artistic Works (photocopying) protocol last year - CLARCS procedures for clearing artistic works in course packs were initially dreadful, with delays of several months."

Finally there were two comments about the expense of course pack creation.

3.8.2 HERON

There were just four comments relating to the HERON service. One stated that "HERON is developing nicely". Another wrote that "HERON promise a lot, but so far we haven't had any delivery for various reasons and we have little faith in their ability to meet our needs." One HERON-user cited the difficulties of copyright clearance generally as the main hindrance to the new service:

> "We are piloting HERON, thinking this would be an easy way to create electronic short loan materials. They are doing a great job, but we have found the whole thing takes so long to get clearances and then have stuff digitised, that it hasn't been of much practical use this session. Costs quoted by many publishers were well over the £100 mark and although we accepted some in the interests of getting some stuff ready to work with, it's not something we'd do on a larger scale or in the longer term. Costs of £10-20 were much more acceptable. We're also having difficulty with the system of them quoting for one academic session - if we request things late, then effectively we've wasted money because we can only use them for a few weeks/months before our time runs out and we have to pay again."

This issue of payment was raised by another respondent who stated that they would "mostly" use "HERON but will also use the CLA for the big British publishers, as they don't charge 10% on top of the clearance fee." However, this respondent was "aware that using HERON is important to Higher Education Institutions" because they felt "it gives us a stronger negotiating position to lower fees."

3.9   The clearance process

The last two questions in Section D related to how the clearance process was managed. Respondents were asked to indicate whether they used manual files, manual and electronic files, or an electronic database to keep track of their clearances. They were also given the opportunity to comment generally on the clearance process.

No respondents used an electronic database alone to manage clearance. Twenty-two used manual files, and twenty-seven used a combination of manual and electronic files. Twenty-seven respondents made comments on the clearance process. They could be grouped in the following categories.

3.9.1   Liaising with academics and faculty

Many respondents complained that their internal customers didn't understand the need for clearance, or the time-scales and processes involved in gaining clearance. According to one respondent "the library is often seen as 'being awkward' by our academic colleagues because we have to implement these [copyright] regulations." One respondent wrote of the "constant battle against the attitude that it is all about interfering with academic freedom." Another wrote that they needed to educate "faculty administrative staff…[to ensure] that they know when clearances are really needed." There were a number of comments suggesting that "Internal customers don't realise just how difficult it is to set [a copyright clearance service] up". As another wrote: "In the field of HE I am concerned that the volume of work is not clearly understood."

This misunderstanding leads to difficulties in getting adequate bibliographic information from academic staff within an appropriate time-scale. One respondent put this succinctly: "Requests from internal customers, Problems: 1. Insufficient bibliographic information. 2. Unrealistic time-scales (e.g. academic staff as requestors don't leave enough time for the clearance process.)" Another reported: "[Its] a constant problem to make academics appreciate the possible delays in getting clearance", which results in "Internal customers [that] never allow sufficient time to obtain permission".

3.9.2   Administration

Respondents drew attention to the fact that copyright clearance is a heavily administrative process that requires "'on the ball' admin staff". One wrote, "There is a lot of paperwork especially when I have to share information with academics and course administrator". Another echoed this comment, "A lot of paperwork is involved in record keeping and tracking progress, as a back-up to the electronic database."

3.9.3   Liaising with CLA and rights holders

There were many comments about liaising with the CLA and individual rights holders. Three explained that "frequently the CLA have no mandate from the publisher" which means they have to approach rights holders directly. One wrote that they deliberately avoid the CLA and write directly to publishers.

> "We now write direct to the Publishers for clearance as we did before the inception of the Licence. The Licence has not eased the clearance problem it has in fact made it more complicated and contentious. We are made to feel guilty

until proven innocent and not the other way around. There is no consideration for education or research purposes. As an institution we are not attempting to defraud but to provide education. In many respects it easier to write direct to the Publishers than to deal with the CLA."

Two main problems were highlighted with approaching rights holders directly: tracing them, and the delay in getting a response. Eleven comments related to the time-consuming nature of clearance. One wrote,

"it is very very time consuming for all concerned - despite being asked to give us course packs in plenty of time I always end up with a great rush at the beginning of each semester. It can be very hard to trace small publishers and imprints which have been swallowed up by big multi national publishers".

Another commented, "It is time consuming, lecturers often supply inadequate information and publishers tend to move far more frequently than the rest of the population without leaving a forwarding address." One respondent suggested that the reason for the delays was that "a significant number of publishers only seem to have one part-time person to deal with clearances". To compound the problem, not all rights holders grant permission as one person commented, "often it can take months if not years to get permission for some items. Some publishers refuse altogether…which is very frustrating as there is nothing you can do about it."

A final comment was from a copyright clearer who suggested that "The CLA needs to develop an easier way of doing repeat clearance for study packs".

3.9.4   Terms of permission

Once permission has been gained, problems still occurred in the form of "all the different publishers licences and requirements [which] can be very confusing and make the process more difficult when you have to tailor the system for each item". One respondent commented that "Licence agreements need to be written in plain English and crystal clear - a lot of lis-copyseek is about how to interpret ambiguity."

3.10   Clearance fees

Section E asked six questions relating to clearance fees:

- What's the average permission fee for the different types of clearance you undertake?
- What's the highest fee you've been asked to pay for a single item? And what was it for?
- What's the highest fee you've actually paid?
- What proportion of your clearance requests are granted without charge?
- What different types of charging mechanism have you come across? (e.g. royalties per use, one-off licence fees, etc).
- Who pays the clearance fees? (i.e. library, departments or individuals?)

3.10.1 Average permission fee

This data was difficult to analyse as few respondents actually indicated what the fees were for. There were three "average coursepack" quotes that ranged from £350,

through £650, up to £1,000. There were eleven smaller quotes ranging from 70p to £66.34 which may well have been for individual items within coursepacks or items for Short Loan Collections, as these were the most frequently cited services requiring clearance. Three respondents cited a five or six pence per page per student charge which again must have been for coursepack or electronic short loan materials. Two respondents said they wouldn't pay a fee for material. One wrote "We don't pay - if we are asked to pay, we find an alternative", and another stated, "We have currently not been paying as our site acts as a vehicle to promote the publishers materials and they only agree to a very small proportion to be used of each book."

3.10.2 Highest fees requested and paid

Twenty-three respondents stated the highest fee they were asked to pay and the highest fee they have actually paid. The results are listed in the table below.

Highest fees requested and paid			
Highest request	**What for?**	**Did they pay?**	**Highest paid**
"Many thousands of dollars"	To place an article on CD-ROM	N	"Less many thousands of dollars for the article on CD-ROM"
$7500	?	?	£217.50 for 150 copies
£2,265 (£7.55 an article)	300 copies of an article	N	10p per page
£900	Coursepack	Y	Not given
£639 (12p per page)	130 copies of 41 pp of book	Y	Not given
£500	TV clip	N	£250
£400	One item in coursepack	N	not more than £200
£300	Digitising book chapter	N	£222 for book chapter for use by 50 students in a distance learning course pack
£250	?	N	0 - we don't use it if we have to pay
£200	Journal article	N	£25 – article which was very heavily used
£188.75 (£7.55 an article)	25 copies of an article	Y	Not given
£174.85	One article	Y	Not given
$100	Book chapter	N	£41
£60 (60p per copy)	100 copies of tiny photograph	N	Not given
£50	?	N	£20 journal
£50	Book chapter	Y	Not given
£20	Business publication	Y	Not given
£7.50	Journal article	Y	Not given
£4.60	Multiple journal articles	Y	Not given
£2.77	Journal article	Y	Not given
50p per page	Book chapter	Y	Not given
25p page (per student)		Y	Not given
12p per page	Book chapter	?	Not given

Table 4

The top two highest prices were in dollars, which perhaps indicates that US rights holders charge some of the highest fees. It is difficult to draw any firm conclusions from this small sample, however, as in many cases it was unclear exactly for what was being charged. However it can be seen that fees that appear small at the per page level, can soon escalate when multiplied by the average number of pages in a journal article multiplied by a large class of students. It is worth bearing in mind that it is the largest classes of students that benefit the most from coursepacks, as traditional library provision cannot adequately meet their needs.

3.10.3 Permission granted for no charge

Thirty-seven respondents indicated the percentage of their permissions that were granted for no charge. The responses can be seen in figure 12.

Percentage of permissions granted for no charge
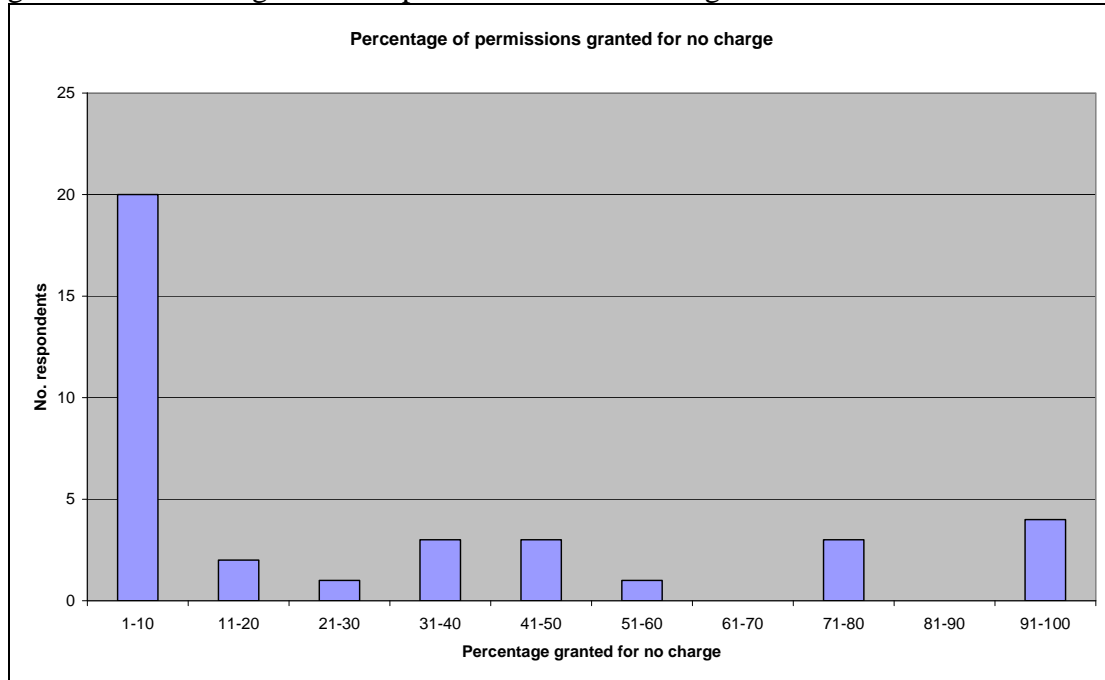
Figure 12

The largest group of respondents to this question (54%) indicated that less than 10% of their permissions were granted for no charge. Six respondents (16%) stated that between 31-50% of their permissions were granted for no charge. There was another peak of three respondents in the 71-80% range, and, interestingly, four in the 91-100% range. Although this latter category contained two respondents that didn't pay for their permissions (either by only copying material that was fee-free or by arrangement), that left two others that seemed to be quite successful permission-seekers!

Two respondents made interesting annotations to their response to this question. One wrote that CLARCS requests were never free, but that 46% of their direct requests were. Another commented that 55% of Short Loan requests were granted without charge, but only 7% of coursepack requests.

3.10.4 Charging mechanisms

Respondents were asked to list the different charging mechanisms that they had experienced. The results are given in the graph below.
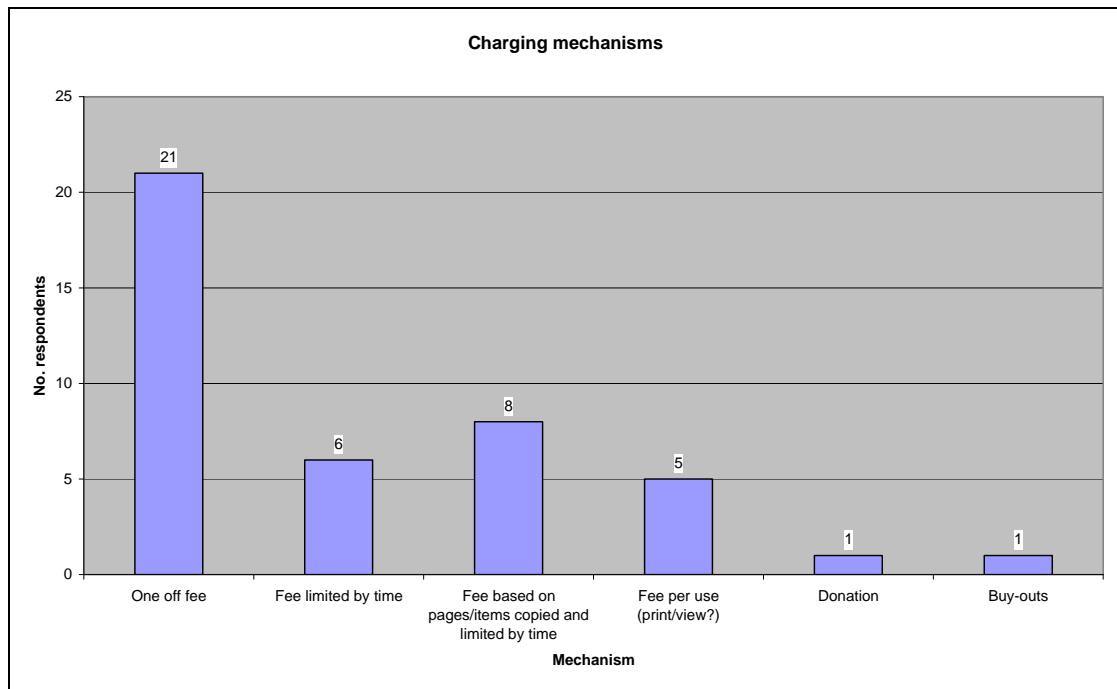
Figure 13

Six basic charging mechanisms were identified although they went by many different names. The most popular was the one-off fee, not limited by time or the amount copied. BLDSC copyright-cleared copies fall into this category. Fees could be limited by time in the form of annual fees or even a fee per semester, however a fee based on the number of pages or items copied and also limited by time was the second most common mechanism reported. This method is used for CLARCS fees where the number of pages in the item to be copied is multiplied by the number of students on the course. With the advent of electronic copying, fees per use – often referred to as royalty fees – also occured.

3.10.5 Who pays?

The final question in this section asked respondents "who pays the clearance fees? (i.e. library, departments, individuals)". There were 48 responses to this question. The results are shown below.

Who pays the fees?
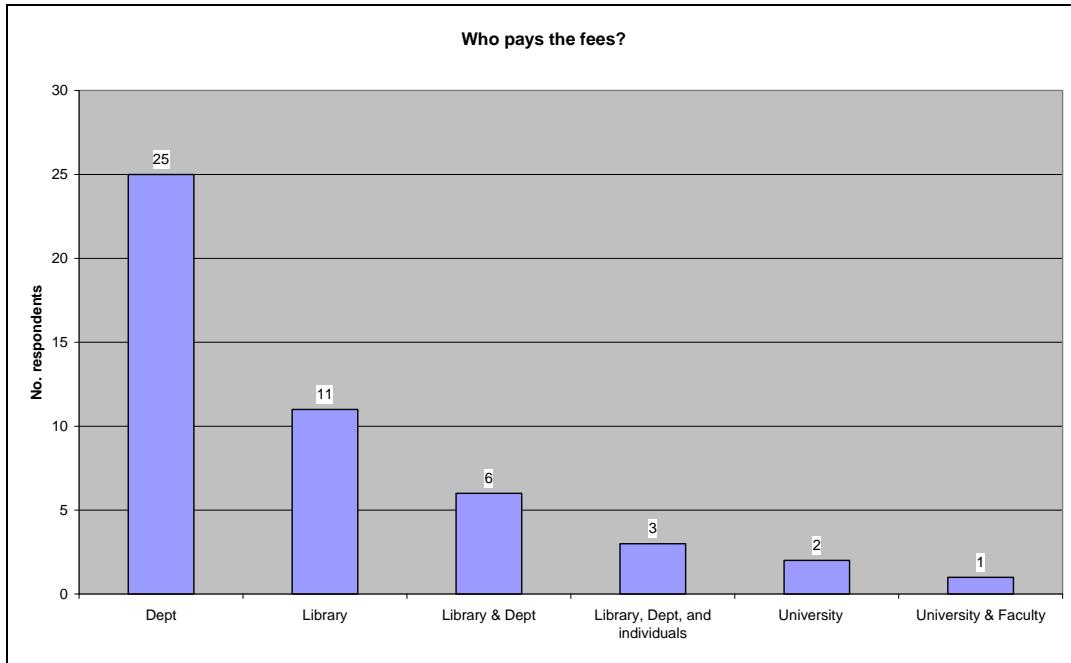
Figure 14

Overall, departments were most frequently listed as those that pay the clearance fees. Fifty-two per cent of respondents said departments' alone foot the bills. Less than half this number, 23%, said the library alone paid the clearance fees. In six cases the fees were split between the library and departments, and in 3 other cases with individuals as well. Two said that the University pays and one said that fees are paid at University and Faculty level.

To understand which services each category were paying for, data from section B on the reasons for clearance were plotted against the above data. The analysis may be flawed in that the services specified as requiring clearance in section B, may not have all been accounted for in section E, when the question about who pays for them was put. However, it was thought this correlation may indicate some general trends. The graph below illustrates what services departments were paying for.
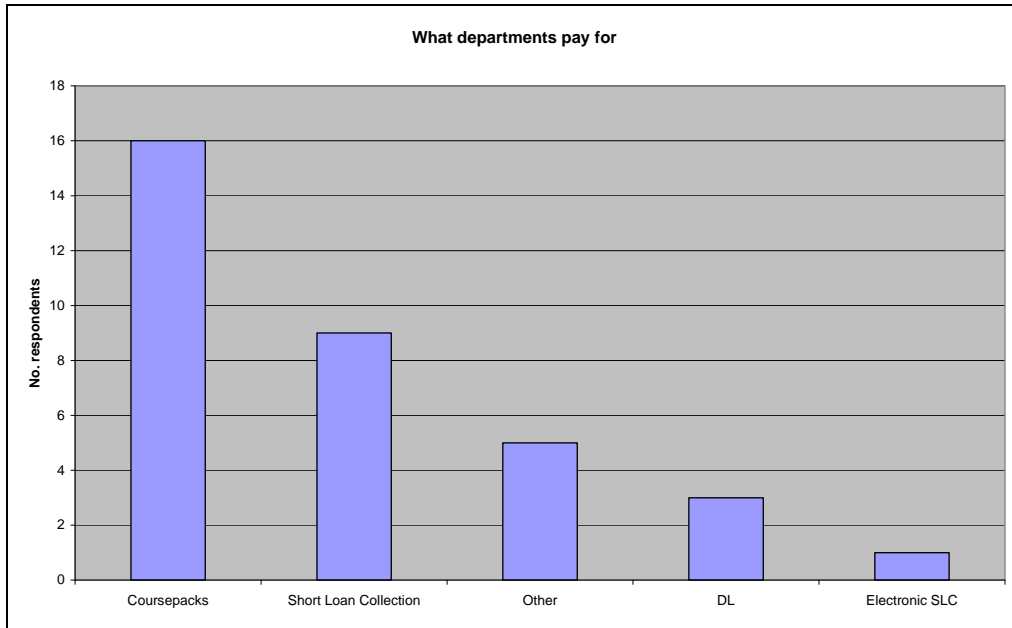
Figure 15

It can be seen that coursepacks featured heavily in the analysis – 16 occurrences (64%) in total. There were 9 occurrences of Short Loan, 3 of DL materials, and one of Electronic Short Loan.

The next graph illustrates what clearance fees libraries pay.
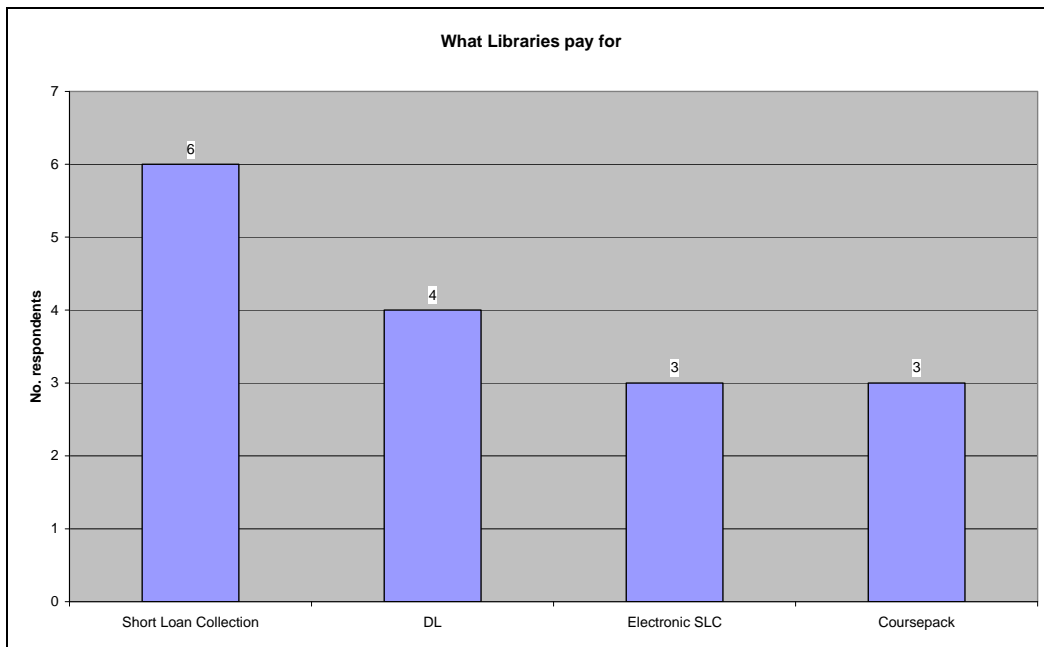
Figure 16

Short Loan Collection clearance fees – both print and electronic - feature quite heavily in this analysis. However three libraries indicated that they paid coursepack fees, and fees for DL materials. Three respondents stated that their current payment arrangements (two paid for DL materials, and one for coursepacks), were only

temporary and that in future they would look to charge the clearance fees back to internal customers.

3.11   The length of the clearance process

One of the most frequent complaints about the clearance process given in section D concerned the length of time it takes to get permission. Section F of the questionnaire asked five questions about the length of the clearance process:

- Can you estimate how many items you attempt to clear (as an organisation) per annum?
- What's the average time a permission takes to come through? (please specify for different types of material and purpose if possible)
- What percentage of permission requests do you have to chase?
- How many times will you chase a request before giving up?
- What proportion of permission requests are never answered?

It was expected that not all respondents would have accurate data with which to answer these questions, so estimates were encouraged. This does mean that the results are indicative rather than categorical.

3.11.1 Number of items cleared.

Twenty-nine respondents estimated the number of items they cleared per annum. Three respondents gave their answer in terms of coursepacks produced, namely, less than ten, 22 and 100 per annum. The other responses are tabulated below.

Items cleared per annum	
Items cleared p.a.	No. respondents
1-100	10
101-500	7
501-1000	6
Over 1000	4

Table 5

Excluding the large number of items cleared by one dedicated copyright unit with 24 full time staff (7,000-8,000 p.a.), the median number of items cleared per annum was 300 and the mean number was 439. However, the largest group of respondents cleared under 100 items per annum. Two institutions only cleared 2-3 items a year. Of the nine organisations that cleared over 500 items a year, eight did so using staff based in the library. Five of these had dedicated copyright staff based in the library and three used regular library staff who dealt with clearance alongside their other duties. The other organisation had a dedicated copyright officer based outside the library.

3.11.2 Average time to gain permission

Respondents were asked how long it takes, on average, for permission to come through, and to specify according to different types of material and purpose where possible. Thirty-six responded to the question. Twenty gave a figure without specifying the type of material or purpose to which it applied and these responses are illustrated in the graph below. The other sixteen responses are tabulated in Table 6.
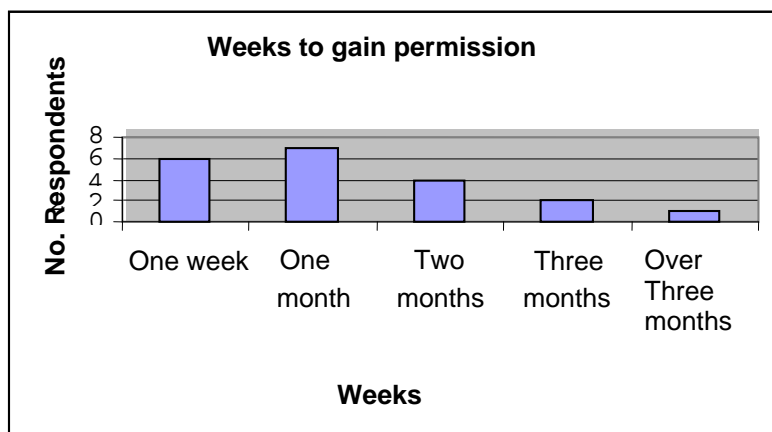
Figure 17

Two weeks was the median length of time taken to gain permission, although the mean (and mode) was one month. However, waiting for two or three months was not uncommon, and for some the waiting time was over three months. Those respondents that specified the length of time taken for a variety of clearance purposes shed more light on this. (Please note that the number of respondents does not add up to 16 as respondents gave different estimates for different clearance activities.)

Clearance time by clearance type

Type of clearance	No. respondents	Time taken for clearance (days)
BLDSC	3	3-14
CLARCS	10	instant - 21
CLARCS Digitisation	1	90
HERON	1	40
Music	1	60
Pictures/extracts	1	135
Direct to publisher	8	10-75

Table 6

Many respondents drew the distinction between the time taken for clearance if CLARCS had a mandate compared to the time taken if they don't. Responses such as "CLARCS 1-2 weeks, Direct 4-8 weeks" were fairly common. Another respondent compared the response time from UK and US publishers thus: "Direct from UK publishers - 2 weeks, Direct from US publishers - 2-3 months".

3.11.3 Chasing permissions

Respondents were asked to give the percentage of permissions they had to chase before receiving a response. Twenty-nine responded to this question, three of which said they didn't have to chase any responses. The remaining 90% of respondents had to chase. The responses are given in the figure below.
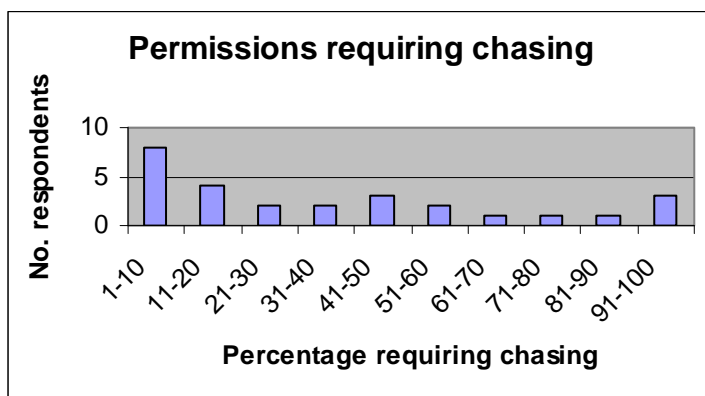
Figure 18

The largest group of respondents (8) chased between one and ten per cent of their permissions. The remaining responses were spread right across the spectrum with two saying they had to chase all or virtually all of their permission requests for a response. The mean percentage of items requiring chasing was 35%. The median figure was 30%.

Eighteen respondents gave both the approximate number of items they cleared per annum, and the percentage of items requiring chasing per annum. This allowed the calculation of a mean number of items chased per annum. Excluding the unusually high number of items chased by the large dedicated Copyright Unit (4200), the average number of items chased per HEI came to 97. The median number of items chased per annum was 40.

The second question asked respondents how many times they would chase an item before giving up. Twenty-four respondents answered this question. Two stated they would "keep going as long as the person asking for the copy is willing to wait". Another said they would "never give up!". The responses of the remaining 21 are given below.

Figure 19

Most respondents said they would chase more than once – and four stated that they would chase up to five or six times. The median number of chases performed was two.

Fifteen respondents gave the approximate number of items they cleared per annum, the percentage of items requiring chasing per annum, as well as the average number of chases they gave to an item per annum. This allowed the calculation of a mean number of chases per annum. Again, excluding the unusually high number of chases performed by the large dedicated Copyright Unit, the average number of chases per annum was 315.

3.11.4 Requests never answered

The final question in this section asked how many permission requests are never answered at all. Twenty-three answered this question. Two stated that they always receive a response. Five said that very few requests were never answered. One wrote "Publishers are hopeless if we have to go direct to them...most never respond but as part of the total clearance process this is a very small [percentage]". Others concurred that it was the direct applications to publishers that were more likely to receive no response. Another elaborated that it was "mainly overseas publishers" that fell into this category. The remaining respondents gave a percentage of their total requests that never receive a response. The results are given in the graph below.
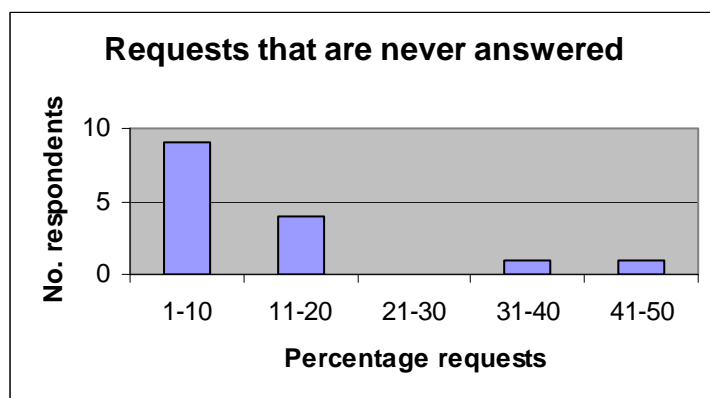
Figure 20

Fifty-six per cent of those answering this question said that between one and ten per cent of their requests were never answered. A smaller proportion said the figure was between 11 and 20 per cent. One respondent stated that 80% of their HERON requests had received no response. This was probably due to the pilot nature of this new service. Excluding this one respondent's experience of HERON, the mean proportion of requests never answered was 12.5%, while the median was 5%.

Thirteen respondents gave both the approximate number of items they cleared per annum, and the percentage of requests that were never answered. From these figures, the mean number of requests that were never answered came to 25, while the median figure was higher at 40.

3.12 What the future holds

Section G offered respondents the opportunity to give their view on what the future holds for copyright clearance. The first question was a "straw poll" on the question: "Do you think copyright clearance is going to become easier in the future?". Forty-four respondents answered this question, sixteen (36%) believed it would get easier, 28 (64%) thought it would not.

Is copyright clearance going to become easier?
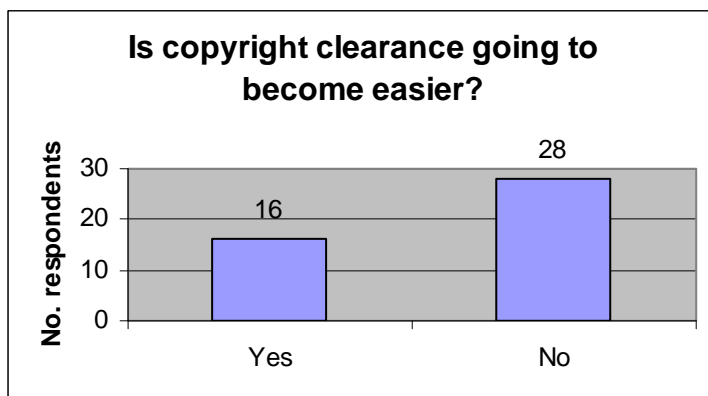
Figure 21

3.12.1 Copyright clearance will get easier…

Those respondents that thought copyright clearance would become easier gave a variety of reasons for their optimism. One or two felt it just couldn't get any worse, with one saying "Otherwise the law will be ignored - 'they' cannot sue everybody." Only one respondent put their hope in the new EU Copyright Directive to improve the clearance situation. More cited a change in the licensing and clearance arrangements as a catalyst for improvement – i.e. "more publishers… participating in the CLA/CCC agreement which makes clearance much quicker", and the establishment of HERON as an alternative one-stop-shop.

Others thought that the solution was technological. One respondent wrote:

> I think the current move towards e-archiving, once it becomes a critical mass and RAE-acceptable, will lead to the downfall of traditional journals and the freeing of academic work for academic use. Well, on optimistic days I do!

Some commented that the increase in electronic products, such as e-journals and full-text databases, that can be used under licence, will gradually eliminate the need to clear multiple print copies for coursepacks, or for copies for Short Loan. Others felt that an increase in the electronic trading of intellectually property would mean that publishers would be more geared up to dealing with electronic copyright clearance requests, and therefore the process would be quicker.

3.12.2 Copyright clearance will not get easier…

The reasons why respondents thought that clearance would not get easier fell into four main categories: electronic copyright clearance, legislation, licences, and volume of clearance.

3.12.2.1   Electronic copyright clearance

Six respondents thought that the relatively new need to gain copyright permission to include items in electronic collections would increase the complexity of the clearance process. One of the reasons cited was that many "publishers [are] not in any system of clearance" for digital copyright. Another speculated whether the BLDSC service would "transpose…into an electronic environment".

3.12.2.2 Legislation

There were many concerns about the forthcoming EU Directive and subsequent changes to copyright law. One respondent wrote: "[The] implementation of EU directives may mean more material has to be cleared individually (i.e. if S41 disappears)". Another thought the "forthcoming Directive" was "bound to be more difficult". It struck one respondent that copyright is now "an international problem which will not be solved in our interests."

3.12.2.3 Licences

Five respondents made comments about the increasing volume and complexity of licensing arrangements. One respondent wrote: "more and more legislation is appearing, e.g. now for photocopying images within books!" Another stated:

> More and more has to be cleared separately for each item and more and more fees paid (e.g. under CLA HE digitisation licence) this increases the administrative burden…[The] complexity of licences and material covered by copyright (e.g. all the electronic developments) means that we spend more time puzzling out what is legal and making sure we are applying the right rules.

Two felt the situation would be exacerbated as fewer publishers licensed their rights to intermediaries. One wrote: "I think that in the future publishers will be less willing to allow rights agencies to work on their behalf particularly when clearing for internet/digitisation use."

Three respondents felt that licensors were becoming more "aggressive" by actively pursuing those organisations that they felt should be taking out their licences. One person bemoaned what they saw to be the education sector's weak bargaining position when it came to copyright licences, and another complained that the "The CVCP seem unable to negotiate a sensible licence" and that "The CLA /publishers seem to have all the clout."

3.12.2.4 Volume of permissions

Some respondents saw the volume of clearance increasing in the future with more restrictive legislation necessitating more clearance, and for a wider variety of services. "People will want to use copyright material in more and more different ways", said one respondent. It was felt that the increase in demand would slow the clearance process down - as another respondent wrote: "I've been waiting years and people are still saying 'the publishers can't cope with this'".

3.13 Other comments

The last question in Section G gave respondents an opportunity to make any other comments about "copyright clearance in libraries generally, or your library in particular".

Many comments reiterated how burdensome copyright clearance was. Attention was drawn to ambiguous legislation and licences, the time-consuming nature of clearance and the costly administrative burden. One person wrote:

> "It has created a whole level of administration, in the library mainly relating to our offprints collection, and the need to constantly monitor the faculty administrators and ensure that new staff are properly informed."

Another suggested:

> "Clearance is very costly in administrative terms. Agencies and owners should look at streamlining applications through Websites or agencies and go for standard pricing. Reduced prices would expand the market, and revenue flows - read Adam Smith!"

Three Libraries stated that they only have enough staff to take on clearance for library services and that they have to get departments to undertake their own coursepack clearance. Many realised that this wasn't economically sensible for the organisation as a whole, and stated the need for a centralised copyright unit.

> "Except where obtaining permission directly affects the library, I think that obtaining clearance (e.g. for courses) should be done by those who are responsible for putting the material together (and who pay for it) or preferably by a central Copyright unit/person."

Another 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. I don't have strong feelings about whether this sits within the library structure or not, so long as we can work closely with the Unit."

One or two respondents looked at the copyright situation more broadly and suggested action:

> "the LIS community needs to get its act together to influence all those involved (rights holders, publishers, governments) to improve the copyright situation especially in educational establishments. The process is unnecessarily complicated and the CLA never give a straight answer! Our students are losing out and cannot understand why an item can't go into the short loan when so much other information is freely available over the WWW. 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!)"

Two respondents commented that they would be starting electronic reserve collections in the future, one of which would be using HERON.

3.14 Copyright Clearance Units and Copyright Officers

The final section of the questionnaire was addressed to organisations with dedicated copyright clearance posts or units. The questions were:

- What was the impetus behind the establishment of the copyright unit or copyright post(s)?
- When was the unit or post(s) established?
- How is the unit or post(s) funded?
- How is the unit or post(s) managed? (i.e. to whom do they report?)
- What proportion of the unit or post's time is spent giving copyright advice as opposed to performing copyright clearance?

Eighteen respondents completed this section. Referring back to the data provided in Section A, it could be seen that the number of dedicated copyright clearance staff in these organisations ranged from 0.2 to 24. The mean was 2.4 staff and the median and mode was 0.5 staff.

3.14.1 Why establish a copyright post/unit?

There were a variety of motives for establishing a dedicated copyright clearance post or unit. 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 Unit 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!"

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 Licence with accompanying HE Copying Accord.

Three respondents cited efficiency, order and visibility as the primary motives for setting up a centralised copyright unit. As one stated, the impetus behind the establishment of the unit was:

> "To centralise the clearances which were taking place within each faculty. To provide a point of contact for help and advice. To raise awareness of copyright within the University and ensure compliance."

For another it 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."

Others set up copyright units for particular initiatives such as electronic reserve projects, and coursepack services, or in response to general demand, or in one case,

the "awareness of [the] importance of copyright in [the] QAA". One large Copyright Unit was set up in response to the organisation's huge publishing output.

3.14.2 When were the posts/units established?

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

"Age" of the clearance units/posts		
Year established	Years in existence	No. of units/posts
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 7

It can be seen that the majority of units were set up in the last three years, although a fair number have been in existence for over ten years. All but one unit was set up after the creation of the CLA in 1982.

3.14.3 How is the unit funded?

Again, sixteen responded to this question. The responses are given in the graph below.
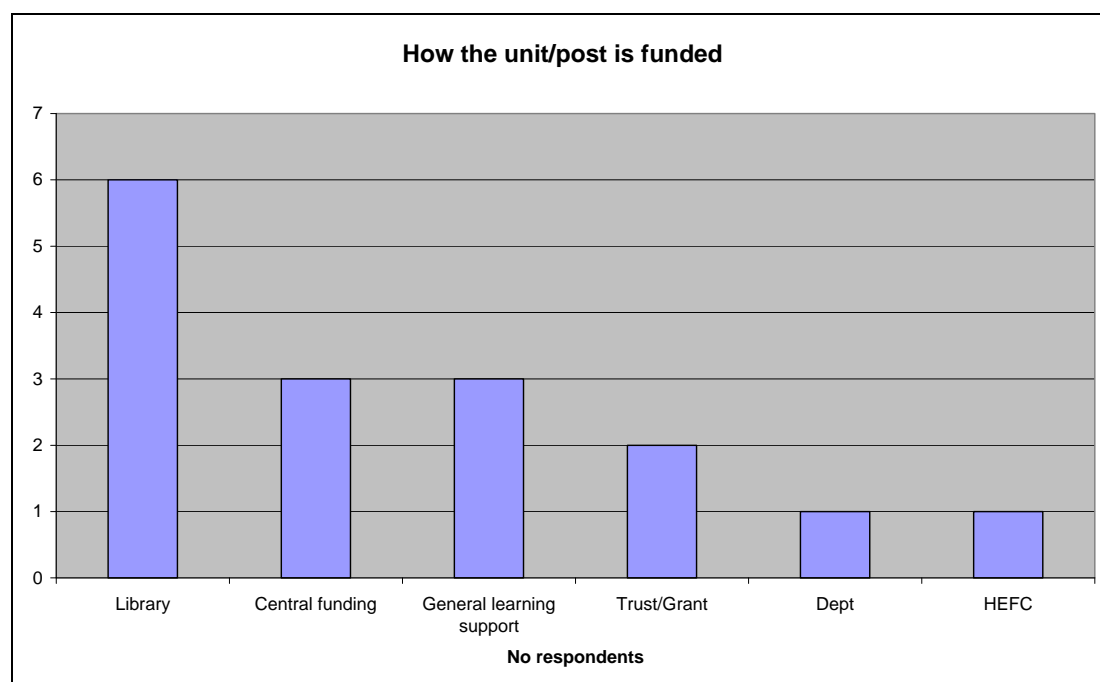
Figure 22

It can be seen that the majority of posts are funded out of a library or information services budget. Other posts are either funded centrally or through a generic "learning support"-type budget. Two respondents mentioned funding from a trust or grant but no further details were given.

3.14.4 How is the unit/post managed?

As was to be expected considering the wide variety of job titles involved in copyright clearance, there were a range of personnel responsible for line-managing the clearance activities. The answers given are tabulated below:

How is the unit/post managed?
Pro-Vice Chancellor
University Librarian
Librarian
Deputy Director of LIS
Assistant Director of Information Services.
TV Services Manager and Head of Academic Services
Online Learning Centre Manger and Learning Support Services Manager
Dept Admin Manager
Academic Services Librarian
Copyright Co-ordinator
Student Services Librarian
Project Manager

Table 8

Those responsible for managing the clearance activities of the dedicated posts and units ranged from Pro-Vice Chancellor through Librarians, Library Staff, Copyright Co-ordinators, and Project Managers.

3.14.5 Advice vs. clearance

The last question in this section asked what proportion of the post/unit's total "copyright" time is spent giving copyright advice as opposed to clearance. Eleven respondents were able to answer this by giving a percentage. The results are illustrated below.

Percentage advice vs clearance
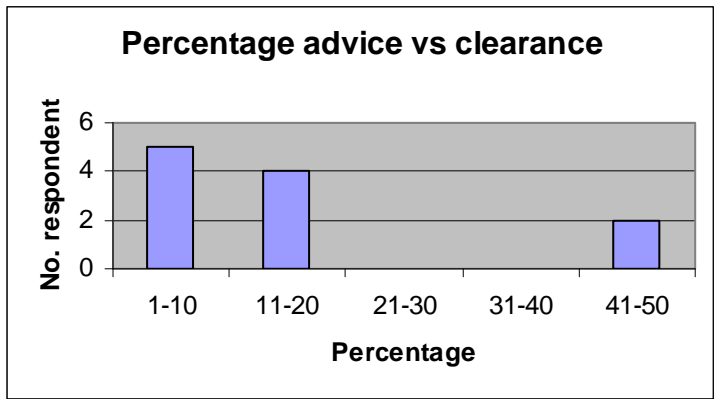
Figure 23

No respondent spent more than 50% of their time giving advice. The most common response was ten per cent, although four respondents spent between 11-20% of their time giving copyright advice.

4.0 Responses from Copyright Advisors

To supplement the questionnaire to copyright clearers an email was distributed asking those that only advised on copyright to answer some questions on their advisory role.

4.1 Organisations

Eleven organisations responded to the email, ten of which described their organisation as a Higher Education Institution and one of which was from an organisation representing HE Libraries.

4.2 Job titles

Once again, there was a wide range of job titles associated with copyright advice in HEIs. However one theme did arise: six of the ten HEI respondents were employed at Assistant or Subject Librarian level and had copyright responsibilities that were additional to their main duties. Four were subject specialists with the additional title of "Copyright Officer", "Copyright Licensing Co-ordinator" or "Copyright Co-ordinator". One respondent had copyright duties written into her main job title of "IPR and Projects Officer". The four other HEI respondents included a "Head of Library and Media Services", a "Teaching Fellow & Open & Distance Learning Policy Manager", a "Legal and Constitutional Adviser", and a "Planning and Administration Co-ordinator from an Information Services Directorate".

4.3 Time spent giving copyright advice

Only five respondents gave an estimate of the amount of time they spent advising on copyright. The responses were converted into percentages. They ranged from 1-20% of a staff member's time. One respondent wrote, "I would say that 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 respondent highlighted that it wasn't just the copyright advice that occupied her, but the time spent "learning up about copyright".

4.4 Advisory areas

The final question asked respondents to list the sorts of topics they have had to cover as copyright advisors. Some responses covered their general remit as an advisor and others gave some of the more detailed queries they have had to answer.

In terms of the overall remit of the copyright advisor, one respondent wrote:

> "My role in theory involves only responsibility for copyright matters as they relate to the library, and one of the senior members of the University's central administration has overall responsibility for copyright matters at the University. However, many general questions about copyright are posed to the Library (presumably because library users are accustomed to view the library as 'the place to get information', and don't view the central administration in this way) either by phone or in person at the enquiry desks, and these questions tend to be referred on to me."

No other respondents drew this distinction, but the core areas on which most seemed to advise were:

- What is allowable under the CLA Blanket Licence;

- What is allowable under the DACS, NLA, and ERA licences;
- How to create coursepacks;
- What can and cannot go into Short Loan Collections.

However, the actual breadth and diversity of queries was far greater. One respondent's sample of queries included "copying [an] illustration from [an] old book to use in [a] new, 1920s photographs, tape-recorded archive of dialect speakers…[and] how to trace [a] copyright holder for a song". Others mentioned digitisation, copyright in theses, and "the rather bizarre restrictions concerning replacing vandalised pages". Two people mentioned that their copyright duties involved negotiating licences for commercially produced electronic databases. However, many stated that they "produced a number of leaflets and copy for our website, and regularly do mailshots to our academic staff to remind them of copyright regulations" or similar.

Only one person was also involved in advising staff on their own copyright in terms of "ownership, publishing and related contracts" in addition to the exploitation of third party copyright.

5.0   Interview Visits

Five HEIs with Copyright Clearance Services were selected for interview. They were selected on the basis of the number of years they had been established, their geographical location, whether they were a "new" or "old" 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 9

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 fits into the larger intellectual property management structure in the organisation;
- Why the service was established and how it is funded;
- How the service is received by, and promoted to, the organisation;
- How clearances are processed;
- Views on the future of copyright clearance;
- How the service staff keep up-to-date with copyright issues.

5.1   How the clearance service fits into the overall IP management structure

The table below illustrates the responsibilities of the five clearance services. It can be seen that the remit of the services varies from taking responsibility for a whole range of different intellectual property matters such as data protection, ownership of the organisation's copyright and negotiating licences for electronic resources, through to a specific coursepack clearance-only remit.

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 10

The clearance services within institutions D and E had the most IPR responsibilities. Institution D 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, this post is the focus for IP management for the institution. This institution is the only one that dealt with data protection and copyright clearance in the same place. Institution E is a large clearance service with 24 full-time copyright staff. It is little wonder therefore that they are able to take on so many rights management responsibilities. Institutions B and C had similar responsibilities to each other. This may stem from the fact that their situations are similar: both are new universities with large student numbers, and both units were set up in the last 4-5 years. Both services were seen as the main copyright advisory centre for their organisation, and took on a wide variety of clearances. The "youngest" clearance service in Institution A had the most closely defined remit. This service was only responsible for coursepack clearance and some awareness raising. It may be that this role will expand once the service becomes more established.

The table below illustrates some of the other intellectual property responsibilities within the organisations, and who takes on those responsibilities.

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)	Electronic Resources Co-ordinator	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	-	Some Depts may clear their own rights	-
Other advice	Media Services Librarian	-	-	Graphics Unit; Library	-

Table 11

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 such as the CLA Licence was either the institution secretary or the clearance unit itself. 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. Patents did not fall within the remit of any of the clearance services interviewed. They remained the responsibility of commercial or research arms of the organisation. Two clearance services were involved in the negotiation of electronic resource licences. In the other three cases this was the responsibility of library staff. Similarly 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.

5.2   Establishment of the Clearance Service

5.2.1   *Why the service was established*

The introduction of the CLA Licence and CLARCS motivated many institutions to appoint specific staff to handle copyright and its associated clearances. 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. Institution A found that increasingly restrictive CLA licences meant that clearances were becoming too burdensome for departmental administrative staff. Academics therefore lobbied for a centralised clearance service that was set up in the Library. In the three other cases the impetus for establishing the service came from the Library itself. Institution B wrote a proposal document that gave the following persuasive arguments for setting up a clearance service:

> "[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 by that the best value for money is obtained when negotiating clearances. The availability of the service also raises awareness of how copyright material can be used imaginatively and legitimately to support students' learning."

The document also listed the following benefits of a clearance service:
"

- 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.
- Provide an enabling service to support innovation in learning strategies, especially open and distance learning, by negotiating rights clearances for the inclusion of copyright material in learning materials (in both printed and electronic formats).

- Improve the educational experience of students by negotiating clearances for the production of course readers so that students can easily obtain basic information needed for modules which they are studying."

This service was initially set up as a pilot in 1997 for six months. The success of the service has meant it has continued on a permanent basis

Institution C gave similar reasons for establishing their service. The Learning Centre was concerned that the institution stayed within the law, and that they offered a streamlined service to staff thus encouraging legitimate and creative learning materials. It was also a Librarian at Institution D that championed the creation of the "Data Protection, Copyright and Licensing Co-ordinator" post. The only very different approach to establishing a clearance service came from Institution E. Here the service was originally set up to support the publishing activities of the organisation. Although the remit of the service has now considerably widened, it is still principally concerned with published outputs, rather than "home-photocopied" coursepacks or teaching materials.

5.2.2 How the service is funded

All the clearance services interviewed receive top-sliced funding from the institution. In all cases copyright fees are charged back to internal customers, but administration charges are not passed on. 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 pays for stationery, training courses, and for some interim copyright fees before the monies are reclaimed from departments. 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. With recent restructuring, the clearance service has been fully incorporated into the Learning Support Services structure. Some departments choose to sell coursepacks to students through the Campus Bookshop. Originally the bookshop earned £2 on each pack sold. However, the new management of the bookshop are adding 10% commission in the first year. The clearance service invoices the bookshop for the copyright fees for the packs, and all unsold packs have to be purchased by the Department. Last year almost £6,000 was lost through unsold coursepacks. However, the CLA's recently proposed "sale or return" coursepack clearances initiative may eliminate such losses. 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). Institution E has the largest staff bill at £600,000 per annum - and the operation is still expanding. Six new posts were created last year. Each course has its own budget from which copyright clearance charges are paid.

5.3 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 question intended to examine that relationship at the five institutions interviewed.

5.3.1 Promotion of services to the organisation

The clearance units used a variety of methods to promote their services to their organisations. These included web pages, information leaflets, meetings with course leaders and heads of schools, email adverts, and memos on changes to the licence and so on. Two institutions run internal training courses and presentations on copyright. Another places notices by photocopiers explaining what constitutes coursepack copying, and advertising the clearance service. One service is advertised in the University Handbook. At Institution B subject learning advisors promote the service to the departments with which they regularly liaise.

5.3.2 How the service is received by the organisation

Four of the five institutions received positive informal feedback from their internal customers. At Institution A, the Copyright Librarian has received praise for her newly designed web pages and copyright clearance forms. She has also built up a good relationship with staff through her "open door" policy. Institution E saw a positive attitude as being very important when dealing with copyright. They never like to say "no" to a request outright, but always like to provide alternative options for their internal customers. Rather than picturing rights issues as another hurdle over which academics must leap, they offer to "take the problem off [academics'] hands" so that it will be "one less thing for them to worry about". Rights are seen as an essential part of the teaching materials production process at Institution E. This is not only because of the professional, published nature of the materials, but also because the Rights Manager has the authority to prevent publication of those materials if he is not satisfied 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.

Alongside the generally positive feedback received by the clearance service at Institution B, there is some confusion and wariness at training sessions (mainly disbelief at the various terms and conditions). A small amount of negative feedback has been received concerning the cost and the length of time it takes to prepare and clear a course pack. At Institution C the number of enquiries and requests are growing so this is taken as a positive sign.

5.4 The clearance processes

5.4.1 Clearances undertaken

Three of the services interviewed would take on any clearance requests submitted to them. Institution A restricts its service to coursepack clearances and is rarely asked to take on other clearances. However, the Copyright Librarian may assist in identifying rights holders for other permissions if they are not too busy. Institution B tends to avoid audiovisual clearances, such as use of music/film in students' projects, although they do offer advice. This is because of the amount of work involved, the high number of requests and the low success rate. The technicians in Learning & Technology Services usually handle the bulk of these requests.

5.4.2 Receiving requests

All of the services have designed clearance request forms to ensure they receive all the information they need for the clearance process. Institutions D and E have one form per item to be cleared, whereas Institutions A-C allow multiple requests to be

entered on one form. Institution D has two forms: one for book requests and one for journals. Institution C has three forms, one for CLARCS, one for HERON, and one for anything else (e.g. clearance for a lecturer's own book). Institutions C and E have guidance notes to accompany the forms. Samples of the forms can be found in Appendix 3.

The forms vary according to the range of clearance work undertaken by the service. The common denominators of each form are the bibliographic details of the item to be cleared, the number of copies required and internal customer details. The more detailed forms ask for:

- Format of reproduction (Hard copy, CD-ROM, Internet etc.);
- The proposed distribution (internal, UK, world-wide, etc);
- Two copies of the material to be cleared (including the copyright line of the original source, etc.)
- Publisher name and address;
- Percentage of original book or article;
- Details of illustrations or figures and whether they are to be redrawn;
- If the material was authored by a member of the Institution.

Institution A is in the process of designing a new clearance database through which it hopes to receive requests online.

In terms of lead-in times, one institution suggests a four week lead-in time, three institutions recommend that requests are submitted six to eight weeks prior to the course start date, although Institution E asks for a six month lead-in time for text clearances. (Audiovisual clearances can be virtually instantaneous as they are agreed by telephone.) However, these are only recommendations, as one interviewee said:

> "I usually ask for 6-8 weeks, but that doesn't seem possible for most academics! Either they don't realise they need clearance until just before the course begins, or they don't know what material they will be using until the last minute."

Backlogs of requests are common as a result. Institution B dates the request forms on arrival so they can be dealt with on a strictly first-come, first-served basis. At Institution A the backlogs deter some departments from using the centralised service if they are in a hurry. Such departments often clear their own coursepacks as well using the central service.

5.4.3 Distribution of workload

The clearance service at Institution A consists of the Copyright Librarian so inevitably she takes on all the clearance work. Only the reprographics element is left to the ordering department. Two members of staff run the services at institutions B, C and D. At Institution B the workload is distributed as follows between the full-time Copyright Clearance Officer and a part-time (0.5 FTE) Copyright Assistant.

Copyright Clearance Officer -
- identification of rights holders/contact details
- contact CLARCS (online database) or draft letters to rights holders,

- provide progress reports to requester
- establish costs –whether CLARCS fees or invoices from rights holders
- update clearance database
- final report (excel spreadsheet, or table)
- authorise any CLARCS fees/ re-charge/pass invoices to Schools
- if course pack is for sale through bookshop:
- collate and compile material
- determine reprographics costs
- send to reprographics with appropriate cover pages
- update pricing/stock control spreadsheet for bookshop
- deliver finished packs to the bookshop

Copyright Assistant-
- check address details, fax numbers
- fax requests to rights holders
- update database and code book
- sort incoming mail & faxes
- send out chaser letters
- administration tasks connected with training sessions etc

At Institution C, the Senior Information Advisor (Media Services), spends 40% of her total employment time dealing with copyright matters. These include managing the clearance service and dealing with advisory questions. This takes about 40 per cent of her time. The 0.5 FTE Clearance Assistant deals with all aspects of the clearance work. There is a similar set up at Institution D where the Data Protection, Copyright and Licensing Co-ordinator manages the service, and a Clearance Assistant spends two hours per day (approx. 30% of her time), clearing the rights.

The 24 full-time clearance staff at Institution E are organised into the following team structure:

Rights Manager

Assistant

Deputy Rights Manager (Acquisitions)

Legal Affairs Administrator

Finance Administrator

3 S+C staff

Rights Advisor

Assistant

Rights Advisor

3 Rights Executives

3 S+C staff

3 Rights Executives

3 S+C staff
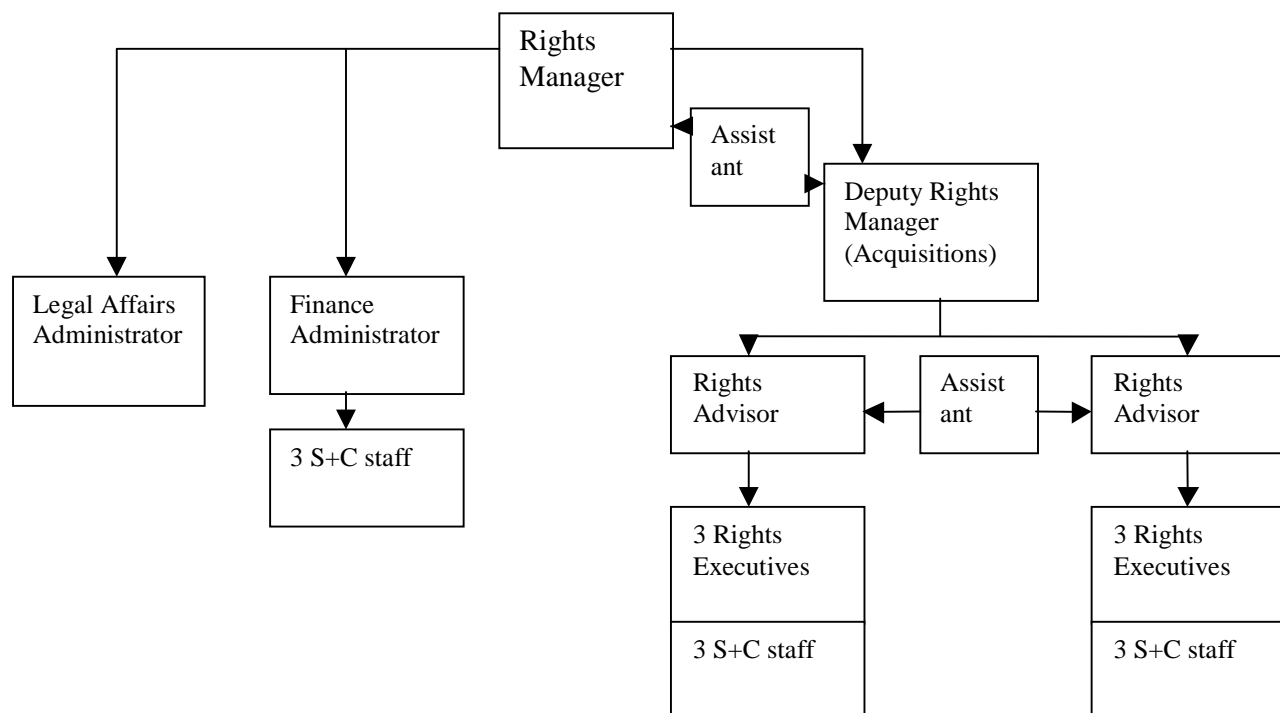
Figure 24

It can be seen that the Deputy Rights Manager who oversees two teams, each of which is headed up by a Rights Advisor, manages the main clearance work. The two teams used to be divided by specialism into audiovisual or text clearances. However, they found that the different teams were negotiating with the same rights holders for permission to make material available in different formats (CD and print, say). They are now reorganised into a faculty-based structure, each team serving a different combination of faculties. The new structure allows one team to assist another if one is less busy than the other.

5.4.4   Set procedures

Each institution had its own established clearance procedures depending on the type of clearance involved. However, the first stage of all text clearance processes was bibliographic checking of the receipted requests. A number of bibliographic tools were cited as being of use. These are listed below:

- CLARCS database
- Local OPACs
- BL OPAC
- COPAC
- Internet (e.g. publishers home pages)
- Dawsons
- LibWeb
- Ullrichs
- Book Data's Bookfind
- AcqWeb's Directory of Publishers and Vendors

The practice at Institution A is to check the CLA database for mandates and prices and then submit an initial quote to the department for approval, before approaching

the CLA for real. At Institutions B and E, the material is checked to see whether it actually requires clearance. For example, some material may be covered by an existing agreement (e.g. the BMJ allows course pack copying for no charge if the institution holds a subscription). Other material may be out of copyright or in the public domain. Some copying may actually be regarded as insubstantial use or fair dealing. No institution checks to see whether the material exists on an electronic resource such as a full-text database or electronic journal. (The potential benefit of doing so is that the resource may be governed by a licence that allows educational copies of the material to be made.) This is partly because the volume of requests makes it impracticable, and partly because they assume the academic will have done this checking before submitting the request. Institution C did say that they might consider doing this when they begin clearing for an electronic reserve service[18]. This is because it will save them digitisation costs as well as copyright clearance costs.

Two institutions check if the material is authored within the institution. Institution A will contact the rightsholder directly for permission if the CLA fee for use of such material is high. Institution B is responsible for the reproduction of coursepacks once permission has been received. None of the other institutions interviewed take on this responsibility, unless the cleared materials are for library use – e.g. copying to replace a lost item. Institution A passes a permission note to departments that then do the copying and return a copy to the Copyright Librarian for her records.

5.4.5   Tools (database/standard letters)

All the services interviewed used a database to manage the clearance process and all five of them – from the newest to the largest – created that database in Microsoft Access. The databases varied in complexity. At Institutions A and B the Copyright Officers designed their own databases initially. However, technical staff within those institutions are currently working on more sophisticated versions of the databases with additional functionality. Clearance Staff at Institution C also designed their clearance database. Each CLARCS application is recorded as one entry on the database, whereas items requiring clearance directly from the publisher are recorded individually. Some sample forms from Institution D's database are provided in Appendix 4. Institution E has two Access databases: one for text permissions and one for AV permissions. They are looking to rationalise the two into one new database in the near future.

All the Institutions used standard request letters to rights holders. A selection of sample letters is provided in Appendix 5. Some letters are linked to the Access database and are generated automatically when a new request is entered. Three institutions attached a permissions form to their request letter that the rights holder simply has to sign to grant permission.

5.4.6   Chasing procedures

The length of time spent waiting before chasing a request varies between institutions. Institution A only waits one week after sending the initial request before chasing, and will chase clearances up to five times. Institution B has found that chasing requests too early or too frequently can result in threats from the rights holder that their letter will be placed at the bottom of the pile! They run a query on the database pulling up

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[18] This service is now in place and Institution C are checking electronic resources before submitting requests.

all unanswered requests, and only chase those requests with no reply after four weeks. Requests are chased three times before being cancelled.

Institution C has a similar procedure. A query is run on the database for requests that have been outstanding for four weeks or more. A chaser letter is sent to these rights holders. If no response is received the address is checked and a second letter is sent. The third chase will be by phone. If no response is received after three chases, the lecturer is notified to see whether the item is still required. Institution C also made that valid point that the other party requiring chasing is the academics! Granted permissions are sent to academics to sign off. Often they don't get back to the Clearance Service and require chasing.

Institution D waits a little longer - between 6-8 weeks - before chasing. After 3 months they give up, and inform the lecturer that the request hasn't been successful. Institution E chases text permission requests three times. After the third request, they may use the material without the permission of the rights holder and "await claim" depending on the risk involved in its use. The clearance service tends to do all "follow ups" on a Friday to regulate them. Once a permission comes through, a permission granted form is created listing the conditions under which permission is granted. Three copies are made, one for the Course Manager to sign off, accepting the conditions of grant, one for the course file kept in the Rights Department, and one for the Finance section to facilitate payment. Examples of "sign-off" forms for internal customers are given in Appendix 6.

5.4.7 Fees (types and levels)

The types of fee charged (e.g. up-front, royalty, etc) varied according to the types of clearance undertaken. For text clearances, all the fees were up-front. However options for different user groups for AV materials, and royalties on the use of film were paid by Institution E. In Institutions A, B, C, and D the decision as to whether to accept or reject a fee is left to the department. In Institution A, an expensive item may be replaced with a less expensive item. In Institution B several lecturers have dropped their original ideas when they discover the costs and try alternative ways of delivering their courses. There is sometimes negotiation between teaching staff, the Clearance Officer, and the rights holders. Institution C has found that a publisher may re-quote if their first quote is refused on cost grounds. Institution E takes a proactive approach to fee negotiation and will negotiate any fee that they consider too high. As the Rights Department there clears between 300-400 items per month, they have a good idea as to what is an acceptable price for certain types of material, and will use that knowledge in negotiations. If fees are unacceptable they may consider advising the use of alternative materials. They have found material from American journals to be particularly expensive.

Three institutions gave an indication of the cost of clearance fees to their institution. Between February and August 2000, Institution A paid £11,197 (inc. VAT) in clearance fees for 53 course packs. In 1999 (Jan-Dec) Institution B paid £ 19,180 (inc. VAT) in CLARCS fees for 345 items, and Institution C paid £34,500 (inc. VAT) in CLARCS fees.

5.4.8 Advice for those setting up a service

Interviewees were asked what advice they would give to those setting up a new service. The advice ranged from staff skills, to practical day-to-day management issues. The advice given was used to compile the best practice guidelines in the recommendations of this report, and therefore hasn't been repeated here.

5.5   Views on the future of copyright clearance

Views on the future of copyright clearance mainly centred on the forthcoming re-negotiation (or not) of the CLA Licence. One institution expressed concern at the CVCP's decision to submit the CLA Licence negotiations to the Copyright Tribunal. This was because they felt the Tribunal has historically found in favour of the rights holders, and a decision by the Tribunal is non-negotiable. Another institution hoped that the CVCP's actions would result in a fairer CLA Licence. One institution was encouraged by the CLA's recent consultation days and hoped the new CLA licence would be "more understandable" than the current one as a result. They also noted that more publishers seemed to have moved towards representation by the CLA, making the CLA more of a one-stop-shop for rights clearance.

Another institution had little hope of an improvement in the CLA Licence. They noted that the copyright licensing trend has been for everything to become increasingly complicated and restrictive. As an example, they said that the CLA Licence initially allowed multiple copies for educational purposes. The only restrictions were on the amount and number of copies made and on copying from some excluded publishers' materials. In 1993, they continued, study packs were explicitly excluded from the basic licence, and they had to be cleared through CLARCS. However, reprints could be distributed to students throughout a module without extra fees being incurred. As of April 1998, they noted that distributing such reprints to students counted as a study pack if the "intention" was that a collection of readings was to be built up. They felt that such restrictions increasingly throw into question the value of the basic licence that is already costing organisations a great deal of money. Ideally, they believe a simpler licensing solution should be found - for example, paying a higher fee, and not having to clear on a transactional basis. They feel the scale of the clearance operation is out of proportion with the value of the cleared materials.

Two institutions mentioned the new EU directive: one in a negative light with concerns that it might drive more rights holders to negotiate their own licences rather than working with a one-stop-shop. Another hoped that it would force the updating or clarification of the UK Copyright Act.

One institution pointed out the centrality of copyright clearance to developments in teaching and learning, and thought that more and more institutions would have to invest in this area. Another felt that this was a good time to establish Clearance Units in HEIs as they move from holdings to access on many levels.

5.6   Keeping up-to-date with copyright

The final interview question focussed on how clearance staff kept up-to-date with the changing world of copyright licensing, and where they went for copyright advice.

5.6.1 Keeping current

The various means of keeping up-to-date with copyright licensing that the interviewees used 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 and e-collections.
- Internet – any project reports or latest updates posted by JISC etc
- Newsletters and journals (e.g. European Intellectual Property Review)
- Courses (e.g. The Publishing Industry Training Centre run rights and contracts courses at Book House (www.train4publishing.co.uk/), or a Post-Graduate Diploma course in Law)
- Basic Copyright texts such as the continually updated Aslib Guide to Copyright

5.6.2 Copyright advice

The interviewees went for specific copyright advice to 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.

6.0   Conclusions and discussion

Without question, copyright clearance is felt to be a real burden to UK HE, in time, complexity and cost. Two-thirds of responding HEIs involved at least two members of staff on the task. On average an HEI submits over 400 clearance requests per year, one-third of which require chasing, five per cent of which are never answered at all. The clearance process itself is lengthy, requiring a minimum of twelve distinct steps. There are up to fourteen different copyright licences to get to grips with, and there is clearly room for improvement with some clearing houses.

So how could the situation be improved? What are the characteristics of an efficient copyright marketplace? Multimedia clearers Carmel and Collins offer four such characteristics:

"First…the buyer can easily search for the copyright holder. Second, once that holder is identified, standardized usage agreements reduce negotiation effort. Third standardized pricing facilitates rapid "buy" decisions. Fourth, an efficient and unintrusive system exists for collecting usage charges (royalties) from the buyer.[19]"

They conclude that any future international solution to copyright management must reduce clearance transaction costs by addressing these areas. The situation in the UK regarding clearance is no different.

There are many different levels at which the clearance problem could be addressed from a copyright clearer's point of view. Firstly, and most fundamentally, it could be addressed by a change in copyright law. Secondly, copyright licences could be altered to allow additional copying without requiring individual clearance. Thirdly, centralised clearing houses could make certain changes as could, fourthly, rights holders. Of course, more and more copyright material is now being produced electronically which may mark the beginning of some technological solutions to the clearance problem. "The answer to the machine is the machine" as Charles Clark famously once said. However, electronic materials are more commonly governed by licence agreements than copyright law, so the answer to some clearance problems may be found in negotiating library-friendly electronic resource licences.

Assuming that the current copyright situation is not going to change for the time being, how are organisations to deal with increasing copyright clearance demands and complexities? And assuming we are still dependant on in-house clearance services, how are they to operate successfully? The following sections attempt to discuss some of these issues.

6.1   Copyright Law
As respondents were very aware, copyright law in the UK may be changed as a result of the EU Directive currently going through the European Parliament which aims to

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[19] Carmel, Erran, and Collins, Elizabeth. Impact of copyright management on multimedia markets. *Telematics and Informatics.* 1997. 14(1), 97-109.

harmonise certain copyright and related rights in the Information Society[20]. Once the Directive has been adopted, member states will have two years in which to implement the Directive. Faced with the possibility of a change in the law, the question is raised as to how the balance between copyright holders and users could be addressed in order to reduce the burdensome clearance transaction costs with which we are currently faced. Years of imperfect copyright law prove that this is not an easy question to answer.

6.1.1   Provision for educational use

One proposal might be more provision within the law for legitimate educational use of copyright materials. Clearly many rights holders are currently of the opinion that educational use of their materials does not damage their economic interests, as they allow educational copying for no charge[21]. Perhaps they see education as the start of a creative process without which future intellectual property may be under threat.

6.1.2   Mandatory clearing houses

Another proposal – and one already in place in other countries such as Norway and Japan – could be the implementation of mandatory clearing houses. Under such a scheme it would be compulsory for all rights holders to make their works available for licensing through a central source. Carmel and Collins provide an excellent discussion of the advantages and disadvantages of mandatory clearing houses. They recognise that while they strengthen the position of the user and make clearance activities a lot less burdensome, "some creators of some works will be reluctant to produce or distribute works in such an environment."[22]

6.1.3   Clearer clauses

Of course many copyright clearers have no aspirations to change copyright law in such major ways, but would simply settle for a clear, no-nonsense interpretation of the law we already have. What is "fair dealing"? What does constitute a "reasonable proportion" or "substantially the same"? The difficulty is that when such terms *are* explained in minute detail, they have a tendency to look petty or ridiculous. The CLA's Higher Education Copying Accord is a document that fell foul of this principle. The CLA made every effort to define a coursepack in as clear terms as they were able: "a compilation of materials…of four or more photocopied extracts from one or more sources, totalling over 25 pages of material…[23]" However, academics are often bemused that 25 one-page journal articles does not constitute a coursepack, neither does three fifty-page journal articles, but four ten-page articles does. This is the price you pay for quantifying copyright regulations.

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[20] 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
[21] See section 3.10.3 Permission granted for no charge.
[22] Carmel, Erran, and Collins, Elizabeth. Impact of copyright management on multimedia markets. *Telematics and Informatics.* 1997. 14(1), 97-109.
[23] CLA. *Higher Education Copying Accord.* London : CLA, 1998.

6.2   Copyright Licences

Assuming copyright law is not changed significantly by the forthcoming EU Directive, another level at which the clearance problem could be addressed is at licence level. The number of different copyright and related licences specified by respondents was fourteen. Hopefully not every copyright clearer has to come to a working understanding of that many licences. However, it does give an indication of the scale of the licensing problem.

6.2.1 Value for money

One of the main complaints from respondents was that licences were becoming more and more restrictive, offering users less for their money, and necessitating additional clearances. Respondents were most vociferous about the CLA Licence, however one person made this comment about the DACS Licence:

> "DACS do not cover image areas that we particularly need for our collection, e.g. graphics / advertising / logos, which means that whilst paying substantial sums for their licence, we still have the expense of staff and resources of clearing other images with individual copyright holders - if we can trace them!"

This is a serious issue. The intention of the provision made in the CDPA88 whereby rights holders could offer licences for additional copying was surely to save users from extra burdensome clearances. Somewhere along the line users have found themselves with up to fourteen additional licences, *and* a large clearance bill. One interviewee disclosed that their CLA HE Licence fee in 1999 amounted to £71,700 while their CLARCS clearances for the same year cost a further £34,500 – an additional 50% on top of the licence fee. It is an obvious recommendation therefore that more copying is allowed under licence, resulting in less transactional clearances. It might also prove beneficial if further research was undertaken into exactly what extra copying rights are provided by such licences and at what cost.

6.2.2   The law/licence interface

As licences are meant to offer an *extension* to the law in terms of the amount of copying that can be done by the signatory organisation, it is important that licences do not take away any rights provided by the law. It is also important that Licencees do not agree to such terms as they *may* stand up in court. It is recommended that all licences be checked for an explicit statement that they do not prevent activities allowable under law. It also causes confusion if a Licensor's interpretation of the law is different to that widely accepted by the licensed community. As the Copyright Act is ambiguous on a number of counts, it is not surprising that there are differences of opinion about its meaning, particularly between rights holders and rights users. Examples of this are frequently discussed on the Lis-Copyseek discussion list. As there is very little case law in this area – and no copyright clearer wants to become case law – most err on the side of caution.

With regard to the HE community, it would be extremely beneficial if there were a central body that interpreted the law and the various HE-related licences on their behalf. The body could provide advice (and preferably indemnity to HEIs taking that advice) on common areas of confusion about what is and is not permissible under the

law or licences. Weedon's research into copyright policies in UK HEIs recommended that the

> "JISC might act as a co-ordinating centre for the dissemination of information on Copyright; might provide funding for a centre of expertise and a national officer for copyright, along with funding for further research".[24]

This recommendation has now been implemented in the form of the JISC Legal Information Service[25]. It may be therefore, that the above might become a part of its remit.

6.2.3 Administering licences

One of the administrative problems with licences is that of where they are kept, and how their contents are filtered down to users. The signatory for organisation-wide licences is usually a member of senior management staff, and in some cases the licences can stop there, rather than being filtered down to those that need to interpret them for their every day work. Alternatively they may be sent on to some users, but not others. Weedon noted that

> "The various copyright licences could be dealt with in a number of places within an institution – at one place it was in Reprographics while their library dealt with copyright on short loans and exam papers and the Research Office with copyright in postgraduates' work." [26]

Such a large number of licences can be a particular problem for clearance staff, the vast majority of whom are a) not trained to interpret legal contracts (which is effectively what a licence is), and b) part-time. Copyright licences, like copyright law, are infamous for vague terminology and complex clauses. One respondent pleaded:

> "Licence agreements need to be written in plain English and crystal clear – a lot of lis-copyseek is about how to interpret ambiguity".

This is again an area where licensors can improve the experience of copyright clearers.

6.3   Centralised clearing houses

If mandatory clearing houses such as those mentioned in 6.1.2 are out of the question, we are left with voluntary schemes such as the BLDSC Copyright-cleared service, CLARCS and HERON. Such services do address the four principles for an effective copyright marketplace as outlined in section 6.0. Namely, they can allow for the easy

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[24] 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, p. 24.
[25] The JISC Legal Information Service web site is due to go live at the end of 2000. The URL will be: http://www.jisc.ac.uk/legal/
[26] 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, p. 79.

identification of rights holders, they provide standard terms of permission often for standard prices, and allow for the easy payment of rights holders.

Perhaps the most surprising find regarding clearing houses therefore was that almost a quarter of respondents didn't use them. As 94% of respondents clear book chapters and journal articles, it's unlikely that all those not using them, don't do so because the services don't clear the materials they need. It is more likely that the services are not mandated to clear the volume of copies they need as mentioned below in section 6.4.1. However it appears that others don't use them on principle. As one respondent wrote:

> "We now write direct to the Publishers for clearance as we did before the inception of the Licence. The Licence has not erased the clearance problem it has in fact made it more complicated and contentious…In many respects it is easier to write direct to the Publishers than to deal with the CLA"

6.3.1 CLARCS

The Copyright Licensing Agency was established in 1982 by the Authors' Licensing and Collecting Society (ALCS) and the Publishers Licensing Society (PLS). It exists to represent the interests of authors and publishers with respect to copying from materials produced by the two groups. The main way it does this is by offering licences to various sectors (Business, Government, Higher Education, Further Education and Schools) that allow more copying than the CDPA88 permits. Up until recently all such licences were for paper-to-paper copying. However in 1999 the CLA introduced a digitisation licence for Higher Education. It is expected that this will be rolled out to other sectors in the future. Copying not covered by the "blanket" licences mentioned above, can be cleared on a transactional basis through the CLA's Rapid Clearance Service (CLARCS). All electronic copies have to be cleared through CLARCS in accordance with the accompanying digitisation licence.

Historically the relationship between the CLA and HE has been strained. The recent reference of the CLA HE Licence to the Copyright Tribunal by the CVCP illustrates this. In a recent paper given by Peter Shepherd, CEO of the CLA at their HE Consultation Day, the forthcoming renewal of the CLA Licence was discussed. He felt that any objections to a "smooth rollover" would fall under three headings "administrative, economic and...philosophical"[27]. These headings neatly describe the issues raised by respondents about CLARCS.

6.3.1.1 Administrative

There is no doubt that one-stop clearing houses such as CLARCS can considerably reduce the clearance workload for copyright clearers when the service is functioning smoothly. Comments comparing response times from CLARCS to those directly from publishers illustrate this: "CLARCS 1-2 Weeks, Direct 4-8 weeks". Having said that, many respondents bemoaned a slow response time from CLARCS, particularly at peak times of the year, and after changes to the licence. Other administrative frustrations reported by respondents resulted from the interface between the CLA and their rights holders. Further details on this are given in section 6.4.1 below. Another difficulty raised by respondents was the absence of a simple method of

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[27] Shepherd, Peter. *The Higher Education Copying Accord*. [Paper given at the CLA Higher Education Consultation Day, 6 July 2000]. URL http://www.cla.co.uk/www/heca.htm

ordering repeat coursepacks over consecutive years. This latter concern has been recognised by the CLA who hope to address it in the near future[28]. Perhaps the most unnecessary administrative burden experienced by respondents was the "unhelpful attitude of staff", described by one as "the customer is always wrong" attitude. It would seem that this might be the easiest administrative problem to address.

6.3.1.2   Economic

It is not only the expense of *CLARCS* fees that concern clearers, but the cost of clearance fees generally. However, the payment of CLARCS fees after organisations have already paid for a CLA Licence does seem to irritate many clearers. As highlighted above in section 6.2.1 some institutions are paying half the cost of their CLA Licence again in CLARCS fees. In 1999 CLARCS transactions in the HE sector totalled £538,325[29]. That is over half of the total CLARCS income of £1,026,174. The other £487,849 was generated from the business sector. It concerns many that cash-strapped HE is paying more than the business sector in CLARCS fees. One of the main reasons for this concern is the belief that HE is paying to copy materials that were produced by the HE sector in the first instance. This leads on to the philosophical issues below.

6.3.1.3   Philosophical

The seeming injustice of academia having to pay to copy materials originally produced by academia – materials that were "given away" to publishers in return for publication in a "publish or perish" environment - has been much bemoaned. As mentioned above, the income collected in CLARCS fees from HE is considerable and many believe that HE is paying many times over for material they initially produced. Various solutions to this problem have been proposed. They include HEIs retaining copyright in work written by their employees[30]; HE setting up their own University Presses; self-archiving of drafts of articles on e-print servers[31]; and so on. Some publishers have responded to these concerns by allowing authors to retain their copyright under certain conditions[32].

It would seem prudent for HEIs to encourage their academics to licence their copyright to publishers rather than to assign it. This would at least enable them to use their own work in their own teaching. In order to benefit other institutions, however, self-archiving is a good option. Academics need only point their students to the electronic archive where the research is freely available. No need for clearance.

6.3.2 HERON

HERON was set up in 1998 in response to a call from the JISC under Phase 3 of the eLib programme. Projects in this area concentrate on the electronic storage of documents for the purposes of customised on-demand publishing to support taught

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[28] Shepherd, Peter. *The Higher Education Copying Accord*. [Paper presented at the CLA HE Consultation Day, 6 July, 2000.] http://www.cla.co.uk/www/heca.htm

[29] Copyright Licensing Agency. *A year of growth : the Copyright Licensing Agency : a review 1999*. CLA : London, 1999. P. 11.

[30] Patel, Kam. Libraries unite over copyright. *Times Higher Education Supplement*. 26 May 2000.

[31] Patel, Kam. Team finds way round copyright. *Times Higher Education Supplement*. 25 February 2000.

[32] See: The Association of Learned and Professional Society Publishers' Model Grant of Licence for Journal Authors URL: http://www.alpsp.org.uk/grantli.pdf

course students in their essay and project work[33]. It built on the work of the On-Demand Publishing and Electronic Reserve strand of projects funded under Phase Two of the eLib programme. HERON has been funded over a period of three years on a reducing basis. Funding has been provided by JISC and by Blackwell Retail Ltd, HERON's commercial partner.

The aims of HERON are to:

- develop a national database and resource bank of electronic texts which will widen access to course materials and improve the quality of learning throughout Higher Education in the UK;
- co-operate with rights holders and representative bodies to remove blockages in copyright clearance and to determine appropriate fee levels and conditions for the digital age;
- provide a one stop shop for copyright clearance and digitisation for UK Higher Education Institutions (HEIs).

In undertaking this role, HERON aims to reduce duplication of effort in digitisation and remove the burden of copyright clearance from individual HEIs. At the same time it hopes to reduce problems for publishers that might otherwise find themselves being deluged with requests from multiple sources. HERON are working with the CLA's Digitisation Service for some clearances, while negotiating others on their own.

6.3.2.1 Benefits
There is no doubt that HERON offers a service the nearest *in effect* to a mandatory clearing house, as they will attempt to clear any printed materials on your behalf, unlike the BL and the CLA that are only able to clear materials from rights holders that have mandated them. HE certainly seems to have caught on to the fact that HERON offers a convenient, value-added, interface to the CLA's Digitisation service, as the recent CLA newsletter notes: "Most licensed HE institutions have chosen to manage their digitisations through the JISC-funded HERON project[34]". Because the service is based in the HE sector and is not employed by rights holders it should avoid some of the difficulties that CLARCS has faced.

HERON may also give HE "a stronger negotiating position to lower fees" as one respondent hoped, and there may be other economic benefits. One interviewee pointed out that the current subscription price to HERON of £800 is cheaper than a member of staff would cost to do the clearances. Also, if HERON are unable to get clearance *and/or* provide a digital file of the material you need, within the timescale you specify, no fee is payable. It therefore offers a no-risk option for cash-strapped HEIs embarking on digitisation projects.

6.3.2.2 Disadvantages
There are a number of difficulties HERON has to face however. Firstly the long-term viability of a resource bank seems to rest on the assumption that there is overlap amongst HEIs as to what they want cleared and digitised. Initial work by some of the

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[33] See: http://www.jisc.ac.uk/elib/projects.html#dp
[34] Digitisation news. *CLARION : the newsletter of the Copyright Licensing Agency.* Winter 2000, p.5.

On-Demand Publishing and Electronic Reserve eLib projects cast doubt whether this was the case[35]. [36]

Secondly, although HERON is working closely with the CLA to obtain clearance for materials from publishers that mandate the CLA, there are many requests that cannot be cleared through this route. For example, overseas publishers and many smaller rights holders need to be approached individually. Typically such rights holders are the more difficult part of the marketplace: smaller publishers can be hard to locate, and overseas publishers can be hard to contact and communicate with. Direct negotiations with any rights holder is time consuming, but even more so when negotiating electronic rights, until publishers begin to develop their own policies on electronic permissions.

Thirdly, in addition to the subscription fee, HERON adds an administration fee to each successful transaction. This is done as part of HERON's move towards becoming self-supporting, but may make HERON's costs appear high to institutions.

Many of these problems will be teething problems. Once the service is up and running and they have agreements with a good proportion of the rights holders, the process should speed up and prove more and more valuable to HE. In one sense it is a shame they are limited to electronic copyright permissions. If they provided such a service for print permissions, many copyright clearers might consider their problems over.

6.3.3   British Library Document Supply Service – Copyright Cleared Copies

The British Library's Copyright Cleared service[37] was established in the 1990s in response to pressure from corporate customers, particularly from the USA, most of whom would only use a copyright cleared article service. They supply over 500,000 articles per year of which only 100,000 are supplied within the UK. Of this 100,000 only 18,647 were supplied to UK HE in 1999/2000 so the HE market is still a fairly small one. Having said that, there was an almost three-fold increase in requests between 1997/98 (6,859 requests) and 1998/99 (16,968 requests)[38], undoubtedly in response to the introduction of the HECA.

This service provides another approach to copyright clearance that has parallels in the HERON service. Namely, they both combine document supply with the clearance necessary to use the document in a specific way. It raises the question as to whether there could be a parallel in the primary publication market. For example, could HE libraries purchase "library copyright-cleared copies" of certain texts - at a premium of course - that they could then on-copy for coursepacks, short loan, and other educational purposes?

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[35] The ACORN Project, URL: http://acorn.lboro.ac.uk/
[36] HERON staff believe that as the content of the resource bank grows and will show cost as well as availability of digitised materials, overlap will increase as users begin to select items which are already available for a known price.
[37] The British Library Document Supply Centre: Copyright Fee Paid Option. URL: http://www.bl.ul/services/bsds/dsc/intCFPPS.html
[38] Figures from correspondence with the Head of Publisher Liaison at The British Library. 26 April 2000.

6.4 Rights holders

6.4.1 Mandating centralised clearing houses

Rights holders are also in a position to alleviate transaction costs for copyright clearers. The most obvious way they can do this is to mandate central clearing houses such as those mentioned above, so clearers do not need to approach them individually for frequent clearance requests such as coursepacks. However it is also important to clearers that rights holders mandate centralised clearing houses for the *quantity* of copying they need too. A number of respondents reported difficulties trying to clear book chapters through CLARCS where publishers had limited the volume of clearance allowable (either in terms of the number of pages, the number of copies or the financial value of the clearance transaction). The reason that publishers impose such limits results from their concern that CLARCS sales might replace book sales. However, some respondents found that book chapters often exceeded the number of pages CLARCS have been mandated to clear. Others said that the number of students on their courses were greater than the number of coursepack copies they were sometimes permitted to make. It is important to remember that it is the larger groups of students whose needs are the least likely to be met by traditional library provision, and who benefit the most from coursepacks cleared by services like CLARCS.

Difficulties also arise when copyright clearers apply direct to rights holders that *have* mandated CLARCS. A clearer might do this if they require more copies than CLARCS has been mandated to clear, or if they want to use the material for a purpose other than that for which CLARCS has been mandated. Respondents' reported that some rights holders automatically forwarded their requests to CLARCS without reading them to see what they were actually asking. Some confusion can also arise when rights holders both mandate CLARCS, *and* deal direct with clearers. This can result in two separate rates being offered to copyright clearers for the same material, and raises doubts in their minds as to whether they are always getting the best deal.

6.4.2 Publishing on a chapter-by-chapter basis

Clearly if whole textbooks were meeting the needs of all courses of education, then there would be no need to "pick and mix" chapters of individual books for coursepacks. However this is apparently not always the case. It is the view of some copyright clearers that this problem could be overcome if books were sold as they were often used, namely, on a chapter-by-chapter basis. Although some publishers are concerned that this not a viable economic model, one publisher in the US, IDG Books, is testing this out[39].

6.4.3 Making rights decisions prior to publication

However rights holders choose to handle their secondary rights, it is important that conscious decisions are made on this matter prior to publication. If the decision is made to handle permissions in-house, the publisher should ensure that they have enough staff to deal with inevitable demand for clearance. One respondent felt that "publishers don't have enough staff to deal with clearances". Another respondent

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39 Guernsey, Lisa. Books by the chapter or verse arrive on the internet this fall. *New York Times on the web*. July 18, 2000. URL http://www.nytimes.com/library/tech/00/07/biztech/articles/18book.html

wrote "I've been waiting years, and people are still saying 'the publishers can't cope with this'".

If the decision is made to grant permission for no charge for certain educational uses, it would be helpful to copyright clearers if this information was made clear on the material itself. Indeed the inclusion of rights metadata on items of intellectual property looks set to become the norm in the electronic environment. However it would also be useful if this information was available in the print environment. Perhaps a series of rights codes could be developed that have clear, impossible-to-misinterpret meanings, that could be marked on all newly published items of intellectual property.

6.5   Electronic solutions

6.5.1   Metadata

As mentioned in section 6.4.3, the idea of making rights information available on documents may be novel in the print environment, but it looks set to become a standard in the electronic environment with the development of metadata schemes. Both the Dublin Core Metadata Initiative[40] and the IMS (Instructional Managements System) learning resource metadata scheme[41] make provisions for including information on the rights status of a piece of intellectual property. This can only be good news for copyright clearers. The development of electronic copyright management systems that offer technical protection to digital intellectual property, and only allow viewing on electronic payment are also well underway[42][43].

6.5.2 Electronic resource licensing

Of course most electronically published intellectual property is *licensed* to libraries rather than sold. In such cases it is these individual licence agreements, rather than copyright law or general licensing schemes, that govern what can and cannot be done with these resources. This may mean that clearers become less dependent on individual clearance applications to rights holders, and more dependent on well-negotiated electronic resource licences in future.

6.5.2.1 Standard agreements
However, if an institution subscribes to over 170 electronic databases, (as is the case it Loughborough University for example) then potentially there are over 170 licences to become familiar with – and that's not including electronic journals. Some excellent work has been done by the JISC and the Publishers Association on the development of a model licence for electronic resources[44] that should make the implementation of such licences easier within institutions. The NESLI model licence for electronic journals has also been developed by both rights holders and users. As such it offers a

[40] Dublin Core Metadata Initiative, URL: http://purl.oclc.org/dc/

[41] IMS Metadata Scheme, URL: http://www.imsproject.org/metadata/

[42] Isaias, Petros. Technology issues and electronic copyright management systems. *Ariadne* 1999. Issue 21. URL: http://www.ariadne.ac.uk/issue21/ecms/

[43] Isaias, Petros. Electronic copyright management systems : aspects to consider. *Ariadne* 1999. Issue 20. URL: http://www.ariadne.ac.uk/issue20/ecms/

44 Joint Information Systems Committee and the Publishers Association. *Model licence for material supplied in electronic form.* 1999. URL: http://www.jisc.ac.uk/pub99/modellic.pdf

fair balance of interests. Of particular benefit to copyright clearers is that it encourages rights holders to allow users to incorporate articles in coursepacks and short loan collections[45].

6.5.2.2 The wider remit of electronic resource licences

Although electronic resource licences do encompass what further copying (digital or print) can be done with the resource, this is only one aspect of a licence. Ann Okerson, founder of the US LibLicence initiative[46], makes the point that "unlike copyright law, which governs copying only, the licence describes the thing being sold and all the terms and conditions under which this is done. Its reach is far wider than copying.[47]" Therefore, although it is very useful for copyright clearers to be involved in the negotiation of such licences, there does need to be a wide range of other staff included. Okerson concludes that "libraries must determine how to incorporate licensing into their skill set and work flow." Duranceau depicts librarians "racing to catch up: learning the new language of license agreements, learning new – or modifying old – negotiating skills, figuring out what is most important for our institutions and users, and trying to make sense of widely variable access restrictions and pricing models.[48]"

6.6   Organisational copyright management

Assuming that the current copyright framework does not change in the near future, how can organisations best deal with increasing clearance demands and complexities? One thing this research made very clear was that the copyright clearance activities of an organisation could not be viewed in isolation from the broader copyright management (indeed intellectual property management) activities. Many respondents couldn't disentangle the time they spent clearing rights with the time they spent giving advice or keeping up-to-date with copyright. Dedicated clearance services were often mandated to raise awareness of copyright, act as designated contact for copyright licences, and create organisational copyright policy and guidelines. Some were also involved with the protection of the organisation's own copyrights, and other broader intellectual property concerns.

It makes a lot of sense to group various IP responsibilities together under one umbrella because the different aspects of IP tend to impact on each other. Also, the larger the remit of a central service, the more useful and transparent it appears to be to members of the organisation. For example, if an organisation asserts it's employer's copyright in the work of its employees and then retains that copyright rather than assigning it to publishers, then the clearance service will not have to clear those works with publishers.

The message is firstly that an organisation needs a clearly defined IP management infrastructure, and secondly, that any clearance service needs a clearly defined role

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[45] NESLI Model Licence. URL: http://www.nesli.ac.uk/ModelLicence8a.html
[46] Liblicence : Licensing electronic information : a resource for Librarians. URL: http://www.library.yale.edu/~llicense/index.shtml
[47] Okerson, Ann. Copyright or contract? *Library Journal* 122(14), 1997, 136-137,139.
[48] Duranceau, Ellen Finnie. Electronic journal forum : why you can't learn license negotiation in three easy lessons : a conversation with Georgia Harper, Office of General Counsel, University of Texas. *Serials Review*, 23(3) 1997, 69-71.

within that infrastructure. This will enable the various parties to work closely with one another to create an efficient approach to IP management. This view was strongly affirmed by interviewees.

6.6.1 Organising copyright responsibilities within the organisation

In one sense, where the various IP responsibilities lie within an organisation (i.e. in the library or elsewhere) should be irrelevant as long as the infrastructure is clear enough for all parties to work seamlessly together. Having said that, the number of questionnaire respondents that worked in the library compared to anywhere else in the organisation showed that the library is still a centre of copyright clearance expertise. Initially the figures may look marginal (only 55% of respondents were based in libraries, compared to 45% elsewhere). However those respondents in the "elsewhere" category were based in a variety of different locations, including media services and academic departments, thus making the library's share of copyright clearers much greater.

This view of the library as a focus of copyright expertise was noted by Weedon's recent research into IPR policies in Higher Education Institutions [49]. He writes:

> "… librarians have an excellent understanding of copyright law, especially as it pertains to 'Fair Dealing' and the conditions under which their own organisation has to operate. However, by default they also find themselves in the role of monitoring compliance, often at odds with the service they are trying to provide for their readers."

This was certainly the experience of one copyright advisor who wrote:

> "My role in theory involves only responsibility for copyright matters as they relate to the library… However many general questions about copyright are posed to the Library (presumably because library users are accustomed to view the library as 'the place to get information')…and these questions tend to be referred on to me."

It is important to stress the point that libraries are not only centres of copyright expertise but also major clearance centres. Some rightsholders and their representatives have expressed the view that libraries should not be involved in clearing coursepacks because, under the CLA HE Licence, libraries cannot house them. However this shows a misunderstanding of the way rights are cleared in institutions – more often than not libraries clear not only for their own services, but also for those of the whole institution.

6.6.2 The status of copyright clearance

Although libraries predominated in terms of where clearance takes place, the range of job titles cited in association with clearance was quite broad. In some organisations it was dedicated copyright staff, in others administrative staff, library staff, contracts advisors, managers, or technical staff. In very few HEI's was the clearance staffing the same. This is not necessarily an indicator that the approach to copyright clearance

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[49] 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, p. 79.

in HE is haphazard or unplanned, but there does seem to be confusion as to the status of copyright clearance. Is it an administrative role, a library professional's role, a technical role, or a managerial role? The short answer is that it depends. It depends on what types of materials are being cleared, for what purpose and in what way. This is discussed further in the section 6.8 below.

6.6.3   The spread of expertise

Some respondents couldn't give the job titles of the clearers in their organisation, as there were so many of them. Indeed over 63% of HEI respondents had more than two people clearing copyright. This spread of expertise is again something that Weedon found in his research. He wrote:

> "often the person completing the questionnaire had to consult a number of other people in different departments and sections. In particular it became clear that copyright was rarely the dedicated responsibility of one person.[50]"

Again:

> "In no institution we visited was there a single person, administrative or academic, solely responsible for copyright and it was very rare for any institution to have a 'copyright officer'[51].

In Weedon's research this spread of copyright knowledge may have been due to different people having different copyright responsibilities. Even so, he did note "a lack of management systems for copyright and horizontal co-ordination within institutions[52]". However where there are multiple copyright clearers in one organisation it stands to reason that some duplication of effort is taking place.

6.7   Setting up a clearance service

To avoid duplication of effort is just one of many ways in which the establishment of a clearance service can benefit an organisation.

6.7.1   Avoiding duplication of effort

It is precisely because copyright clearance is such a time-consuming and heavily administrative process, that centralising it can save so much of an organisation's time. One of the most time-consuming elements is untangling the copyright law and licence terms that govern what should and should not be cleared in the first place. As one respondent commented,

> "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. I don't have strong feelings about

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[50] Weedon, Ralph. *Policy approaches to copyright in HEIs : a study for the JISC Committee for Awareness, Liaison and Training (JCALT)*. Glasgow : Centre for Educational Systems, 2000, p.50.
[51] Weedon, Ralph. *Policy approaches to copyright in HEIs : a study for the JISC Committee for Awareness, Liaison and Training (JCALT)*. Glasgow : Centre for Educational Systems, 2000, p. 79.
[52] Weedon, Ralph. *Policy approaches to copyright in HEIs : a study for the JISC Committee for Awareness, Liaison and Training (JCALT)*. Glasgow : Centre for Educational Systems, 2000, p. 80.

whether this sits within the library structure or not, so long as we can work closely with the Unit."

Central clearance services save the duplication of clearance systems, such as clearance management databases and standard letters. They also prevent repeat applications going to the same rights holders. Repeat applications not only waste the organisation's resources, but may also slow the rights holder down.

6.7.2   Economic savings

Inevitably, avoiding the duplication of effort will save money. The creation of one clearance management database is less expensive than the creation of two. Having one dedicated copyright clearer is less costly than having multiple clearers in different departments all trying to interpret the licences and clear rights. A centralised clearance officer may also be able to save money through negotiating good institutional rates for materials, with their knowledge of the "going rate" for particular types of clearance.

6.7.3   A one-stop-shop for internal customers

One of the key benefits of a centralised clearance unit is the streamlined service it offers to internal customers. In a HEI, academics need not concern themselves or their departmental administrators with clearing their own coursepacks because the job – and all its associated complexities - can easily be passed on to the central service. Similarly, assuming the service offers copyright advice, an organisation can be reassured that standard, well-researched copyright advice is accessible to all members of staff.

6.7.4   Legal and pedagogic benefits

The existence of a clearance service is evidence that an organisation is making a sincere effort to respect copyright and to stay within the law. Many questionnaire respondents and interviewees made reference to the importance of "staying legal". However it is also a proactive means of encouraging the creative use of copyright materials – particularly in teaching and learning: in some cases perhaps anticipating future developments rather than reacting to them. Teaching and learning developments in turn enhance the students' educational experience.

6.8   Staffing clearance services

When establishing a new clearance service, deciding how to staff it can be problematic. It has been demonstrated in section 6.6.2-3 that there are really no standard approaches to staffing a clearance service.

6.8.1   Time allocation

Knowing how much time to allocate to a new service is very difficult. It depends not only on the sorts of clearances the service expects to take on, but also on demand. The figures provided by the research offer some indication, however caution is advised, as those figures may only represent the time spent on clearance, not on the accompanying tasks such as advice-giving, keeping-up-to-date with changes in the law or licences, and awareness raising. As one advisor commented, it wasn't just the advice that occupied her, but the time spent "learning up about copyright". One service interviewed started life as a pilot in order to gauge the demand and staffing levels required.

Clearance work is also very seasonal with peaks over the summer, and at the beginning of each term or semester. Many respondents commented on this, and it does add to the staffing problem. Clearance staff may be looking for additional duties at certain times of the year, and crying out for co-workers at others! Certain clearances – particularly requests not frequently dealt with by the service – may take a disproportionate length of time to deal with, as may some advice. As one respondent stated, "some of the questions can take an inordinate amount of time to resolve". It is worth noting that legal advice – which is effectively what Copyright Advisors are offering – is time-consuming for qualified lawyers, let alone the unqualified.

6.8.2 Staffing models and skills

The staffing model for any clearance service needs to be appropriate to clearances undertaken by that unit. A number of interviewees stressed the importance of having a dedicated member of clearance staff because of the expertise required and the time it takes to keeping up-to-date with legislative and licence developments.

In terms of skills, text clearances (for coursepacks or short loan for example) can be fairly routine, and may easily be taken on by a good administrator. However, where there's a clearance service there will always be complex questions regarding the interpretation of the law or a licence term. Therefore every service will require some oversight by a professional or technical person who is able to answer those questions and create procedures and policy with confidence. 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 this service's experience, people usually have one or the other, not both.

The staffing models adopted by the interviewees included two with a part-time manager and a part-time clearance officer. Another had a full time copyright officer, and part-time assistant. These three services only (or mainly) took on text clearances. Their models therefore match the overseer/administrator model suggested above. One interviewee commented on the difficulty of getting extra staff for her service. Managers wouldn't provide additional staff unless she could prove that the existing

staff was massively overworked. However, she was unable to actively promote the service, because she knew her existing staff could not have dealt with the resulting workload: a catch 22 scenario.

6.9 The clearance process

Having decided to establish a clearance service, what are the issues facing such services, and how might they best operate? This section aims to answer some of these questions.

6.9.1 The "Piggy-in-the-middle" factor

Perhaps the prevailing difficulty facing clearance services is something best described as the "piggy-in-the-middle" factor. Librarians and other copyright clearers occupy an uncomfortable middle ground between their users and the copyright legislators and licensors. As professionals they are eager to ensure that intellectual property is respected and used only with appropriate permission. As service providers they are keen to make intellectual property as accessible as possible, and to remove all barriers to its use. However, the copyright legislation that intends to protect intellectual property from misuse also creates huge barriers to its use. In educating their users about that copyright legislation, their users often accuse copyright clearers of pedantry and bureaucracy as though they had created the laws themselves. And in lobbying legislators and licensors for clarification on the copyright situation, and for fair educational use of intellectual property, copyright clearers are often suspected of abusing the copyright system.

We see this factor at work both in the relationship between clearers and rights holders above, and also in the relationship between clearers and their internal customer base. One respondent wrote: "the library is often seen as 'being awkward' by our academic colleagues because we have to implement these [copyright] regulations." Another 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!)"

One clearance service that was very aware of their "piggy-in-the-middle" status tried to turn it to their advantage. Instead of allowing themselves to be seen as erecting barriers to the use of materials, they tried to market themselves as copyright problem-solvers. They never liked to say no to a request outright, but always tried to find an alternative for the customer. In this way the customers saw the unit as a problem-solver rather than a problem creator.

6.9.2 Administration and its legal implications

Copyright clearance involves a lot of paperwork and thus requires meticulous administrators. This is particular important because the terms of permission constitute a legal contract and a clearer may be asked at any time to produce evidence of their permission to reproduce that intellectual property. The following sections provide a step-by-step guide to the clearance process, providing comment on some of the issues faced at each step. Figure 25 provides a flow chart of the clearance process.

Figure 25
Clearance process flow chart

```
┌─────────────────┐
│ Receive request │
│ from internal   │
│ customer        │
└─────────────────┘
         │
         ▼
┌─────────────────┐                                    ┌─────────────────┐
│ Does it require │                                    │ No clearance    │
│ clearance (i.e. │         ◇ No ◇ ──────────────────▶ │ required.       │
│ not             │ ──────▶                            │ Notify          │
│ insubstantial   │                                    │ customer.       │
│ use or covered  │                                    └─────────────────┘
│ by an           │
│ agreement)?     │
└─────────────────┘
         │
         ▼
      ◇ Yes ◇
         │
         ▼
┌─────────────────┐
│ Check           │
│ bibliographic   │
│ details         │
└─────────────────┘
         │
         ▼
┌─────────────────┐
│ Check if        │
│ items were      │
│ authored in-    │
│ house.          │
└─────────────────┘
         │
         ▼
┌─────────────────┐
│ Trace rights    │
│ holders         │
└─────────────────┘
         │
         ▼
┌─────────────────┐                                    ┌─────────────────┐
│ Generate and    │         ◇ No      ◇ ─────────────▶ │ Send chaser     │
│ send request    │ ──────▶ │ response │               │ letter          │
│ letter.         │                                    │ (email/fax)     │
└─────────────────┘                                    └─────────────────┘
    │         │
    ▼         ▼
 ◇ Perm.    ◇ Perm. ◇
 granted ◇    refused
    │         │
    ▼         ▼
┌──────────┐ ┌──────────┐
│ Check    │ │ Negotiate│
│ terms    │ │ with     │
│ &        │ │ rights   │
│ conditions│ │ holder?  │
│ of perm. │ └──────────┘
└──────────┘
    │
    ▼
┌─────────────────┐
│ Notify          │
│ internal        │
│ customer        │
└─────────────────┘
    │
    ▼
┌─────────────────┐
│ Receive sign-   │
│ off from        │
│ customer.       │
└─────────────────┘
    │
    ▼
┌─────────────────┐
│ Pay rights      │
│ holder          │
└─────────────────┘
```

6.9.3 Receiving requests from internal customers

One of the main difficulties clearers face is getting adequate bibliographic information from internal customers in order to process their requests. Designing a clearance request form is an excellent way of ensuring you have all that information (assuming it's filled in correctly). This also puts some of the onus back on the customers during busy periods. It's certainly very important to ascertain whether a member of the organisation authored the material requiring clearance. This may help in negotiating a low fee (or hopefully no fee) for materials written by members of staff.

6.9.4 Checking requests

All the interviewees checked the bibliographic references of all the requests they received. This is a massive, but – they felt – unavoidable, task. They then checked to see whether the materials actually required clearance by considering whether the copying fell within the fair dealing or insubstantial use exceptions of the CDPA88. It is a shame that those interviewed found it too time-consuming to check whether requests are covered by electronic full-text sources purchased by the institution. This probably means that some clearance requests are being made unnecessarily. However, some research done by Calvert into the impact of full-text databases on inter-library loans (ILL) revealed that only a very small percentage of ILL requests were available on such databases, and that it was not cost effective to check them prior to submitting ILL requests[53]. It seems likely that the same would apply to clearance requests. A final double check done by interviewees was to see whether the items requested were authored by someone in the organisation, if this information hadn't already been received.

6.9.5 Tracing rights holders

Having checked the requests, the next step was to trace the rights holders in those works (unless the request was first sent to a central clearing house). Tracing rights holders – particularly small publishers, individual authors or creators, or those from overseas – is notoriously difficult[54]. As one respondent wrote, "it can be very hard to trace small publishers and imprints that have been swallowed up by big multi-national publishers."

6.9.6 Sending requests

Creating a standard request letter is a must for the frequent clearer. A standard response form to go with it is also a useful addition. Firstly it may speed up the process if the rights holder is small and hasn't got it's own systems in place. Secondly it ensures that you have the rights you need, as you designed the form.

6.9.7 Rights holder response times

Most respondents cited an average time of one month for a clearance to come through. Hence the necessary six-week lead-in time required by most copyright services (and often flouted by internal customers). However the length of time taken for rights holders to respond varied according to the type of clearance, hence the six-

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[53] Calvert, H.G. The impact of electronic journals and aggregate databases on interlibrary loan: a case study at Ball State University Libraries. *New World Library* , 2000, 101(1153), 28-31.

[54] GADD, Elizabeth. 'Copyright Clearance for the Digital Library : a practical guide', *Learned Publishing*, 1997, 10 (3), 255-259

month lead-in time required by one interviewee. The author of this report requested permission to create electronic copies of three journal articles from a well-known American publisher in October 1996 and received no response until July 2000 when the permission finally came through! Against a backdrop of horror stories such as that, the value of an established one-stop-shop can be clearly seen.

6.9.8 Chasing

With rights holder responses taking weeks if not months, chasing requests becomes a necessary part of the clearance process. According to respondents, approximately one-third of their requests required chasing. As most of the institutions interviewed waited 4-8 weeks before chasing, they cannot be accused of impatience. Again, most respondents chased at least twice, thus leading to about 315 chases per annum per organisation. That's a lot of additional administration on top of an already paper-intensive and time-consuming process.

6.9.9 Refusals

The issue of refused requests wasn't covered by the questionnaire. However some data on the proportion of refusals was received from one interview candidate and from HERON. Of the 706 requests that HERON had received a response to in March 2000, 66 of them (9%) were refused[55]. In just over three years, Institution B had received responses to 792 requests of which only 21 (1%) were refusals. However, there were an additional 75 requests that received no reply.

6.9.10 Requests never answered

In most respondents' experience, up to ten per cent of their requests go unanswered – these were mainly direct applications to publishers. It is impossible to interpret a lack of response, however the legal interpretation is as a refusal – i.e. one cannot go ahead and copy without explicit permission. At a recent seminar attended by the author, one delegate made the point that only those who are prepared to make use of rights should own them. It would certainly be most helpful to clearers if this were the case.

6.9.11 Terms of permission

Even if a request has been successful and a permission has been granted, a copyright clearer's work is still not over. This is because permissions are often granted under certain terms and conditions. Sometimes it may be as simple as a particular wording to go on the copied texts, or a time limit on the usage of the material. For other clearances, particularly the re-publication of audio-visual materials, the terms may be more complex to implement. However, even the simple terms and conditions become harder to manage when they are scaled up. The mean number of items cleared per annum by respondents was over 400. Potentially then, there are over 400 different sets of wording, time limitations, security measures, etc, to deal with. Of course one of the most important terms of permission is the price.

6.9.12 Average Fees

6.9.12.1 None – or negotiable

Not all permissions had a price attached. Respondents indicated that between 1-10% of requests were granted for no charge. This tallies with HERON's experience where 13% of requests were granted for no charge[56]. Some respondents also found fees to

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[55] Private correspondence from Helen Pickering, HERON Copyright Officer, 9 March 2000.
[56] Private correspondence from Helen Pickering, HERON Copyright Officer, 9 March 2000.

be negotiable. On rejecting a permission on cost grounds, one respondent had the fee reduced by the publisher to an acceptable level.

Unfortunately it was impossible to ascertain an average permission fee from the data given. However CLARCS recommend 5p per page per student to their rights holders for printed coursepacks. And again, information from HERON confirmed that the vast majority of rightsholders charge 5p per page per student for digitising material[57]. Another respondent noted that average fees vary widely between the types of rights holder approached. She wrote "the average per page fee being charged via the CLA is 5.5p. The average fee from publishers is 4.5p. The average fee from authors is 1.5p."

6.9.12.2 Per page

This does raise a question as to the logic of the per-page charge however, and questions as to what clearers are actually paying for. For example, if clearers are paying to reproduce a unit of intellectual property, of what significance is the number of pages on which that intellectual property is printed? Why does it affect the price? The author has written an article that was parallel published in two journals – in one it was printed on four pages, in the other it was printed on five pages. If anyone wanted to reproduce it (and the author had assigned her copyright to the publisher, which she has not) they would pay more for one article than the other. This does seem to make a mockery of the per-page system. It appears to be an inappropriate transfer of per-page photocopying charges (which do make sense) to clearance charges.

A similar situation may arise if the CLA's suggested amendments to the artistic works protocol were accepted by the CVCP. Instead of HE having to pay an additional fee for every artistic work accompanying the text in materials requiring clearance, they have suggested that HE pay an additional fee only for those illustrations that are printed on the whole page, not for those on part-pages[58]. Again, if the purpose of the fee is for the privilege of reproducing intellectual property, whether that intellectual property is printed on a whole page of part of a page is immaterial.

6.9.12.3 Other charging mechanisms

The per-page charge is just one charging mechanism however. According to respondents there are six different methods of charging to reproduce intellectual property. Any in-house clearance management system would therefore need not only to be able to cope with the different types of fees, but the different variations of that fee. For example, a fee limited by time might be for a semester, a year, two years, five years, and so on. Fees per use might be per print or per view. Charges for audiovisual materials become more complex still when taking territorial rights and options into consideration.

6.9.13 *Who pays?*

The questionnaire data on who pays the copyright fees was borne out by the interview analysis. None of the copyright services paid the clearance fees themselves, they were all passed back to the relevant internal customers. Therefore, the decision as to whether to accept or reject a permission fee has to be made by that internal customer

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[57] Private correspondence from Helen Pickering, HERON Copyright Officer, 9 March 2000.
[58] Shepherd, Peter. *The Higher Education Copying Accord*. [Paper presented at the CLA HE Consultation Day, 6 July, 2000.] http://www.cla.co.uk/www/heca.htm

and not by the clearance service. This adds another layer of correspondence to the clearance process. All the services interviewed were centrally funded, so none charged their time back to internal customers either.

In most of the interviewees' experience, cleared coursepacks were given to students and the costs borne by the department. However the one interviewee's experience with selling coursepacks through the library bookshop resulted in losses as not all students bought them. These losses had to be borne by the department. However the CLA have recently mentioned introducing a sale or return facility on coursepacks. This would dramatically change the economics of selling packs to students, reducing the risk of expensive clearance.

6.9.14 Clearance tools

Fifty-five per cent of respondents used an electronic database to help manage the clearance process, leaving just under half that use paper files alone. Of the five services interviewed, all had designed in-house databases based on Microsoft Access. It is apparent that many institutions are "reinventing the wheel" as far as clearance management systems go. The eLib project, ACORN, designed a clearance management system called CLEAR[59] which was offered to UK HEIs for no charge as an output of a publicly funded project. The take up was high, however no support could be offered to users. Another eLib project, ERCOMS[60] (Electronic Reserves COpyright Management System) also worked on a generic electronic copyright management for managing documents as well as the clearance process. However this research was subject to delays and difficulties. It certainly appears that there is still room for work in this area, as more and more organisations take on more clearances. Perhaps there is a role for HERON in the design of a generic clearance management database that subscribing organisations can work with – it may even be able to interface directly with the HERON system.

[59] GADD, Elizabeth, GOODMAN, Richard, and MUIR, Adrienne. 'CLEAR Design: developing an electronic copyright management system for Project ACORN.' *The Electronic Library*, 1998, 16(4), 253-9.
[60] ERCOMS homepage, URL: http://www.iielr.dmu.ac.uk/Projects/ERCOMS/

7.0   Recommendations summary

7.1   Copyright law

- If changes are made to the UK Copyright Act as a result of the EU Copyright Directive, it would be a good opportunity to clarify some of the terms that have always caused confusion in the copyright community.

7.2   Licences

- It is recommended that Licensors reconsider what they offer for a flat fee to reduce the volume of additional clearances required.
- It is recommended that further research is undertaken into what additional copying copyright licences offer and at what cost.
- It is recommended that central licensing negotiation bodies such as CHEST include a clause in licence agreements allowing licensees to exploit full-text resources for teaching activities such as printed coursepacks and short loan collections wherever possible.
- It is recommended that publishers producing material in electronic form base their licences on the JISC/PA model licence agreement[61].
- Licence agreements need to be written in plain English, avoiding the use of jargon. Licensors need to remember that the interpreters of copyright licences are usually not legally qualified. Terms should be unambiguous.
- It is recommended that licensees check all licences before signing to ensure they are not signing away exceptions that have been afforded them by law.

7.3 Centralised clearing houses

7.3.1   CLARCS

- It is recommended that CLARCS provide additional clearance staff at peak times of the year (particularly over the summer) and after any changes to the Licence.
- CLARCS are encouraged to implement a "sale or return" scheme for coursepacks that are cleared and then not sold.
- CLARCS are encouraged to create a simple way of ordering repeat coursepacks.
- It is recommended that the CLA expand upon recent moves towards user consultation, perhaps performing a thorough CLARCS user survey.
- It is suggested that CLARCS establish a customer charter. This would both provide clarity over the level of service customers should expect, and allow CLARCS to chart their service level against set goals and criteria.

7.3.2   HERON

- There may be a role for HERON in keeping a centralised database of the conditions governing some of the CHEST and/or NESLI licences for full-text materials. Their database could then warn clearers requesting digital copies of those materials that they may already have them in full-text if they subscribe to a particular database through the CHEST deal.
- There may also be a role for HERON in the design of a generic clearance management database that subscribing organisations can work with.

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[61] Joint Information Systems Committee and the Publishers Association. *Model licence for material supplied in electronic form.* 1999. URL: http://www.jisc.ac.uk/pub99/modellic.pdf

7.4 Rights holders

- It is recommended that rights holders think carefully about if, and how, they intend to exploit secondary rights in material before they publish it.
- It is recommended that rights holders add permissions information to their published materials (i.e. "copyright waived", "apply to this address", "free for educational use", etc.)
- It is recommended that a series of unambiguous rights "codes" are developed which provide at-a-glance permissions information for users.
- It is recommended that rights metadata is included on electronically published materials.
- It is strongly recommended that if rights holders intend to manage the exploitation of their secondary rights for a fee that they employ enough staff to cater for the inevitable and increasing demand.
- It is recommended that the PLS encourage their members to mandate CLARCS to at least allow the copying of a whole chapter even if that chapter contains more pages than the existing upper limit. Preferably upper limits on the number of pages copied, or copies made could be removed altogether to meet growing demand.
- It is recommended that rights holders read permissions letters carefully rather than forwarding all such requests to CLARCS automatically. There is probably a good reason why they are being approached directly.
- It is recommended that rights holders liase with CLARCS to ensure that whether an item is cleared direct with the rights holder, or through CLARCS, the fee is the same.
- It is recommended that rights holders move away from a per-page mechanism for charging for intellectual property, and that they move towards a per-item charge. This will make fees more transparent to users, and more meaningful.
- It is recommended that publishers investigate new ways of marketing materials that meet the needs of the HE sector (e.g. books on a chapter-by-chapter basis).

7.5 The HE Community

- It is recommended that a central HE-wide body be established to act as an authority on the interpretation of copyright law and licences as they pertain to Higher Education. Such a body should provide advice (and indemnify HEIs taking that advice) on common areas of confusion about what is and is not permissible under the law or licences. This is a role that could be taken on by the new JISC Legal Information Service.

7.6 Organisations

- All organisations need a clearly defined and transparent intellectual property management infrastructure.
- Organisations may wish to survey their departments to assess how much clearance is being undertaken and in what way.
- Organisations that are undertaking a lot of clearance are advised to establish a clearance service to avoid duplication of effort.

- Any clearance service needs a well-defined role within the IP infrastructure of the organisation. This will ensure the various aspects work seamlessly together.
- The signatory for organisation-wide licences needs to ensure that the terms of those licences are filtered down to those that need to interpret them for their every day work.
- HEIs should encourage their academic staff to licence their rights to publishers rather than assigning them, wherever possible. HEIs might also encourage staff to self-archive their work to benefit

7.7 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". This is difficult when copyright does erect so many barriers, but is an option for those fed up with taking the blame for someone else's legislation!

7.8 Good practice for clearance services.

The following recommendations include the advice given by clearance service interviewees on establishing a service, and their best practices.

- 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. (Sample forms from interviewees are given in Appendix 3.
- Ask internal customers to indicate where 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".