

## Executive summary

# Learning the copyright lessons

Consumer Focus and NEN reproduction of Pinsent Masons LLP report for Becta on the UK copyright licensing schemes in the education sector



# About the organisations involved

## Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and for postal consumers in Northern Ireland. We operate across the whole of the economy, persuading businesses, public service and policy-makers to put consumers at the heart of what they do.

Consumer Focus works on copyright exceptions, licensing and enforcement to build competitive markets where consumer demand is effectively met through innovative products and services. And we want to see a copyright system that supports this by balancing the interest of consumers, copyright owners, investors and creators.

For more information see: <http://www.consumerfocus.org.uk>

## The National Education Network

The National Education Network (NEN) is a dedicated, educationally focused resource for teaching and learning without constraints of time or location. Harnessing our unique expertise, we enable a safe, secure, collaborative and creative learning experience for pupils, teachers and parents.

The NEN provides schools with a secure network designed and maintained by experts within the educational community. It harnesses the power of broadband technology to deliver unique content and services, enabling users to share learning resources at every level, to deliver a personalised learning experience in the classroom.

Optimised for data-intensive applications (including video conferencing), the NEN offers a number of unique advantages for schools, offering a secure and safe environment where issues such as copyright are managed and where teachers, pupils and parents can work confidently together.

For more information see: <http://www.nen.gov.uk/aboutus>

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Pinsent Masons LLP report for Becta on the UK copyright licensing schemes in the education sector prepared May 2010, published by the National Education Network and Consumer Focus in November 2011.

The original report as provided by Pinsent Masons LLP to Becta in May 2010 is also subject to an Open Government Licence.

## Becta

Becta (formerly known as the British Educational Communications and Technology Agency) was a government agency funded by the Department for Children, Schools and Families. It was a charity and a company limited by guarantee. In the post-election spending review in May 2010, it was announced that Becta was to be abolished. The organisation closed in April 2011.

Becta was the Government's lead agency for information and communications technology (ICT) in education, covering the United Kingdom. It was established in 1998 through the reconstitution of the National Council for Educational Technology (NCET).

For more information on the transfer of Becta's work see:

<http://www.education.gov.uk/popularquestions/a00192537/becta>

## Pinsent Masons LLP

Pinsent Masons LLP is an international law firm recognised as one of the major legal providers to the UK public sector with deep sector knowledge and expertise in the education sector. Pinsent Masons LLP's large team of intellectual property lawyers are experts in copyright law and have particular expertise in advising the education sector in relation to all aspects of copyright and other intellectual property protection, exploitation, use and enforcement.

Pinsent Masons LLP is delighted to be involved in this project and would like to thank all of those who have contributed to the information contained in this report, including contacts at the copyright licensing agencies and local authorities. We hope that the report proves useful and facilitates discussion and co-operation on this important issue for the future of our schools.

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## Further information

The full version of this report can be accessed at: <http://bit.ly/uKMtTN>

The original report as submitted by Pinsent Masons LLP to Becta in May 2010 can be found at: <http://bit.ly/r83Pos>.

# Preface

Schools and other education establishments depend on licences from collecting societies, or copyright licensing agencies, to enable their use of copyrighted material. The use of copyright protected material, especially digital, is central to the delivery of a 21st century curriculum and to provide effective learning and teaching. The report maps the current system of collective copyright licensing for schools, the cost of these licensing schemes, and sets out different options for reform.

The report was commissioned by Becta in 2009, but as Becta closed in March 2011 it was not widely distributed. Becta was the government agency charged with leading the national drive to ensure the effective and innovative use of technology throughout learning. The law firm Pinsent Masons LLP prepared the report for Becta on the basis of discussions with local authorities, who frequently manage the purchase of licences for schools, and some of the licensing agencies.

The report was completed by Pinsent Masons LLP in May 2010 under the title 'The UK Copyright Licensing Schemes in the Education Sector'. Subsequently Becta provided the report to the National Education Network (NEN) and Consumer Focus under a non-exclusive Open Government Licence to enable and encourage the free use of government information covered by Crown copyright.

The NEN and Consumer Focus submitted the report to the call for evidence of the Independent Review of Intellectual Property and Growth, announced by the Prime Minister in November 2010. This report was directly referenced by the review as 'Pinsent Masons LLP report for Becta' and we have decided to republish it now to stimulate the ongoing debate on how to update copyright licensing.

Where the use is not covered by an exception, copyright licensing enables schools to use copyright materials, including newspaper articles, performances of plays, broadcast and films, and recorded music within the scope of the licence. We believe that this report comes at a critical time, as digital technologies have increased the opportunities for the use of copyright material for teaching and learning. There is an urgent need to make the licensing system fit for the digital age, so as not to inhibit teachers' ability to deliver a modern curriculum to a generation of digital natives.

Today young people are not only recipients and consumers of digital resources and other people's copyrighted materials but creators themselves. Tomorrow it is they who will drive the economy. This report, although focused on a particular element of education provision, will help develop our understanding of how to develop a better copyright licensing regime for copyright owners, users and creatives of all ages.

Since the report was completed in May 2010 there have been changes in the services offered by some licensing agencies, as well as changes to the policy directing school education and the role of local authorities. However these changes have not diminished the relevance of the main findings within the report or the challenge offered by its recommendations for the debate today. The recommendations set out improvements to the licensing system to bring better value and meet the needs of education today more fully. We will distribute the report within the education sector and to other interested parties in the continuing debate on copyright licensing.

The NEN and Consumer Focus, using the flexibility provided by the Open Government Licence, are publishing this report with only minor editorial amendments. To make the report more accessible we have added a list of abbreviations, summaries (in grey boxes), images and have published the two schedules separately.

The report refers to Becta on several occasions and we have not changed these references, though Becta's functions have now transferred to the Department for Education, the Department for Business, Innovation and Skills, and the Learning & Skills Improvement Service. The report was completed more than a year ago and where it refers to events which have since happened, we have added explanatory footnotes.

*M. O'Connor* *M. Philipson*

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Grid for Learning



# Executive summary

**'I am so pleased that someone is looking to simplify copyright in schools, as it really is a nightmare. I am sure some schools are not even aware what licences they hold, how they are covered and think once covered by a blanket licence they can do anything they like, which is not the case'**

Quote from the E-Communications Officer at a local authority.

**'A large amount of officer time is spent advising schools after they are contacted directly by some of the companies involved. Dealing with licences is not formally part of any person's job description.'**

Quote from Support Services Assistant at a local authority

These quotes capture the essence of the problem with the existing copyright licensing regimes in the UK. For educational establishments and their local authorities, the current licensing systems are costly, complex, time consuming, and confusing. There are a number of difficulties with the existing system, such as:

- Different licences are required for different types of copyright material, with some overlap, for example two different licences are required to play a recorded song in a public place;
- The existing licences do not cover all of the activities undertaken in schools and fail adequately to deal with developing technologies; and
- Copyright owners, through their licensing agencies are effectively free to dictate their own licensing terms and fees, with little control;

Some of the licensing agencies are specifically set up for the education sector or have developed bespoke licensing models to assist schools, whether through discounted blanket licensing for local authorities to cover all schools – e.g. the Educational Recording Agency (ERA) and Copyright Licensing Agency (CLA) – or by outsourcing the administration of their licences through one centralised body – e.g. the Performance Rights Society (PRS), Phonographic Performance Limited (PPL) and Public Video Screening Licence (PVSL) administered through the Centre for Educational Finance Management (CEFM).

From our research it appears that local authorities generally appear to arrange certain of the core licences for the schools in their area (in particular the CLA, ERA, PRS and PPL licences), but many leave it up to schools to assess their specific licensing needs for other licences. It is clear that schools and local authorities are not adequately equipped to deal with the complexities of the licensing systems and there is no assistance available to them.



## Summary of the current system and scope for reform

Under the current system activities by educational establishments are covered by copyright licences from 12 or more different licensing agencies. Schools may be covered by a blanket licence obtained by their local authority, or obtain an individual licence from the relevant licensing agency. The current system is costly and confusing. It does not protect educational establishments adequately from liability for copyright infringement and inhibits their ability to deliver their curriculum.

The following problems have been identified:

- The more than 12 licences available for use of different types of copyright material in educational establishments do not cover all uses. These gaps mean schools are wary of using copyright material to deliver their curriculum and at risk of liability for copyright infringement.
- There are no standard licensing terms, meaning educational establishments have to comply with potentially 12 or more different sets of licence term when delivering their curriculum.
- A number of the existing 12 or more licences appear to overlap with each other, for example the use of recorded music requires a licence from PRS and PPL.
- Licensing agencies can only license the copyright material owned by their members. No central database is available to educational establishments to ascertain from which licensing agency they require a licence when they want to use a particular work.
- The existing licences do not adequately take account of increasing use of digital technology and copyright material. CLA and ERA have issued licences for digital copyright material, leading to increased licensing fees for schools which are unregulated cost for schools.
- The conduct of the licensing agencies is not regulated, allowing them to impose their own licensing terms and fees. The cost of bringing a case to the Copyright Tribunal to challenge licensing terms or fees means that educational establishments can only realistically hope to bring a case through representative bodies.
- Little information or advice is available for educational establishments on copyright licensing and the advice provided by the licensing agency may not be impartial.
- There is significant ambiguity about the interpretation of Section 34 of the Copyright, Designs and Patents Act 1988, which provides exceptions for educational establishments. It allows them to perform music or show films without a licence if it is in 'the course of the activities of the establishment' or 'for the purposes of instruction'. No guidance is available on the interpretation of in 'the course of the activities of the establishment'. PRS and PPL, which license music, and PVSL, which licenses recorded music and film, issue licences for 'curricular' and 'non-curricular' activities, requiring educational establishments to pay 'non-curricular' licences for activities which may fall under the exception as in 'the course of activities of the establishment'.
- The administrative cost to schools and local authorities from licensing is not known. In the calendar year of 2009, the CLA collected £10.8 million from schools for copyright licences, the ERA collected £2.5 million, with the PRS and PPL collecting £2.8 million each.

An effective licensing system should reduce the administrative burden and cost on educational establishments. The system should give teachers the freedom to operate within the scope of the law and relevant licensing schemes. Considering the problems with the current licensing system there are several options for reform.

The advantages and disadvantages of the various options are discussed in the report.

- Blanket licensing: Increased use of blanket licences obtained by local authorities. The CLA and ERA apply a discount to blanket licences and they reduce the administrative burden on schools. However some local authorities do not purchase blanket licences, and the PRS, PVSL and PPL only offer block-licensing to local authorities, which don't reduce the cost per school, but still reduce the administrative burden on schools.
- Accessible information: Currently schools do not have access to adequate information on copyright licensing, with [www.licensing-copyright.org](http://www.licensing-copyright.org), an information resource established by licensing agencies being among the few resources available online. Schools often turn to local authorities for advice, which in some cases provide information and in turn rely on licensing agencies for advice. Local authorities could formalise their role and provide a main point of contact for educational establishments, along with standardised information on local authority websites. Educational establishments would also benefit from information on the blanket licences held by local authorities, and a database to establish from which licensing agency a licence is required if educational establishments want to use a particular work.
- Use of Technology: In order to assist teachers in navigating around the gaps left by the current licences, particularly with regards to digital material, technology could be developed to flag up copyright material covered by licences or a searchable database could be established.
- Centralised Administration: Licensing at local authority level is more efficient than licensing at school level, reducing administrative cost for schools and licensing agencies, who may pass on administrative cost through an administrative fee. The Centre for Educational Finance Management (CEFM) was set up in 1990 by the Department of Education and Science to, among other things, provide central administration of licences for grant maintained schools by the PRS, PPL and PVSL by Filmbank. It reduces the administrative burden on the schools requiring licences and for licensing agencies. The role of the CEFM, now privatised, could be expanded to administer the licences for public schools and of other licensing agencies. Alternatively a new centralised body could be established to administer the licences of all licensing agencies.
- Bespoke licensing models for schools: While some licensing agencies have blanket licensing or specific education tariffs for schools, the current system could be improved if all licensing agencies would offer blanket licences to local authorities. Currently only the CLA and ERA provide blanket licences. The current system could also be improved through the implementation of model licence terms across all types of copyright material and licensing agencies. Licensing terms could better reflect the activities undertaken in schools, reducing the number of restrictions imposed. Licensing agencies currently only make annual licences available to schools, the implementation of a 'pay as you go' tariff for the sporadic or one off use of copyright material by schools could reduce licensing cost where educational establishments make very limited use of copyright materials.

- Tighter controls on licensing agencies:  
Licensing by licensing agencies to schools could be more tightly regulated, through for example the establishment of a body which reviews and oversees licensing practices, or by expanding the powers and accessibility of the Copyright Tribunal, for example by giving it pro-active investigative powers.
- Legislative change – educational use of copyright: Copyright legislation could be amended in a number of areas, providing copyright exceptions for the benefit of educational establishments. Educational establishments could be exempt from requiring a licence for the use of copyright material, taking into account technological developments such as interactive whiteboard and distant learning. Legislation could in particular address gaps in the coverage of existing licences. For broadcast, copyright law provides educational establishments with an exception in the absence of a licensing scheme, this approach could be extended to all types of copyright work. This approach would protect educational establishments from liability for copyright infringement in the absence of a licensing scheme. The definition of 'activities relating to an educational establishment', which is subject to an existing exception, could be defined in statute to provide certainty for licensing agencies and educational establishments.
- A single licensing agency for schools: Creating a single licensing agency for schools, licensing all types of copyright material would require significant legislative change. Alternatively a single licensing agency could be established for copyright works most frequently used by educational establishments, which are currently licensed by the CLA, ERA, PRS, PPL and PVSL.
- The Copyright Tribunal powers and practice: Existing licences could be referred to the Copyright Tribunal by schools or their representative organisations if it can be established that the terms of the licences to and/or the licence fees payable by schools are unreasonable.

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