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STATUTORY INSTRUMENTS

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**2014 No. 1372**

**The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014**

**Libraries and archives: amendments to Part 1 of the Act**

5.—(1) After section 40A(1) insert—

**“40B Libraries and educational establishments etc: making works available through dedicated terminals**

(1) Copyright in a work is not infringed by an institution specified in subsection (2) communicating the work to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in subsection (3) are met.

(2) The institutions are—

- (a) a library,
- (b) an archive,
- (c) a museum, and
- (d) an educational establishment.

(3) The conditions are that the work or a copy of the work—

- (a) has been lawfully acquired by the institution,
- (b) is communicated or made available to individual members of the public for the purposes of research or private study, and
- (c) is communicated or made available in compliance with any purchase or licensing terms to which the work is subject.”.

(2) For sections 41 to 43(2), substitute—

**“41 Copying by librarians: supply of single copies to other libraries**

(1) A librarian may, if the conditions in subsection (2) are met, make a single copy of the whole or part of a published work and supply it to another library, without infringing copyright in the work.

(2) The conditions are—

- (a) the copy is supplied in response to a request from a library which is not conducted for profit, and
- (b) at the time of making the copy the librarian does not know, or could not reasonably find out, the name and address of a person entitled to authorise the making of a copy of the work.

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(1) Section 40A was inserted by [S.I. 1996/2967](#), regulation 11(2) and is prospectively amended by section 43 of the Digital Economy Act 2010 (c.24).

(2) Section 43 was amended by [S.I. 2003/2498](#), regulation 14.

(3) The condition in subsection (2)(b) does not apply where the request is for a copy of an article in a periodical.

(4) Where a library makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

#### **42 Copying by librarians etc: replacement copies of works**

(1) A librarian, archivist or curator of a library, archive or museum may, without infringing copyright, make a copy of an item in that institution's permanent collection—

- (a) in order to preserve or replace that item in that collection, or
- (b) where an item in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the item in the collection of that other library, archive or museum,

provided that the conditions in subsections (2) and (3) are met.

(2) The first condition is that the item is—

- (a) included in the part of the collection kept wholly or mainly for the purposes of reference on the institution's premises,
- (b) included in a part of the collection not accessible to the public, or
- (c) available on loan only to other libraries, archives or museums.

(3) The second condition is that it is not reasonably practicable to purchase a copy of the item to achieve either of the purposes mentioned in subsection (1).

(4) The reference in subsection (1)(b) to a library, archive or museum is to a library, archive or museum which is not conducted for profit.

(5) Where an institution makes a charge for supplying a copy to another library, archive or museum under subsection (1)(b), the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) In this section "item" means a work or a copy of a work.

(7) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

#### **42A Copying by librarians: single copies of published works**

(1) A librarian of a library which is not conducted for profit may, if the conditions in subsection (2) are met, make and supply a single copy of—

- (a) one article in any one issue of a periodical, or
- (b) a reasonable proportion of any other published work,

without infringing copyright in the work.

(2) The conditions are—

- (a) the copy is supplied in response to a request from a person who has provided the librarian with a declaration in writing which includes the information set out in subsection (3), and
- (b) the librarian is not aware that the declaration is false in a material particular.

(3) The information which must be included in the declaration is—

- (a) the name of the person who requires the copy and the material which that person requires,
- (b) a statement that the person has not previously been supplied with a copy of that material by any library,
- (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person, and
- (d) a statement that to the best of the person's knowledge, no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person's request, a request for substantially the same material for substantially the same purpose.

(4) Where a library makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person ("P") makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

- (a) P is liable for infringement of copyright as if P had made the copy, and
- (b) the copy supplied to P is to be treated as an infringing copy for all purposes.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

### **43 Copying by librarians or archivists: single copies of unpublished works**

(1) A librarian or archivist may make and supply a single copy of the whole or part of a work without infringing copyright in the work, provided that—

- (a) the copy is supplied in response to a request from a person who has provided the librarian or archivist with a declaration in writing which includes the information set out in subsection (2), and
- (b) the librarian or archivist is not aware that the declaration is false in a material particular.

(2) The information which must be included in the declaration is—

- (a) the name of the person who requires the copy and the material which that person requires,
- (b) a statement that the person has not previously been supplied with a copy of that material by any library or archive, and
- (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(3) But copyright is infringed if—

- (a) the work had been published or communicated to the public before the date it was deposited in the library or archive, or
- (b) the copyright owner has prohibited the copying of the work,

and at the time of making the copy the librarian or archivist is, or ought to be, aware of that fact.

(4) Where a library or archive makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person (“P”) makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

- (a) P is liable for infringement of copyright as if P had made the copy, and
- (b) the copy supplied to P is to be treated as an infringing copy for all purposes.

**43A Sections 40A to 43: interpretation**

(1) The following definitions have effect for the purposes of sections 40A to 43.

(2) “Library” means—

- (a) a library which is publicly accessible, or
- (b) a library of an educational establishment.

(3) “Museum” includes a gallery.

(4) “Conducted for profit”, in relation to a library, archive or museum, means a body of that kind which is established or conducted for profit or which forms part of, or is administered by, a body established or conducted for profit.

(5) References to a librarian, archivist or curator include a person acting on behalf of a librarian, archivist or curator.”.