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House of Commons
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Dear Simon,

Mr Tim Jackson,

Thank you for your letter of 21 October, covering correspondence from your constituent, Mr Jackson, about the implementation in the UK of Directive 2001/29/EC on copyright and related rights in the information society.

Firstly, I would stress that our proposals for implementing this Directive are in draft form at this stage, and will be finalised only after all responses to our current consultation on the proposals have been carefully considered and we can make any changes which we consider desirable as a result. I would emphasise also that it is not our intention to make any changes to UK copyright law which are not fully in line with the Directive's requirements. The Directive was the subject of negotiations lasting over three years, during which the UK was at the forefront in seeking to ensure that the interests of all parties were taken into account.

Mr Jackson would seem to suggest that we are not taking up flexibilities offered by the Directive to protect the interests of users of copyright material. I would not agree. UK law already contains an extensive series of exceptions to copyright for the benefit of users, relating to most of the areas addressed in Article 5 of the Directive, which sets out categories of exceptions that Member States may provide in national law although they are not obliged to do so. We intend to retain all of these existing exceptions as far as permitted by the precise terms of Article 5. The Government has also recently supported Private Member's legislation to introduce an exception into UK copyright law permitting the conversion of copyright material into Braille or other formats accessible by visually impaired people. We are now working to bring this legislation into force.



Otherwise, Mr Jackson's concerns stem mainly from Article 6 of the Directive, which requires Member States to provide legal protection against the circumvention of technological measures used by copyright owners to protect their material against unauthorised copying or other infringements of their rights. We believe that copyright owners must be able to use such measures, and I would point out that it is already the case that, irrespective of copyright law, they are free to issue their products in any form they wish, including incorporating copy-protection technology in them or making them playable only on certain kinds of equipment. Neither the Directive (nor our proposed implementation) regulates this in any way, and I see no basic objection to this situation provided that consumers know what they are buying. Ultimately, it is of course for them to decide whether they wish to purchase products issued in a particular form. I would add that, as we understand it, DVD region coding is not intended to be protected by Article 6 since the provision is limited to the protection of technological measures aimed at preventing infringements of copyright, and the mere playing of a film in DVD format is not something controlled by copyright law.

We also consider that copyright owners should be protected against those who seek to circumvent technological measures, but we fully appreciate that there are other interests to be considered and, in our view, Article 6 (and our proposed implementation of it) seek to achieve a fair balance. In particular, it is to this end that Article 6.4 (and the draft legislation) provide for the Government to act if users in areas such as the education, library and archive fields are prevented by technological measures from benefiting from exceptions to copyright in those areas. This provision would also apply in a similar way to the new exception for the benefit of the visually impaired. In my view, however, the best approach here would be if copyright owners can work with organisations such as the RNIB to ensure that technological measures are compatible with the access technology used by visually impaired people. I have urged this in debates on the draft legislation. To implement Article 6.4 we are proposing a procedure which will allow anyone considering that they are unable to benefit from exceptions to make a complaint to the Secretary of State, in order that the matter can be investigated and remedial action taken as appropriate. Mr Jackson seems to feel that this is unworkable. I do not consider this to be so, but we are, of course, willing to consider any suggestions for refinement and improvement of the procedure.

While there are exceptions in UK law allowing limited private copying, such as that in relation to time-shifting, there is currently no general exception permitting the making of private copies of CDs or the like, although I realise that until recently copyright owners may not have had the technical means to control the uses to which such material is put by private individuals. I appreciate that Mr Jackson may well feel that private copying of this kind should remain possible, but this has to be balanced against copyright owners' concern that, in the Internet environment, unprotected material can be disseminated in ways that are clearly prejudicial to their legitimate interests. Moreover, although the Directive allows broader private copying exceptions than currently exist in the UK, it also requires that 'fair compensation' be granted to copyright owners in return. This reflects the position in most other EU states, where although there are fairly wide private copying exceptions, these are accompanied by levies on recording equipment or media to compensate right owners. We consider that such an approach would be problematic, not least since it would also impact on those who do not wish to copy protected material.

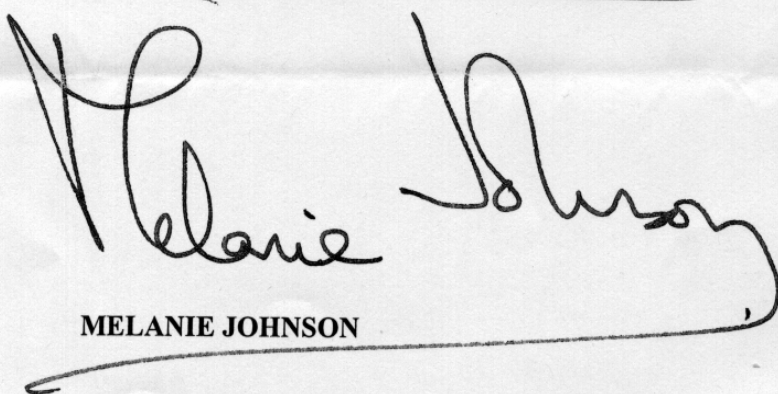


Mr Jackson also expresses concern about the impact of our proposals on cryptographic research. This is an aspect on which the Directive itself does not seem entirely clear, but we are reflecting carefully on whether anything else can or should be done to safeguard such research. We are also looking further at reverse engineering of computer programs which Mr Jackson also mentions. Our implementation of Article 6 is not intended to affect an existing exception to copyright which, in specified circumstances, allows reverse engineering in order to achieve interoperability between programs, but we are giving further consideration as to whether there are sufficient safeguards for this exception.

Finally, I should add that we too would be concerned if the use of technological measures acts to prevent works entering the public domain once copyright has expired, as Mr Jackson fears. However, we think that it is unlikely to be the case in practice that there will be no unprotected copies in existence. Moreover, only technological measures acting to prevent or restrict infringements of copyright will be protected. In our view, therefore, it would be unwise of copyright owners or others to apply these measures to public domain works, when there will be no protection against their circumvention because the works in question are no longer in copyright.

I hope that this explanation of the background to Mr Jackson's concerns is helpful. As Mr Jackson has also sent his comments direct to the relevant officials in the Patent Office, they will be given full and proper consideration in due course along with all other responses to the consultation.

Yours,



MELANIE JOHNSON