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From the Chancellor of the  
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10 July 1985

*Sam Willis,*

*MEH*

COPYRIGHT LICENSING

I am writing to let you know of an approach made to three departments, DTI, DHSS and DES by the Copyright Licensing Agency Ltd (CLA) and my proposals for a central response. My suggestion is that the Government should not enter into the photocopying agreement which CLA proposes.

The CLA acts for a number of publishers, including HMSO. Its purpose is to deal with the allegedly extensive infringements of copyrights in books and periodicals that have been occurring since the use of photo-copiers became widespread. The Copyright Act 1956 provides a legal remedy for such infringements but in practice it is difficult to enforce because copying is done by so many in such small amounts.

Under the Scheme the CLA will:-

- (i) issue licences to photo-copier holders to copy reasonable (though not unlimited) quantities of copyright material;
- (ii) collect royalties on each page copied, for distribution to the copyright owners;
- (iii) indemnify licence-holders against legal proceedings for breach of copyright. The extent of the CLA's indemnity for example to copyright owners outside the scheme is unclear but it appears to be their intention to provide blanket coverage.



The advantages are that the licence holder avoids possible prosecution by CLA members, does not need to seek permission on each occasion, and deals with one body rather than a multitude of authors and publishers. The disadvantage is that he has, in effect, to sign away all legal rights he has to free copying under the "fair dealing" provision in Section 6 of the Act. He also pays for - and has to keep records of - copying which very likely (though perhaps in some cases illegally) he has been getting free of charge. The CLA hope the majority of authors and publishers and their associations will join the Scheme. They claim, without producing any evidence, that some 75% of the associations have already joined them including HMSO, in its capacity as publisher and administrator of Crown copyright. So far they seem to have had very little take-up amongst users.

Clearly it is important that Government Departments should be scrupulous in their handling of copyright material. My officials have consulted widely among departments. While most believe they are complying with the Act, taking account of the 'fair dealing' provisions, the law itself is uncertain and it is possible that some copying might not be covered.

The Government's Green Paper on the Reform of Copyright Law (July 1981) recognised the inadequacies of the relevant provisions in the 1956 Act and gave encouragement to voluntary 'blanket licensing'. You will recall it envisaged statutory provision for arbitration (a Copyright Tribunal) without which it would be difficult for disagreements between licensing bodies and users to be settled satisfactorily. Fresh legislation on copyright (possibly in the 1986/87 Session) is being considered and DTI are currently working on a White Paper.

A number of local authorities such as the Association of County Councils and all local education authorities have, I understand, already signed up with the CLA for a 12 month trial period. But our response to the CLA's proposals, whether favourable or unfavourable, will clearly be seen as very significant since it could well be an influencing factor with other organisations whom the CLA hope to sign up to their scheme.

There are a number of objections to signing up with the CLA:

- (i) they claim a membership of 75-80% of authorised publishers of the journals and periodicals published in the UK, but even if true it leaves a significant proportion of publishers and individual authors unrepresented. It is questionable whether we should endorse a scheme which might leave departments still possibly in danger of infringing the legal rights of those not represented;



- (ii) the degree to which departments fail to comply with the copyright law is uncertain. As far as we can judge much of our copying comes within the fair dealing provisions, and where separate permissions do need to be sought there is no evidence that we would save significantly by subscribing to a blanket licensing scheme;
- (iii) new legislation is being considered and it would be preferable to see what this produces.

It seems best for one central department to reply to the CLA rather than for those approached to reply separately on the basis of common advice and I am content that it should be mine. DTI might normally have taken this on but in view of their work on the White Paper I believe they would prefer as a matter of policy to distance themselves from the CLA.

It is just possible that non-participation in the scheme by departments could result in criticism that our approach is inconsistent with the 1981 Green Paper. But although the government has encouraged voluntary 'blanket licensing' it does not follow that the CLA Scheme is a good one or the right one for departments or indeed necessary for Government, given the nature of our copying. And it would not be unreasonable to postpone consideration of a voluntary scheme until we see what the White Paper and new legislation produce. I should be glad to know if colleagues are content. If so, I shall ask my officials to advise CLA accordingly.

I am copying this letter to members of H and other Ministers in charge of departments.

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From the Minister of State  
for Industry and Information Technology

GEOFFREY PATTIE MP

Rt Hon Viscount Whitelaw CH MC  
Lord President of the Council  
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8 May 1985

Dear Willie

Thank you for your letter of 26 April 1985 about the addition of a number of further provisions to the Copyright Bill. You will have seen Quintin Hailsham's letter of 25 April 1985 on the same subject.

I am grateful to you for agreeing to the additions and note that your agreement is subject to instructions reaching Parliamentary Counsel by the end of January 1986. For those matters where the need to do further work will take us beyond this deadline, I am content to go forward as you suggest and review the legislative position when the work is completed. We are of course doing all that we can to advance the timetable on these matters.

I am copying this letter to the members of QL Committee, First Parliamentary Counsel and Sir Robert Armstrong.

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GEOFFREY PATTIE

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-9 MAY 1985