**A STUDY OF COPYRIGHT INFRINGEMENT PREVENTATIVE MEASURES
IN SCOTTISH PUBLIC LIBRARIES**

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ABSTRACT

In acknowledgement of the difficulties faced by public libraries in balancing the interests of their users in fully utilising the information available to them, against the moral and legal rights granted to intellectual property owners, this research explores the types of measures in place at public libraries to address copyright issues. The research focuses on the geographical domain of Scotland, with data on copyright infringement minimisation measures currently in use being obtained through requests under the Freedom of Information (Scotland) Act 2002.

The aim of the research is to discover whether public libraries in Scotland are implementing active programmes of copyright infringement minimisation and if so the types and quality of measures which they have in place as compared to the recommendations put forward by authoritative sources. It is also the objective of this research to examine the policy decisions taken by public libraries in respect of their obligations under copyright law, and in particular whether they consider being found liable for the digital copyright infringements of their users as a significant risk, especially in light of recent legislative developments such as the Digital Economy Act 2010.

Through the research undertaken, it was found that public libraries in Scotland do not take a uniform approach in their tackling of copyright issues. Some local authority areas have comprehensive programmes to address their legal and ethical obligations under copyright law while others did not have any formal policies on the matter. Certain measures were underutilised by most local authorities, such as active education of users and staff on their rights and responsibilities under copyright law. Differences were also noted in the treatment of digital copyright infringements as against 'traditional' infringements, with digital copyright infringement being less obviously tackled, if even acknowledged, as part of copyright policies for public libraries.

The research findings allow for a number of recommendations to be put forward, namely: (1) that public libraries work together to produce a standard policy covering copyright issues applicable to libraries and how infringements can be minimised; (2) education programmes should be established for staff and users on the copyright provisions most applicable to them, including activities and resources targeted for certain categories of users such as teenagers or researchers; and (3) awareness should be raised of digital copyright infringement and information provided on an equal basis to 'traditional' copyright infringements.

CONTENTS

INTRODUCTION

Library and information professionals often find themselves in the difficult position of trying to balance the demands of their users in accessing information content while being mindful of the rights of intellectual property owners and adhering to copyright restrictions (Pedley 2008; Sturges, 2002). Cornish advocates the importance of library services acknowledging their responsibility for copyright issues, noting that:

> Libraries are in a unique position as custodians of copyright material. They have the duty to care for, and allow access to, other people's copyright works. This places special responsibilities on all those working in libraries, archives and the information world generally. We practice our profession by using this property so we should take all possible steps to protect it, while at the same time ensuring that the rights and privileges of our users and our profession are also safeguarded (Cornish, 2009, p2)

However, maintaining this balance is increasingly become different with the advent of new technologies, allowing for quick downloads and electronic copies of large volumes of information to be undertaken with ease, in contrast to the 'traditional' methods of copying by hand or by photocopiers (Sturges, 2002). This has consequently led to protective measures being taken by the creative industries to stem the perceived high risk of digital copyright infringement, including using restrictive licences and digital rights management software and lobbying governments for tighter legislative controls. This has consequently increased pressure on libraries to ensure they only provide for the legitimate use of their resources (McMenemy et al, 2007). Within the UK, the outdated and complex copyright legislative landscape has been addressed by the Gowers Review (2006) and the Hargreaves Review (2011) leading to recent amendments to the Copyright, Designs and Patents Act 1988 and the introduction of the Digital Economies Act 2010. These changes may both assist public libraries in providing more rights of access to electronic resources, but also may lead to increased responsibilities in monitoring the computer and internet access which they provide as a key service to users. This consequently may change the definition of library professionals from "gatekeeper" of information to "sentry" (McMenemey et al, 2007, p73). What is clear, however, is that:

Copyright is in a constant state of flux. The laws are complex and it is not easy for information professionals to 'stay legal'. Life was much easier when readers just read books, borrowed books and sometimes took notes, and before the photocopier, scanner and digitization come on the scene. Life was also less litigious. But we cannot move back to those days (Armstrong et al, 2004, p49)

In order ensure compliance with the law it is recommended that robust copyright policies are formulated and enforced by public libraries (Cilip 2012; Pedley 2008; Pedley 2012; EIFL, 2012). However, due to the decentralised nature of public libraries and the variances in internet access policies (McMenemy, 2008), a unified approach by public libraries to this issue is not evident. As such this research aims to ascertain the position taken by public libraries in Scotland to the issue of copyright infringement, and in particular in relation to digital copyright infringements, and whether they are exposing themselves to risks of legal action for the copyright infringements of their users and staff. Four research questions are posed to explore this topic, namely:

RQ1. Do Scottish public libraries currently have in place active programmes of measures designed to minimise their potential exposure to legal action for breaches of copyright committed by their users while using library facilities and equipment?

RQ2. Where copyright protection measures are in place at a Scottish public library, how do they compare as against the recommended types of measures put forward by LACA and other relevant authorities?

RQ3. How have Scottish public libraries responded to the potential increased risk of legal action for copyright infringements by its users following the passing of the Digital Economy Act 2010?

RQ4. What is the potential risk level for Scottish public libraries being found liable for the copyright infringements of its users?

In order to obtain the required data to answer these research questions, requests for data were made under the Freedom of Information (Scotland) Act 2002 (FOI(S)A) to the thirty two local authorities in Scotland, which have devolved control over the policies and practices in place at public libraries within these areas. It is hoped that although restricted in geographical scope to Scotland, the data obtained will be indicative of the approaches taken to copyright policies within the wider UK area.

The data collected is subjected to both quantitative and qualitative analysis in order to draw out key patterns and themes in copyright infringement prevention measures taken by public libraries in Scotland. The quantitative analysis centres on the types of measures in place, using a matrix of recommended measures extracted from authoritative literature on copyright issues in public libraries. This will allow conclusions to be drawn as to the comprehensiveness of measures in place at public libraries to tackle the risk of copyright infringement. The quantitative analysis will also aim to establish whether public libraries have been planning for their potential responsibilities under new legislation for user copyright infringements facilitated through their internet service provision and the level of risk exposure public libraries may have to copyright infringements occurring on their premises. The qualitative analysis will aim to explore the contents in policies and guidelines currently in place, looking at the type of language used to convey copyright information and whether prevention of 'traditional' copyright infringements are treated differently from that of new digital and online copyright infringements.

In gathering and analysing this data, recommendations and conclusions will be made in regard to the copyright infringement prevention measures taken by Scottish public libraries. Recommendations will draw from positive examples of policies and procedures currently in place in Scottish public libraries, which may warrant more universal application. Observations will also be made on areas of copyright infringement minimisation programmes currently underutilised or absent from Scottish public libraries which could be developed in the future to assist in reducing the risk of public libraries been found liable for the copyright infringements of its users, while also providing library professionals with the confidence to provide its users with information they have a legal right to access and copy.

CHAPTER ONE: LITERATURE REVIEW

This literature review aims to set out the legal context under which public libraries may be liable for the online copyright infringements of its users, particularly in light of the Digital Economies Act 2010. The ethical considerations information and library professionals face when handling copyright issues will also be discussed, and the balancing act which needs to be undertaken in performance of their duties in line with responsibilities to both consumers of information and those creating intellectual property. It will further explore the recommendations and guidelines put forward by relevant authorities regarding the steps public libraries can take in order to reduce their copyright liability risks. Upon a thematic analysis of these guidelines, the key components of an effective copyright policy will be drawn out in order to provide a matrix with which to measure the comprehensiveness of copyright infringement policies in Scottish public libraries.

1.1 UK Copyright Law and Public Library Liabilities

Copyright law aims to protect the economic and moral rights of creators of original works. In the UK the main piece of legislation governing these rights is the Copyright, Designs and Patents Act 1988 (CPDA), and the numerous Statutory Instruments which amend it in line with European directives. It provides the copyright owner with the exclusive right to control the copying, distributing, rental and lending, performing, communication to public by electronic transmission, and adaptation of their works, subject to certain exemptions. To be covered by UK copyright the works must be original works, recorded and meet the nationality requirements by either the author being a UK national or the works being first published in the UK. The works must also fall into one of the protected categories, these being: literary works; dramatic works; musical works; artistic works; broadcasts; sound recordings; films and; typographical arrangements. The creator of the works can alienate their economic rights through the sale, assignation or licensing of their works. They can also choose to waive their rights. The term which the copyright protections will last depends upon the type of work, but can range from between 25 to 70 years (Intellectual Property Office, 2011).

A copyright infringement occurs where the whole or a substantial part of copyright protected works are used in a way restricted by copyright law and without the authorisation of the copyright holder. In order to enforce their copyright, copyright holders can take legal action for civil copyright infringement. If successful, the court could order the copyright infringer to stop further infringing use of the material, award the copyright owner damages and make the infringer hand over any infringing materials (Intellectual Property Office, 2011). Offences on a commercial scale are dealt with as criminal offences and taken forward by national authorities. In addition to these legal sanctions, organisations found guilty of infringing copyright legislation face reputational damage which could hinder future dealings with intellectual property owners and affect public opinion of the service (Pedley, 2008; Armstrong et al, 2004). An example of action taken against an educational institute is that of Uckfield Community Technology College who was ordered to pay damages of £23,000 to SSER Ltd by a Patents Country Court for publishing copyright protected materials on its website in breach of the terms on its licence with SSER (Uckfield News, 2012). Another example can be found in the case of Hoffman v Drug Abuse Resistance Education (UK) Ltd *[2012] EWPCC 2* where a drug abuse awareness charity was ordered to pay a professional photographer £10,000 of damages for the unauthorised use of his images of drugs on their website (NIPC Law, 2012). More recently, Brighton and Hove City Council reached an out of court settlement with the Copyright Licencing Agency (CLA) for copying protected materials without obtaining a CLA licence, which was discovered when CLA investigations revealed that the 'no-copying' policy of the council was being disregarded by council employees (Savage, 2013).

Public libraries and copyright provisions interact on two fronts, firstly in relation to the organisation itself adhering to copyright law and licensing arrangements and secondly in respect of the behaviours of library users (McMenemy et al, 2007). In terms of public library liability for users' infringements, Norman is of the view that:

> Users are responsible for their own actions. Intervening and challenging a member of the public could be fraught with difficulty. It is a matter of internal policy whether library staff should intervene if they observe apparent infringements but the view of

CILIP is that the appropriate member(s) of staff should be informed and any action taken should be as outlined in the library policy (Norman, 2004, p124)

This stance is supported by The Library Association, who advise that while it is a matter of internal policy as to whether staff should be obliged to approach those users suspected of infringing copyright, they should be required to inform the appropriate colleague ultimately responsible, for example in a public library the Chief Librarian (Norman, 1999).

However, libraries should be cautious of not demonstrating an active role in preventing copyright infringement of its users as sections 22-26 of the CDPA prohibits 'secondary infringement' which includes providing a means for making infringing copies, permitting use of premises for infringing performance and providing apparatus for infringing performance. Libraries could be seen as authorising copyright infringement if it is witnessed and no action is taken. Furthermore, even though the risk of secondary infringement action may be low, public libraries should still be robust in their approach to digital copyright infringement in order to avoid being sucked into "exhausting and unprofitable disputes between users and rightsholders" (Sturges, 2002, p30).

An additional area where public libraries may be at risk of copyright infringement liability for its users is where advice is provided to users as to the legality of what they are copying, particularly prior to the user signing any copyright declaration, and library staff should be wary of deciding on behalf of users as to whether their copying of material falls within the fair dealing exemption under Section 29 of the CDPA (Pedley, 2011).

As such, while public libraries may assess their risk of exposure to copyright enforcement or litigation as low, it is important to note that the legislation does not provide a blanket indemnity for libraries in relation to copyright infringement of its users.

1.2 Digital Copyright

Infringement of copyright by digital means, such as file sharing and online streaming, has become a prime concern of IP rights holders (Bertot et al, 2011), as noted by Pedley (2008, p23):

> Since its invention the photocopier has become a common means of copyright infringement, now overtaken by digital technology, because in the electronic environment copyright works are vulnerable to misuse and unintended further distribution; from a technical point of view they can easily be duplicated and distributed without either the authorization of, or compensation to, the rightsholde (Pedley, 2008, p23)

Due to the increased ease of making infringing copies of protected works, those in the creative industries have voiced concerns that copyright is not sufficiently enforced or respected on the internet, which in turn is seriously damaging the film, music and software industries (Oppenheim, 2011; Sturges, 2002). These fears of copyright holders are aggravated by the changing attitudes of consumers towards IP rights with Sturges observing that IP rights holders can justify their concerns by "pointing to a host of infringements and a general climate of hostility among users towards the whole concept of intellectual property, and electronic intellectual property in particular" (2002, p29). McMenemy et al (2007) also concur that there appears to be a feeling among many who download materials illegally that this is an acceptable thing to do.

In order to gain a clearer insight into the downloading behaviour of the UK population and to inform future policy decisions in this area, the Intellectual Property Office provided funding to Ofcom in 2012 to undertake research on attitudes towards lawful and unlawful access to copyright materials using the internet, which was completed on Ofcom's behalf by Kantar Media (Kantar Media, 2013). 21,475 surveys were conducted during the period of May 2012-May 2013 which provides useful data on the percentage of the population downloading materials illegally, the reasons why people are illegally downloading and what would make them stop. Key findings from the report included:

- There was a "clear demand for online access to copyright material, with well over half (58%) of internet users downloading or streaming at least one item of content during the year. However, infringement was a minor activity" with Kantar media estimating that "17% of internet users consumed at least one item of infringing content, which equates to around a third (29%) of all consumers of online content"

- "On volume basis, almost a quarter (22%) of all content consumed online during the year was infringing – that's over 1.5bn files"

- The distribution of infringement was heavily skewed as "a small proportion of infringers account for the large majority of infringements"

- "The top 20% of infringers were significantly more likely than the bottom 80% of infringers to have streamed or accessed content either out of their home or using a mobile network. Given the complexity involved in detecting infringing activity on mobile and out-of-home networks, this may have significant implications for enforcement, particularly if these trends spread to the long tail"

- The most common reasons for infringing copyright online were that "it's free", "it's easy/convenient" and "it's quick"

- In terms of potential measures which would discourage illegal downloading, the top 10% of infringers, more than the bottom 80%, claim they would be more likely to stop if they thought legal action would be taken against them, if they received a letter from their ISP saying an infringement had been detected and if there were more stories in the media of people being caught, which suggests that "enforcement measures are more likely to be effective with heavier infringers. They also suggest that no single enforcement solution is likely to address online copyright infringement in isolation; a complementary mix of measures including better lawful alternatives, more education about copyright matters, and targeted enforcement is more likely to be successful"
(Kantar Media, 2013, pp2-3)

Of particular interest to the library sector from this report is the emphasis on the fact that the majority of internet users do not infringe copyright, rather it is a minority who commit

the majority of copyright infringements. This appears to validate criticisms by users that when copyright infringement preventative measures are taken by libraries "they are being treated as potential criminals; certain things that should be easy to do, using networked computers, are not allowed for reasons that are seen as poorly argued reasons" (Oppenheim 2011, p43). However, it is also of note that heavy infringers are more likely than occasional infringers to use networks outside their home to download materials due to copyright enforcement difficulties this will cause. Consequently, libraries could potentially be at risk of being seen as a prime location for serial infringers to download illegally. Oppenheim captures the difficulties faced by libraries in enforcing digital copyrights, in his observation that: "Library and information professionals are a kind of 'piggy in the middle', sympathetic to users' needs, but at the same time anxious to be seen as not encouraging law breaking and in respecting copyright owners' rights" (2011, p43). The commonplace use of digital means to copy materials, both legally and illegally, has placed increased pressure on library staff to ensure that copyright is not abused both by traditional means and by new, ever changing, technological mechanisms and this could potentially see library professionals moving from the role of information "gatekeeper" to that of "sentry" (McMenemy et al, 2007, p73).

The Government have also had to address the issue of technological developments in the field of copyright law. Both the Gowers Review published in 2006 and the Hargreaves Review published in 2011, made a number of recommendations for the modernisation of current intellectual property laws in the UK to reflect changing technologies (White, 2014). For those in the library and information field, a series on important changes came into force on 1 June 2014, expanding upon current exceptions set out in the copyright legislation in order to "make our copyright system better suited to the digital age" (IPO, 2014, p2). These exemptions relate to 'research and private study', 'text and data-mining', 'education and teaching', 'archiving and preservation', 'public administration' and to permit 'accessible formats for disabled people' (IPO, 2014). Further exemptions are also due to come into force once approved by Parliament relating to 'personal copies for private use', 'caricature, parody and pastiche' and 'quotation'. It is hoped that these changes will assist libraries in two main ways, namely to preserve works for future generations and to give greater freedom to those carrying out private or non-commercial research (IPO, 2014). Firstly,

libraries will now be able to copy any type of works which are available in the library's permanent collection and which cannot be loaned to the public for the purpose of preserving those works which would be difficult to replace (IPO, 2014). This will greatly assist libraries wishing to digitise rare pieces in their collection. Secondly, the changes to the legislation extend the current exemptions for non-commercial research and private study to all types of copyrighted works, provided that the limitations on the amount that can be copied and the acknowledgement of authorship are followed. This is important in the context of this research as it means libraries will have additional copyright nuances to educate themselves and users of library facilities about regarding the appropriate use of digital resources for private research and study, for example the copying of parts of films for media courses. Indeed, the IPO (2014, p6) recommend that to ensure a person is genuinely not doing commercial work that a librarian "ask a researcher to declare that they are doing non-commercial research; this can now be done electronically". The IPO (2014, p7) further mention libraries will now be permitted to offer access to copyrighted works on dedicated computer terminals for the purposes of private research and study, however what can actually be done to a copyright work accessed on this terminal is vaguely explained as being dependent on "the licence terms of the work, and the facilities that are in place at the institution where you are viewing it". What is made clear, however, is that licence terms for the use of copyrighted materials must be interpreted in line with the exemptions set out in the legislation and as such licences cannot prohibit uses that are deemed acceptable by the legislation, for example reasonable copying for private study.

A further, more controversial, piece of legislation aimed updating copyright law and in particular tackling online copyright infringement is the Digital Economy Act 2010 which will be discussed in more detail below.

1.3 Digital Economy Act 2010 (DEA) and the Potential Impact on Public Libraries

The current position of UK copyright law on tackling digital copyright infringement has been heavily criticised by the creative industry for not being robust enough, particularly in regards to content published online and peer to peer file sharing (Sturges, 2002). Consequently the controversial Digital Economy Act 2010 was passed in April 2010 (Ward, 2012). The most

significant provisions for public libraries is the introduction of a 'three strikes and you're out' system relating to online infringement of copyright and places new obligations on Internet Service Providers (ISPs) under an 'Initial Obligations Code' produced by Ofcom (LACA, 2012a). The new obligations on ISPs can be summarised as follows:

1. If an copyright holder suspects that an internet 'subscriber' is infringing their copyright protections or allowed another person to use their internet connection to infringe copyright then the copyright owner can file a copyright infringement report (CIR) with the relevant ISP who provided that subscriber with the internet connection used for the infringement.

2. Once an ISP has received a CIR they must notify the relevant subscriber within one month of its receipt, provided that the ISP has no grounds to appeal the CIR.

3. If the subscriber receives three letters or more within a twelve month period anonymous information may be provided on request to the copyright holder showing which CIRs are linked to that customer's account. The copyright holder may then choose to take court action to obtain an order requiring the ISP to reveal the identity of the subscriber with the view of taking enforcement action under the CDPA.
(Ofcom, 2012; Ward, 2013; Coulter et al, 2010)

These obligations, which have been delayed under the latter half of 2015, will initially only to applicable to ISPs with more than 400,000 broadband enabled fixed lines. However, concerns have been raised by the library and information sector regarding the unclear drafting and failure to address the unique position of public intermediaries providing internet access to their users (Oppenheim, 2011). Two key concerns were raised on behalf of libraries as part of Ofcom's consultation on its draft initial obligations code, namely: (1) the difficulties they would face in identifying an individual subscriber on a network that is open and used by many people and; (2) the lack of clarity on the position of public intermediaries in terms of whether they are an 'ISP', 'subscriber' or 'communications provider' due to the wide definitions provided in the Act (LACA, 2012b; NLS, 2012; Cilip et al; 2012).

The impact that the Act will have on public libraries will vary greatly depending on whether they will be classed as a non-qualifying ISP or Communications Provider, in which case they should not receive CIRs, or whether they will be considered a 'Subscriber' and need to defend and investigate any CIR issued to them, which would require procedures to be in place to record the details of every session where a user accesses the internet. A further issue identified by Cilip et al (2012) is that a public intermediary is much more likely to reach the three infringements threshold in a short space of time than an individual user, however no distinction is made in the Act between these two types of internet users. If a technical obligations code is also established, an infringing subscriber may have their internet service suspended, which in the case of a public library would severely compromise the core services it provides. There is additionally a possibility that in the future the threshold for qualifying ISPs will be lowered to include public intermediaries (Ofcom, 2012) and as such new infrastructures to handle CIRs will need to be established.

Ofcom have to a certain extent attempted to allay the fears of the library sector by explaining to an audience at the Westminster Media Forum in November 2012 that although it is ultimately the DEA which provides the definition of Subscriber, and for qualifying ISPs to apply these definitions, Ofcom has provided guidance that libraries whom receive internet services primarily for the purposes of making it available to customers should not be considered Subscribers. Instead, they should be considered as an ISP or Communications Provider (Out-Law, 2012). However, while it is noted that ISPs are required to apply the classifications set out in the DEA correctly or face Ofcom sanctions (Out-Law, 2012), public libraries still face uncertainty until precedent is built up through judgements of the independent appeal body or unless the legislation is amended to make the position of public intermediaries clearer. This means the DEA should not yet be disregarded by public libraries as a future potential liability risk. Furthermore, even if public libraries are more concretely taken out of the scope of the DEA digital copyright provisions, this may leave libraries in an interesting position whereby they are considered a safe-haven for digital copyright infringers, thus increasing instances of infringements using library equipment (Orlowski, 2012).

In response to the setbacks in implementing the DEA provisions dealing with individual's online copyright infringements, it has been reported in May 2014 that a voluntary scheme between entertainment industry bodies and UK ISPs has been agreed and will be implemented by the end of 2015 (BBC, 2014; Horten, 2014; Killock 2014, Jackson, 2014; Barrell, 2014; Out-Law, 2014). The Voluntary Copyright Alert Programme vastly dilutes the provisions of the DEA and instead of focusing on punitive measures, ISPs will send educational letters to infringers promoting an increase in awareness of legal downloading services (BBC, 2014). However, concerns have been raised by the Open Rights Group (Killock, 2014) that the discussions regarding the voluntary scheme were conducted behind closed doors and nobody representing the public interests were involved in the creation of the scheme. This leaves the scheme open to many of the same objections by the library profession as the DEA, namely the lack of clarity as to if the scheme will apply to public intermediaries and Wi-Fi providers, with the additional problem of a lack of transparency in regard to how personal information will be used, the processes involved and if alerts can be appealed (Barrell, 2014; Killock, 2014).

As such, the need to minimise the risk incidences of copyright infringement in public libraries should still remain a priority, both to reduce the risk of their networks being used for infringing activities and because a key defence for libraries against liability for copyright infringements of its users is that it has an active programme of minimising copyright infringement and therefore has not knowingly facilitated the infringement in any way (LACA, 2012a).

1.4 Copyright and Library Ethics

The exploration of public library responsibility for user infringements is not limited to interpretation of the current legislative framework however, as there are wider ethical considerations to take into account (Pedley, 2007) and as postulated by Hauptman (2002, p105), "The law is a useful guide and should be followed despite its harsh demeanour, but it must never be confused with ethical commitment…for the law and ethics are sometimes antipodal opponents".

The core ethical debate surrounding copyright in libraries centres on the conflicting responsibilities of library and information service professionals "...as guardians of intellectual property whilst at the same time being committed to supporting their users' needs to gain access to copyright works and the ideas they contain" (Pedley, 2011, p68). Indeed, if intellectual property rights were not respected then libraries and their patrons may face a disappearance of content as creators of works have little financial or personal incentive to produce and distribute their works and publishers go out of business (Skala et al, 2008; McMenemy et al, 2007). This must, however, be weighed against the key ethical commitment of the library profession to disseminate information and facilitate the spread of knowledge (Psoner, 2012; Hauptman, 2002). In order to assist professionals in effectively dealing with this juggling act, the issue of copyright is handled in the ethical codes of the International Federation of Library Associations (IFLA), the American Library Association (ALA) and the Chartered Institute of Library and Information Professionals (Cilip), each of which will now be discussed in turn.

The IFLA Code of Ethics for Librarians and other Information Workers (2012) is based on premise that the "need to share ideas and information has grown more important with the increasing complexity of society in recent centuries and this provides a rationale for libraries and the practice of librarianship" (IFLA, 2012, p1). The IFLA code therefore places a strong emphasis on the duty of information professionals in "providing the best possible access for library users to information and ideas in any media or format" as well as "advocating for exceptions and limitations to copyright restrictions for libraries" (IFLA, 2012, p2). Additionally, information workers have a duty to negotiate favourable licences and contracts with publishers that do not implement restrictions over and above those legislatively in place. The Code does however provide that "Librarians and other information workers recognise the intellectual property rights of authors and other creators and will seek to ensure that their rights are respected" (IFLA, 2012, p2) thereby providing a mandate for information professionals to abide by the copyright laws in place.

The ALA Code of Ethics provides a broader statement to guide ethical copyright decision making, namely: "We respect intellectual property rights and advocate balance between the interests of information users and rights holders" (ALA, 2008). This broad statement

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recognises both the validity of intellectual property rights and the library and its user's responsibility to adhere to the law (Weiss and Shelfer in Aulisio, 2013). However, as with many such high level ethical statements, there is scope for different interpretations of this ethical principal in practice depending on the information professional's experience and knowledge (Aulisio, 2013).

Finally, the Cilip code addresses the issue of copyright in its Code of Professional Practice for Library and Information Professionals under Principle B10, holding that members should: "Defend the legitimate needs and interests of information users, while upholding the moral and legal rights of the creators and distributors of intellectual property" (Cilip, 2012). As with the ALA Code of Ethics, Cilip's statement appears to neutrally handle the conflicting interests of these stakeholders, and as observed by Pedley (2011, p69): "The key point here is that the commitment to providing their users with information has to be tempered by the need to do so within the limits of the law, which includes respecting copyright law".

It is apparent from this examination of professional ethical codes that there is no definitive rule on how to act in a specific copyright law applicable situation. This is not helped by the fact that the copyright legislative framework is complex, with many of the key terms in the CPA not being defined, such as fair dealing, substantial and reasonable, and the legislation being updated in numerous Statutory Instruments (Pedley, 2007; Pedley, 2005). This has led to ethical concerns of "copyright creep" where copyright holders assert protections over their works which exceed legislative scope, thereby stifling the legitimate uses of copyright materials (Aulisio, 2013). It can also lead to information professionals being overly conservative in their application of copyright protections in order to avoid potential litigation and thereby scaring patrons away from legitimately accessing and using information (Hauptman, 2002; Aulisio, 2013). Both copyright creep and copyright paranoia are considered by Aulisio (2013) as forms of censorship which restricts the access that library users have to ideas, thus prohibiting the creation of new knowledge. Furthermore, when educating users on copyright restrictions information professionals must be careful not to assume the guilt of users, which is also ethically problematic (Aulisio, 2013).

As such, it is important that information workers fully understand their "delicate roles as both protectors and providers of information" (Aulisio, 2013, p574), which includes an understanding of how "their policies and procedures, as well as the current legal, economic and technological landscape, syncs with their values and ethical precepts, and advocate change when they do not" (Posner, 2012, p123). In addition, any policies or measures taken need to appreciate that "freedom to access information and freedom of expression are not absolute rights. While the library contributes to the realisation of citizen's rights, the information professional has to balance professional ethical principles and legal limitations" (Pautz, 2013).

1.5 Guidelines on Minimising Copyright Infringement in Public Library

Due to the potential increased risk of legal action being raised against public libraries for copyright infringement, it is more important than ever that public libraries have a copyright minimisation programme in place (LACA, 2012a; Pedley, 2012). Additionally, it is clear that public libraries have an ethical duty to uphold intellectual property rights and educate those using information on how this should legally and morally be done. Both pre and post DEA literature provide recommendations on what should be included in an effective copyright compliance programme and common themes can been drawn from these to paint a picture of what a comprehensive scheme should contain. The measures identified in the literature, and which will be discussed in further detail, are:

1. Copyright policies for users
2. Copyright policies for staff
3. Enforcement of policies
4. User education
5. Staff Education
6. Technical Measures
7. Posters and notices

1.5.1 Copyright Policies for Users and Staff

A copyright policy is defined by EIFL (2012) as "a tool to provide clarity on copyright issues that arise during the provision of library services, and to help manage risk for the library and its parent institution". In achieving this purpose, the policy should aim to meet three key objectives: (1) ensure compliance by library staff and users with copyright law and the licences applicable to the service's digital resources; (2) provide clear guidance to library staff and users as to applicable copyright rules in the use of the library services and resources and; (3) educate staff and users of the library about what they can and cannot do under copyright law (EIFL, 2012). It is notable that copyright policies aimed at users and staff have the same end objectives, and as such they will cover much of the same ground, including key basics such as the purpose of the policy, what can be copied under current legislation and the licences which the library holds (especially any exceptions and limitations), consequences of breaking the copyright policy and where further information can be sought.

The literature strongly suggests that Acceptable Use Policies (AUPs) are put in place at libraries which covers the use of all types of IT facilities and systems, and should be agreed to by all users of the network, including staff, visitors, contactors and students (Pedley, 2011; Pedley 2012; BIS 2010; LACA, 2012a; McMenemy, 2008; Pautz, 2013). This should cover the need for copyright compliance among other issues, such as data protection and computer misuse (Pedley, 2012) and will normally stipulate that legal liability for breaches of the law falls with the individual user and not the library service (BIS, 2010). It is this document which forms the contract between the library service and users of its IT facilities and systems and therefore it is of upmost importance that it is fully understood by staff and users of the service prior to access to electronic services being given (McMenemey, 2008). Staff should also have the additional responsibility as information professionals to explain its terms to users, particular vulnerable users who may have learning difficulties or not understand the language (McMenemy, 2008).

Staff policies should also additionally cover the procedure to follow for dealing with alleged copyright infringements (LACA, 2012a). This will assist with consistency in the application of the policy in different branches and give staff confidence in applying the provisions of the policy in line with current legislation. LACA (2012a) further advise that a senior member of

staff should be available so staff can refer copyright issues to them, which should be reflected in policies by, for example, providing details of any designated copyright compliance contacts (Pedley, 2008). Furthermore, staff policies should cover procedures for copying by library staff, both for the organisation and on behalf of users, digitisation, obtaining copyright clearance and document ordering (EIFL, 2012).

The format which the copyright policy will be communicated to staff and users also needs to be addressed by the library. The means of communication chosen should reflect the intended audience and acknowledge that different user groups may need different levels of detail as to copyright issues (Pedley, 2008). For example staff who work in a reprographics department will need more knowledge than the average library user. As such, different document formats could be used such as fact sheets or FAQs for library users and more detailed written policies for staff. The language used in the policy should also avoid 'legalese', otherwise it is likely users will not understand the obligations they agree to under the policy or may even put them off reading the policy altogether (Pedley, 2008). The best way to communicate the policy should also be considered, for example if hard copies should be provided or if the policy should just be available online.

1.5.2 Enforcement of Policies

In order for copyright policies to be effective, steps must be taken to enforce the provisions of the policy and action taken against infringements (Pedley, 2008; LACA, 2012a). For staff policies, this may include making copyright infringements a disciplinary offence under the terms of their contract of employment and ensuring that breaches are consistently investigated and action taken if required (Pedley, 2012; Pedley, 2005). LACA (2012a) recommend the following enforcement steps be taken:

- Charges of alleged copyright infringement should be investigated. Internet users should be treated with respect, observing and preserving their privacy, and considering them to be innocent unless evidence proves otherwise. Junior staff may want to refer the issue to a more senior member of staff, or to ask another staff

member to accompany them when challenging someone whom it is suspected may be breaching copyright policies of the library.

- Where breaches of copyright by a member of staff are substantiated, and the user can be identified, the person should be given additional instruction about copyright law as this affects library use and warned that a repetition may result in disciplinary action.

- Where breaches of copyright by a library user are substantiated, and the user can be identified, the person should be given information about copyright law as this affects library uses, and warned that a repetition may result in the person being banned from accessing the internet in the library

(LACA, 2012, p6)

Libraries should also consider having a clear mechanism for receiving reports of copyright infringement and a procedure for the quick and effective investigation and dealing with users responsible for any infringement (Pedley, 2011).

1.5.3 Education

Education of users and staff on the correct and incorrect use of copyrighted materials should also be central to a programme of copyright infringement minimisation (Pedley 2012; LACA, 2012a; Pedley 2008).   Indeed, the role that education plays in reducing copyright infringement was highlighted in both the Gowers Review and the Hargreaves Review, with the Hargreaves Review calling for more efforts to be made to educate young people on the importance of copyright protections and how they work. Pedley (2012, p137) acknowledges the role libraries have in providing this education noting that "Libraries should undertake initiatives to educate users on copyright issues, and should take measures to raise awareness of the need to comply with copyright law".   LACA (2012a) also include provisions for education in their guidelines for minimising copyright infringement, advising that libraries make sure that all staff are aware of copyright law and that internet users are educated about copyright issues.

Staff should be provided with training as to the application of the appropriate copyright law in the library environment (Pedley, 2008), this allows staff to both effectively monitor the copyright behaviours of users and the staff around them, as well as allowing them to pass on their knowledge and effectively answer user copyright queries. Staff may also consider providing copyright education to users at points of interaction such as reference desks, however this does risk users feeling like they are being judged as infringers prior to the act (Aulisio, 2013). As observed by Purdy:

> Library and informational professionals have long acknowledged that they have a role to play in supporting their users in gaining access to, and using, information in all formats, while at the same time respecting the economic rights of authors and creators of materials. It is usually this group of professionals who take on the role of educating users in the basics of copyright law and providing guidance in interpreting the law, so users understand what the law means in relation to the issues facing them. (Purdy in Pedley, 2005, p93)

In educating users, library professionals may consider using different ways to convey the message to different user groups, such as brief leaflets setting out why copyright matters in practical terms, web pages aimed at different categories of user such teenagers, students or those undertaking personal research with personalised FAQ or online quizzes and flow charts (Pedley, 2005). Including copyright as a topic in any face-to-face education and induction programmes should also be included (Norman, 1999).

The provision of education can, however, be intrinsically linked to other measures combatting copyright infringements, such as the communication of a clear copyright policy and the clear display of notices or posters relating to what can and cannot be copied (Pedley 2012).

1.5.4 Technical Measures

Specific technical measures to address online copyright infringement could provide further evidence of a programme of active copyright infringement prevention. LACA (2012a)

suggest that where possible access to internet sites which are known to be for the sole purpose of facilitating the downloading of illegal material be blocked. However, the practicality of this is likely questionable due to the nature of illegal sites often changing addresses to avoid detection, as well as involving ethical considerations of censorship of information. Libraries could however prohibit downloads onto library desktops or use firewalls which prohibit access to certain sites that use Flash technologies (BIS, 2010; Pedley, 2012). As observed by BIS (2010, p5): "these will not prevent an individual from infringing copyright but should ensure they will have to make a conscious decision to work around the measures and will need a degree of technical knowledge".

Other technical measures could include requiring users to authenticate themselves before gaining access to the internet using user names and passwords, which would allow the library to identify who committed a certain act of infringement at a certain time, so long as Data Protection Act principles were adhered to. This may be a requirement in the future if the DEA comes fully into force and libraries are classified as ISPs (Pedley, 2011). It could also assist library staff in monitoring web traffic, downloads and user activity, although this would be resource intensive (BIS, 2010).

There are also measures which can be taken to help tackle the harder to detect infringement through wireless networks, which are often taken advantage of by cyber criminals, including:

- "changing the administrator password
- turning off the network's name or Service Set Identifier (SSID)
- enabling Wi-Fi Protected Access (WPA) encryption
- if the router has this feature, reducing the range of the signal in order to limit the distance from your location that the signal can reach"

(Pedley, 2011, p55)

1.5.5 Copyright Posters and Notices

Finally, it is a common theme within the literature that libraries should have warning notices on or above photocopies, scanners, and computers providing information about copyright legislation, what a user is allowed to copy and advising them to seek guidance from a member of staff when in doubt (LACA, 2012a; Norman, 1999; Pedley, 2007). CILIP produce copyright posters which set out in a concise statement what the legal position is in terms of copyright in using photocopiers and scanners and downloading content from websites and databases, including what is covered by the fair dealing exceptions concerning research and private study (Pedley, 2007). Of course, warnings and notices are very unlikely in themselves to provide a comprehensive guide to copyright obligations, instead providing more of a prompt for users to consider copyright issues which may be applicable.

1.6 Research Gaps

The literature review has shown that the topic of copyright infringement prevention in public libraries is becoming increasingly fraught with difficulties as vague and complex legislation is struggling to keep up with technological developments, allowing materials to be illegally copied quickly, cheaply and easily. This has led to new legislation being passed which both aims to broaden exceptions applicable to libraries as well as potentially increasing their burden to monitor users connected to the library internet service. Library professionals also have to reflect upon their ethical duties and apply these to the changing landscape of intellectual property rights, assisting users in finding and using the information they are entitled to, as well as protecting creators of works, thus encouraging people to produce and publish new materials. To fully achieve this staff and users need robust guidelines, policies and education programmes to enable them to understand their rights to access, copy and download certain information, as well as warn them of the consequences of breaking copyright law. Libraries as organisations also need to protect themselves from the risk of being accused of facilitating copyright infringement, both under current legislation, and potentially the DEA or voluntary scheme should either come into force. A key way to reduce this risk is by showing a copyright infringement minimisation programme is in place.

As public libraries are controlled by each individual local authority, there is scope for different libraries in the UK to take different approaches to minimising copyright infringement risks. Indeed, in research undertaken by McMenemy (2008) it was found that there were variances in internet access in UK public libraries, in particular in relation to the provision of acceptable use policies, internet filtering and the quality of guidance. Therefore it is hypothesised that the provision of copyright policies and infringement protections is also likely to vary between public libraries in different local authority areas. As such, further research into this area is required in order to determine:

1. Whether public libraries are undertaking active programmes of minimising copyright infringement and if so the types and quality of measures which they have in place as compared to the recommendations put forward by LACA and other authoritative sources.

2. Whether public libraries have amended their copyright policies in light of the Digital Economies Act 2010, and if so what approach they are taking to the potential liabilities which they could face if the Act does come into force as it is currently drafted.

3. The risk which public libraries face from legal action in relation to copyright infringements by their users.

CHAPTER TWO: RESEARCH AIMS AND METHODOLOGY

The aim of this research is to determine the types of copyright infringement preventative measures in place in Scottish public libraries, and the extent to which these meet the recommendations put forward by the authorities discussed in the literature, namely: (1) user policies; (2) staff policies; (3) enforcement of policies; (4) user education; (5) staff education; (6) technical measures; and (7) posters and notices. A broad view of the attitudes of Scottish public libraries to the threat of being held liable for the online infringements of their users, particularly in light of the DEA, is also hoped to be gained from the research. This will involve an evaluation of the actual copyright infringement prevention measures in place at the public libraries and in particular an analysis of the content of policies and guidelines. In order to achieve these objectives, a number of research questions will be posed, namely:

> *RQ1*. Do Scottish public libraries currently have in place active programmes of measures designed to minimise their potential exposure to legal action for breaches of copyright committed by their users while using library facilities and equipment?

> *RQ2*. Where copyright protection measures are in place at a Scottish public library, how do they compare as against the recommended types of measures put forward by LACA and other relevant authorities?

> *RQ3*. How have Scottish public libraries responded to the potential increased risk of legal action for copyright infringements by its users following the passing of the Digital Economy Act 2010?

> *RQ4*. What is the potential risk level for Scottish public libraries being found liable for the copyright infringements of its users?

It is hoped that by addressing these questions a better understanding will be reached as to the current attitudes of public libraries to their copyright obligations and the comprehensiveness and adequacy of copyright infringement policies within public libraries

in Scotland. This data will hopefully allow public libraries to reflect upon their potential exposure to liability for the copyright infringement of their users and assist them in developing copyright policies which will minimise this risk, reflecting in particular steps that may need to be taken if the DEA and Initial Obligations Code come into force.

2.1 Freedom of Information (FOI) Requests

Public libraries in Scotland are administered by 32 local councils, and as such they are subject to the Freedom of Information (Scotland) Act 2002 (FOI(S)A). This provides that: "A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority." (section 1(1), FOI(S)A). As such, the data required to answer the research questions posed was sought through FOI requests to each of the local councils in Scotland. In using this research method the three golden rules identified by Burke et al (2012) were followed, namely: (1) ask the right questions; (2) make contact with officials and; (3) be prepared for it to take time. This means as a first stage the local council websites were checked to ensure that the information sought was not already publicly available. As none of the local authorities had this information published on their websites, FOI requests were sent to each of the 32 local authorities, and where directed, were also sent to any trust to which the local authority has passed responsibilities for library services to. The local authorities and trusts were asked to provide:

1. Any policies or guidelines currently in place at the public libraries within your local authority which deal with copyright infringement issues, both for staff and users of the library service.

2. Details of any reports, minutes or correspondence you hold which discusses the potential effect of the Digital Economy Act 2010 or the OFCOM Initial Obligations Code on public libraries within your local authority as providers of internet access to the general public.

3. The number of recorded copyright infringements occurring at the public libraries within your local authority for the years 2010, 2011, 2012 and 2013, and how many of these were facilitated through the internet access provided by the library.

The guidance of the Information Commissioner for Scotland was followed in that only recorded information was requested, information requested was kept specific and a date period of 2010-2013 was specified for infringement cases.   As FOI only provides a right of access to information which has been recorded by an authority, local authorities were asked to provide copies of any policies and guidelines dealing with copyright rather than details of any specific copyright infringement minimisation programme, as this provided a broader scope to catch copyright policies which it was acknowledged may come under a number of different wider organisational policies rather than a specific copyright one, and any measures should be recorded in a policy or guidelines to be considered as formally implemented.

This method of data collection could be considered a type of descriptive survey, as its main purpose is to "describe a particular phenomenon: its current situation, its properties and conditions, that is to answer 'who', 'what', 'when' and 'where' (rather than 'how' or 'why') questions about it. It is also known as a status survey, that is, a survey of the status quo" (Williamson, 2002, p91). This means that its purpose is not to undertake formal statistical hypothesis testing or attempt to provide explanatory information on why certain approaches are taken to an issue, but rather to gather facts, enumerate and describe data (Williamson, 2002; Pickard, 2007).   These results can then be analysed using both quantitative and qualitative measures. The questions asked to the sample of respondents in this paper, namely the local authorities of Scotland, aim to gather information which will provide an insight into the current copyright protection practices in public libraries; however it will not attempt to explain why certain approaches are taken and why there are variations between local authorities. The results of the survey will show what measures are in place, from whom the policies and guidance originate (for example internally or from an external professional body), if policies have been updated to reflect the changing legislative and technological landscape of copyright infringement and the means by these measures are communicated to staff and public (i.e where the policies and guidelines appear and when users and staff are educated of there content).

The information gathered from the FOI responses will be both quantitatively analysed and qualitatively analysed. The quantitative analysis will be conducted on the number of and

type of copyright preventative measures in place, whether action has be taken in light of the DEA and the number of copyright infringements by users recorded by public libraries. The qualitative aspect will come from thematically exploring the content of the policy and guideline documents provided by the local authorities in order to ascertain what they include and how this is expressed. In both methods of analysis the identity and practices of specific libraries will not be identified, instead the paper will focus on providing a general picture of what copyright infringement preventative practices are in place in public libraries in Scotland and any issues of concern applicable to the public library sector as a whole.

2.2 Quantitative Analysis

The quantitative analysis of types and number of measures in place will be conducted through the use of the set of seven specific copyright preventative measures identified in the literature. The benefit of drawing out these measures from the literature rather than synthesising the types of measures from the FOI responses is that it provides an independent yardstick from which to measure the comprehensiveness of copyright minimisation programmes in place (Foster et al, 2012). This will allow for a quantitative analysis of how far the copyright recommendations are being followed by the various public libraries in Scotland, ranging from those with no policy in place to those which have in place measures addressing all the recommendations.

The data provided by the local authorities will be coded in line with the seven identified measures, along with the code of 'other' to account for measures with have not been identified in the literature. Bryman (2012) noted that coding is a key stage in analysing data which is in an unstructured form, such as the information retrieved from the FOI requests, and outlines two key stages in the coding of data, namely, categorising the data and secondly assigning numbers to the categories in order to allow for tags to be allocated for quantitative processing. It is further acknowledged by Bryman (2012) that when coding three basic principles should be followed: (1) each category must be distinct and not overlap; (2) the list of categories must be comprehensive and cover every possible answer; and (3) there must be clear rules on how each category should be applied to ensure consistency in their application. Following this guidance, the categories outlined in Table

2.1 provide the basis of the data coding in this paper for types of copyright infringement preventative measures.

Table 2.1 – Type of copyright infringement preventative measures

Category No.	Type of Measure	Description
1	User policies	Written policies and guidelines aimed specifically at library service users covering the issue of copyright, for example Acceptable Use Policies and terms and conditions for joining the library
2	Staff policies	Written policies aimed at either local authority staff in general or more specifically public library staff covering copyright issues, for example contracts of employment or procedural guidelines
3	Enforcement of policies	Measures in place to deal with any breach of user or staff policies, for example disciplinary procedures or sanctions for breaches
4	User education	Specific training or awareness programmes aimed at educating users as to their rights and obligations under copyright legislation for example offering copyright information when providing training on the use of computers
5	Staff education	Specific training or awareness programmes aimed at educating staff as to their own and users rights and obligations under copyright legislation for example training courses
6	Technical measures	Technical steps taken which affect the ability of users to use library digital facilities to breach copyright law for example securing Wi-Fi networks and recording user usage of the internet
7	Posters and notices	Publically visible signage outlining copyright

		restrictions and exceptions for example Cilip posters above photocopiers
8	Other	Any other measure designed to tackle the issue of copyright infringement

A further quantitative analysis occurs in relation to the information received on whether the Digital Economy Act has had any impact on copyright policies in public libraries, using nominal coding, a general affirmative or negative conclusion will be drawn as to whether action has been taken in light of the DEA and an analysis made on any correlation between policy making in respect of the Digital Economies Act and the completeness of copyright protection measures taken by their public libraries.

Finally, the data on online copyright infringements in libraries will be coded as ordinal, based on the number of recorded incidents of copyright breach in public libraries occurring in the years 2010, 2011, 2012 and 2013 in each local authority allowing an analysis of the risk public libraries may face from users using their facilities to breach copyright and any correlation between incidents of copyright breaches and the completeness of the measures taken by the public library to minimise infringement.

2.3 Qualitative Analysis

The quantitative analysis outlined above will be expanded upon through a detailed qualitative analysis of how copyright policy is expressed through the documents provided by the local authorities through the FOI requests. Qualitative analysis of the content of the documents will be mostly inductive, involving inferences being drawn from common topics and themes present in the policies (Wildemuth, 2009; Pickard 2007). In particular themes relating to the type of language used by the policies, in terms of whether they focus on the negative prohibitive aspects of copyright law, or whether they also explain the rights users have, for example private research and study exemptions will be examined. As discussed in the literature, this is an important ethical aspect to the work of information professionals as they are balancing their obligations to both provide as much information to users as possible while also acknowledging their responsibility to protect copyright on behalf of

intellectual property owners. In addition, comparisons will be made between approaches to traditional copyright issues, such as photocopying of physical materials, as against digital copyright infringement risks, for example downloading music illegally. This is a constantly changing arena, as technologies change and the use of digital materials becomes commonplace, which means that libraries are faced with new and challenging copyright related issues. The literature review addressed the changing legislation around the area of online copyright infringement and showed that there is still much uncertainty as to how and if public libraries are to be held accountable for copyright infringements of users through its internet provision. As such, it is of value to explore how public libraries are tackling digital copyright infringement and whether there is a common standard in public libraries in relation to the responsibility taken for preventing the online copyright infringements of their users. This approach, whereby initial coding of content starts with relevant research findings, is described by Zhang and Wildemuth (in Wildemuth, 2009, p309) as "directed content analysis" as unlike grounded theory development, some direction is formulated prior to the researchers undertaking data analysis where they "immerse themselves in the data and allow themes to emerge from the data".

Documents will be the source of data for the qualitative analysis, in particular official documents deriving from local authorities. These documents have not been produced specifically for the purpose of this piece of research, indeed FOI requests only provide a right to access information which is already in recorded format. This does however mean that the analysis is based on the reality presented by the local authorities and it has been argued by some writers that "documents should be viewed as a distinct level of 'reality' in their own right" (Bryman, 2012, p554). As such documents should be seen as important for what they are trying to achieve and who they are aimed at. They also need to be considered in their context, both in relation to the documents they refer to and/or if they are a response to another document, which is described by Atkinson and Coffey (in Bryman, 2012, p555) as "inter-textuality". This being so, when undertaking the qualitative analysis the purpose for the document will need to be considered, for example if the document is a poster or notice the language used may be short and to the point to reflect the limited space. It will also need to be taken into account whether the document is written solely for the purpose of the public library or whether it has application to the wider local authority

organisation, or whether it was been drafted by a professional body such as Cilip, as this may also have implications on whether the document can truly be said to offer a window into the attitudes and practices of public libraries to copyright infringement.

2.4 Strengths and Limitations to Methodology

The use of FOI requests as a means of data collection has the key benefit of ensuring that you will receive a response to the request for information, so long as the request meets the requirements of the FOI legislation and does not fall within one of the permitted exemptions. The information should also be provided within 20 working days, although the public body may request more time should the data requested be complex to locate. As FOI requests are most commonly submitted to local authorities through a designated FOI email address or online form, it also means time is saved from having to locate the appropriate contact within the organisation to deal with the information request. This allows a large number of public bodies to be surveyed with a guarantee of a response, where surveys often traditionally have low response rates (Lawal, 2009; Williamson, 2002) which can lead to unrepresentative samples. The use of FOI requests in this paper has allowed for data to be collected from all local authority public libraries in Scotland which in theory should provide a reliable insight in practices within Scotland and allow conclusions to be drawn as to whether they are all implementing a similar programme of copyright infringement minimisation. It also allows for recommendations to be made which could potentially assist in standardising copyright management programmes throughout Scotland which in turn could provide a clearer message for staff and users as to the best ways to approach complex copyright issues.

Using FOI requests as a means of data collection can however be problematic. Bourke et al (2012) identify three common problems encountered by researchers: (1) delay; (2) variability and; (3) exemptions. Delay can be caused when requests for information are not clear enough or expect complex information to be gathered from the public body, as such researchers should expect and plan for at least some of their requests taking longer than 20 days (Bourket et al, 2012). Another cause of delay encountered when undertaking this research was the transfer of responsibility by local authorities of library services to leisure

trusts, which meant that many FOI requests had to be forwarded on to the appropriate trust body once the council had confirmed they did not hold the requested information. Variability is also to be expected as different organisations will have different procedures and formats for answering the requests, and as such the quality and detail of data from each source will be different. This means that analysis of the information collected may be difficult and take time to put into a format which can be meaningfully compared. Finally, exemptions such as the cost limit or personal data may be applicable and should be considered at the outset when drafting the information request.

The use of FOI requests as a mechanism for data gathering has limitations on its reliability due to its dependency on the answers provided by each local authority (Brown et al, 2013). As with any self-answering survey, the person who answered the FOI request may have interpreted the questions differently from the author or the person who the FOI request was fielded to may have gaps in their own knowledge or understanding of library policy meaning that the answers they provided do not provide an accurate representation of actual library practice. Unlike in an interview situation, the researcher was not present to provide clarification or further context on the data requested.

It is also acknowledged by the author that the topic of copyright infringement in public libraries would potentially be viewed by local authorities as controversial and as such the answers provided to the FOI requests are likely to contain bias as the respondents wish to show they are robust in their application of the law and downplay any potential risks in this area (Bryman, 2012; Beck et al, 2004). Those who provided the data to the FOI requests were likely to be in managerial roles where awareness of copyright legislation and organisational policies is part of their remit, which does not necessarily reflect on what is being implemented or followed at ground level.

Finally, the research undertaken in this paper has only examined copyright infringement minimisation measures in Scottish public libraries so can only be seen as representative of this geographical area at this moment in time. While the key copyright legislative provisions applicable in Scotland are the same throughout the UK, and the public library copyright measures in Scotland should be representative of other UK public libraries, this cannot be

definitely be proven without further studies extending to England, Wales and Northern Ireland. Furthermore, due to legislative changes coming into force in June 2014 it is recognised that many policy and guideline documents used by public libraries are undergoing review to reflect these updates, and as such the accuracy of policies and guidelines in reflecting the most recent changes to the law has not been taken into consideration in this research.

2.5 Alternative Methodologies

Alternative methodologies were considered for achieving the aims of this paper and to be considered as options should the FOI requests not yield the required data to answer the research questions.

Firstly, the method of unobtrusive testing, also known as mystery shopping was explored, whereby libraries in different local authority areas would be visited by the researcher and the copyright infringement preventative measures in place would be assessed. This would allow the researcher to experience any copyright information provision and preventative measures from the library user perspective and would thus provide a means of checking that public libraries are implementing the measures that they say they are (Lawal, 2009). It would further allow an assessment to be made as to the visibility of copyright information to users and the extent to which any copying, illegal or not, was being monitored by staff. This method does however have a number of disadvantages which meant it was not chosen as the primary method for gaining research data. It would be costly and time consuming for the researcher to travel to libraries in different authority areas, this meant that every local authority area in Scotland would not be able to be visited and only those authorities which were within a reasonable distance from the researcher's base in the central belt of Scotland could be chosen. This means that a less representative sample would be gained than that achieved through FOI requests. It would also restrict the data gathered to copyright infringement preventative measures aimed at users of public library facilities and would not allow for an exploration of the training and guidance provided to staff in conducting their duties as information providers, which is an important aspect of this research, particularly in

relation to the ethical tensions within the library profession of both supporting open information channels and respecting intellectual property owners rights.

The other method for gathering data considered for this research was conducting interviews with librarians working at public libraries in Scotland in order to gain a more in depth insight into the copyright infringement minimisation measures in place at the libraries within which they work. The interview type chosen would be structured with open ended questions, allowing key themes to be covered while allowing the interviewee to respond in the way they feel most appropriate (Pickard, 2007). This method would have allowed for greater probing into the perceived risk of copyright infringement by public library professionals and an assessment into the priority placed on preventing copyright infringements as against other legal and ethical responsibilities. It will still also allow for control over the data gathered assisting in the later analysis and reporting of findings. Unlike self-complete surveys, structured interviews will have a much higher completion rate and responses are higher than more widely distributed questionnaires (Pickard, 2007). However, like unobtrusive testing, this method of data gathering would be time consuming and it is also unlikely that every local authority area in Scotland could be represented. It would also require finding suitable participants to agree to take part in the interview process and any data gathered would be based upon their own knowledge and perceptions of copyright issues in their library. As such, the findings of the research would be based on a smaller sample pool and would be more suitable for qualitative analysis alone.

Following from the analysis of these other potential research methods, the use of FOI requests as the primary means for gathering data for this research paper is shown to be valid due to its requirement for mandatory responses and the representative sample which can be taken from a wide geographical area. The data gathered allows for both quantitative and qualitative analysis, particularly as the primary documents from which copyright policies and guidelines are derived have been requested and therefore a detailed content analysis can be undertaken as well as quantitative measures of the types of copyright preventative measures being implemented.

CHAPTER THREE: RESULTS AND ANALYSIS

The results of the FOI responses will be discussed below under each research question, focusing firstly on the quantitative analysis of the data obtained followed by a more in depth qualitative review of the content of the policies and guidelines in place. Responses were received from twenty nine of the thirty two local authorities in Scotland issued with FOI requests, with three local authorities unable to provide the requested data in both the time frame set out in legislation and required for completion of this research.

3.1 Quantitative Analysis of FOI Request Responses

3.1.1 Research question one

RQ1. Do Scottish public libraries currently have in place active programmes of measures designed to minimise their potential exposure to legal action for breaches of copyright committed by their users while using library facilities and equipment?

Responses to the FOI request showed that the majority of public libraries in Scotland had in place measures designed to prevent copyright infringements occurring through use of their facilities. Interestingly, in the two FOI responses which answered that there were no policies or guidelines in place, both council areas had copyright provisions contained within their publically available ICT policies, and as such no local authority was recorded as having a complete absence of measures. This discrepancy may be explained by a misinterpretation of the question contained within the FOI request, a lack of knowledge by the official providing the response or may provide an indication that digital copyright infringement is in some cases still overlooked by those providing more traditional library services, a theme which will be discussed further within the quantitative analysis.

Figure 3.1 clearly shows that there are variances in the programmes of measures in place at Scottish public libraries, confirming the hypothesis that there is not one clear uniform copyright infringement prevention programme being implemented by public libraries in Scotland.

3.1.2 Research question two

RQ2. Where copyright protection measures are in place at a Scottish public library, how do they compare as against the recommended types of measures put forward by LACA and other relevant authorities?

As discussed in the methodology section of this dissertation, the measure of the comprehensiveness of the programmes in place at Scottish public libraries to combat copyright infringement is as against the matrix of seven measures synthesised from the literature review and an additional category of 'other' to cover measures which to do not fall into the other seven. Figure 3.1 illustrates how many of these categories of measures were used by each council authority.
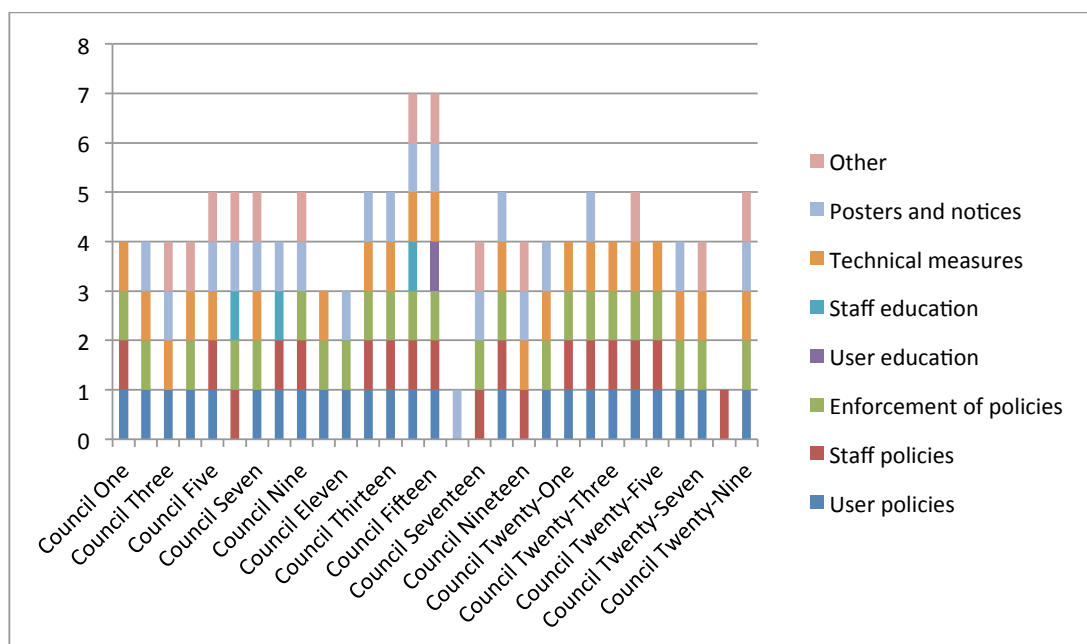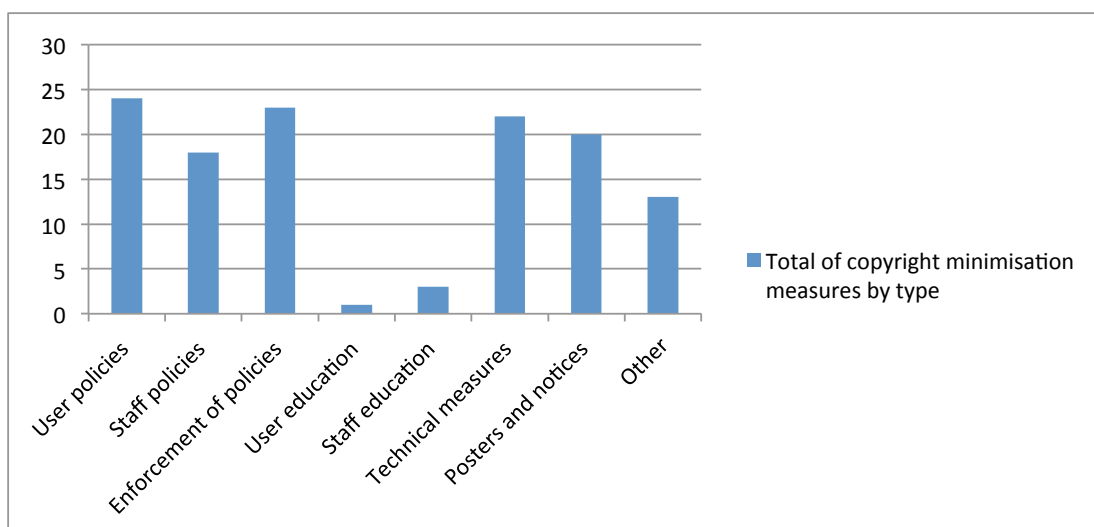

Figure 3.1 – Types of copyright preventative measures in place at Scottish public libraries

When analysing the usage of each type of measure, it becomes apparent that certain measures are more commonplace than others, for example almost all public libraries noted that they displayed posters outlining copyright obligations above photocopier facilities. A comparison of the usage of the various measures can be seen in Figure 3.2.

30
25
20
15
10
5
0

User policies
Staff policies
Enforcement of policies
User education
Staff education
Technical measures
Posters and notices
Other

■ Total of copyright minimisation measures by type

Figure 3.2 – Comparison of use of copyright minimisation measures by type

Within these broad categories of measures however, further variations occur in how the public libraries approach their application. A more detailed analysis of the data from within each category of copyright infringement minimisation measure is therefore warranted.

3.1.2.1 User policies

Most of the FOI request responses reported that user policies were in place dealing with copyright infringement issues in public libraries; indeed twenty four out of the twenty nine respondents had some form of written statement covering copyright obligations. In the majority of cases, the copyright policy statement was contained within a wider AUP for public internet usage rather than a standalone policy. The breakdown of policy conduits for users and staff can be found in Figure 3.3. Only one local council noted that specific policies for users existed in relation to copyright, and this was where specialist collections were held where it is likely that complex copyright issues may occur on a more regular basis. Within the AUPs, the copyright policy statements were kept brief and to the point, often only providing that users must not violate third party intellectual property rights or breach copyright legislation. These policies did not contain information about what could and could not be legally copied from the internet. Some policies did not directly refer to copyright infringements but instead prohibited users from accessing illegal websites or materials or

using the internet for controversial practices, which for the purposes of this research has been taken to include websites facilitating copyright infringement through illegal downloads or streaming.
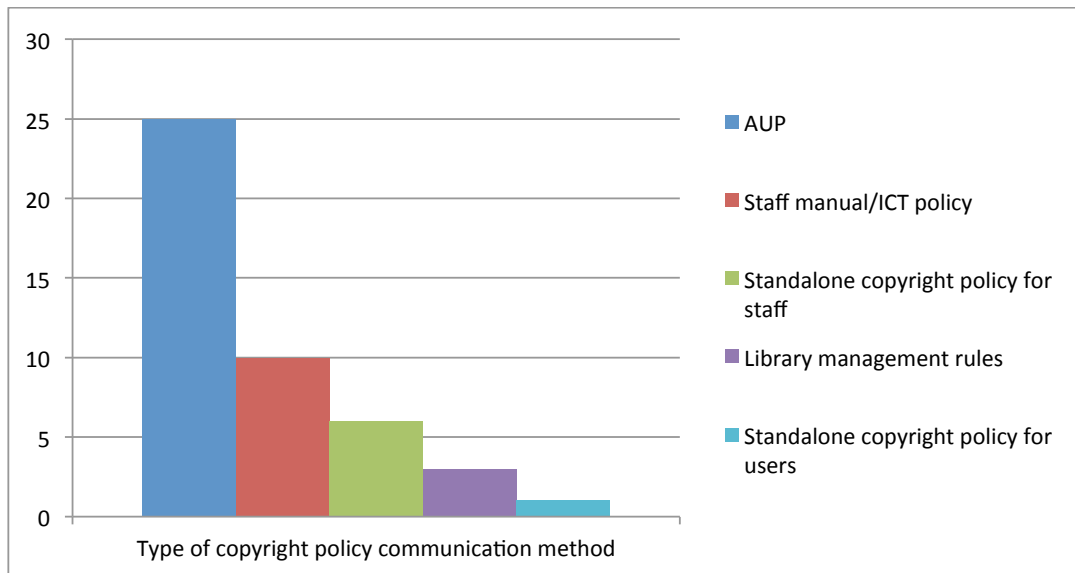
Figure 3.3 – Breakdown of copyright policy communication methods

In terms of user policies addressing more traditional means of copyright infringement, for example the photocopying of protected journals, less coverage was apparent. Three of the respondents to the FOI request confirmed that their library management rules covered the issue of copyright and were applicable and available to both library users and staff. These rules again were very general in nature, providing that actions which contravene the CDPA were strictly prohibited on library premises. These rules, however, where not directed to just internet usage, with one library having in their management rules specific reference to the prohibited video recording or photographing of protected materials.

Within this category of measures, there was no adaptation of policies or guidelines to suit different user groups, for example no guidelines of policies were targeted at teens or heavy users of music library resources, which was noted by Pedley (2005) to be preferable.

The notable absence of specific copyright policies and guidelines within this category may be explained by the overlap between this category of measure and that of posters and

notices. Many of the FOI responses noted that posters providing guidance on copyright law were prominently placed around self-service photocopiers and scanners. This format of guidance, which should be short, simple and aesthetically pleasing is more likely to be read by users of the service than a policy which must be asked for or searched for through council internet sites. However, to be deemed most effective a policy should provide clear guidance to users on the applicable copyright rules for use of all library resources (EIFL, 2012), and this likely to require more detail than that which can be gleaned from a poster or notice.

3.1.2.2 Staff policies

The results of the FOI request revealed that copyright issues were covered in staff manuals or ICT policies in ten of the local authorities. Similar to AUP policies for users, the content of these copyright policy statements tended to be basic and contained a statement that employees were prohibited from illegally downloading or reproducing copyright protected materials.

A small number of the respondents to the FOI request, namely six out of twenty-nine local authorities, demonstrated that they had standalone copyright policies for their staff. These policies provided much more detail on the copyright law currently applicable in the UK and how staff should handle copyright issues in order to remain within the law. For example, one public library area had a copyright policy in place which covered photocopying, maps, digital cameras, newspapers, microfilm, digital copying and procedures on how requests for copying materials should be handled. Another standalone policy covered the ethics of copyright, the consequences of breaches of copyright, exemptions to copyright, duration of copyright protections, how copyright applies to each of the library resources held and procedures for staff making copies. Due to the comprehensiveness of the standalone policies, they may be considered by some as also constituting staff education, however due to the passive nature of policies, and the lack of information as to how they are distributed to staff and whether they are referred to in practice, they have not been categorised as education.

3.1.2.3 Enforcement

Where a local authority had confirmed that there was user or staff policies in place, the policies in all but one case had a statement alluding to how the policy would be enforced. All twenty four public library areas with enforcement provisions had them contained within the general AUP for internet usage. Only two local authorities set out their disciplinary procedure in full for breaching the terms of public internet usage, which provided for temporary suspension pending investigation of the breach, a written report on the results of the investigation being sent to the user, a three strikes rule for permanent suspension from internet usage and an appeals procedure. All other local council authorities set out their enforcement clause by stating that breaches of their AUP, which included provisions prohibiting copyright infringement, could result in internet usage privileges being suspended or in more serious cases being permanently removed.

For those local authorities with staff policies addressing copyright issues, only two contained provisions on the consequences of staff breaching these policies. In both cases, however, these provisions were contained within a wider staff manual which contained other policy statements. Where standalone copyright policies were provided, these were more informational in nature and did not provide information on how these guidelines would be enforced.

No evidence was provided in the FOI responses that public libraries in Scotland would provide those breaching copyright rules with information on copyright laws as part of the enforcement of their policies, as recommended by LACA (2012a).

3.1.2.4 User education

Of the 29 respondents to the FOI request, only one had in place measures which could be deemed as active user education. This local authority had a specialised business library service which offered workshops, leaflets and online information resources covering intellectual property rights, including copyright. This information is targeted more at businesses wishing to protect their own intellectual property rights, however, rather than

education concerning library users copying the resources provided by public libraries. Although it does show evidence of a library service adapting their copyright information provision to suit a targeted audience, as recommended by Pedley (2005).

As such, the provision of user education appears to be a gap in the copyright minimisation programmes currently in place in Scottish public libraries. This is perhaps surprising due to the focus placed on role of education in reducing copyright infringement in both the Gowers Review and the Hargreaves Review (Pedley, 2012).

3.1.2.5 Staff education

Of the twenty nine responses, three local authorities noted that they provided staff with training on copyright law, covering what could and could not be copied and the various exemptions which apply in the library setting. One council noted that briefing sessions had been provided to front-line staff, another noted that copyright issues were covered as part of staff inductions training and the final council said that staff attended training courses on the subject of copyright both internally and through external providers. These measures show the distinction between written policies and education measures, whereby a more active engagement with staff is undertaken. As noted by Pedley (2008), staff training is essential in order for staff to be confident in providing advice to users of library and to undertake effective monitoring of the use of the library copying facilities.

3.1.2.6 Technical measures

The usage of technical measures by the FOI respondents is shown in Figure 3.4 below. It can be seen that a majority of the local authorities require users to log into computers prior to accessing the internet. This in turn allows for the monitoring of computer usage, which 20 of the local authorities explicitly say that they do in their policies and guidelines. This technical measure has the potential to allow libraries to identify and take action against those users infringing intellectual property rights; however, it is also dependent on the public library having the resources available to monitor internet usage sessions (BIS, 2010) and also requires balancing with users data protection rights.
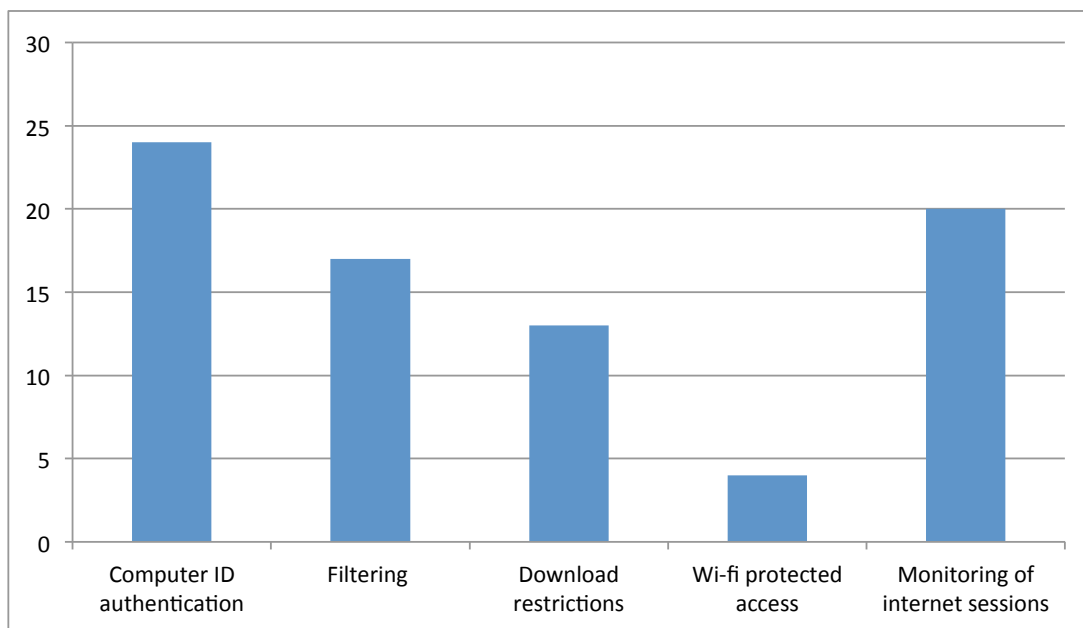
Figure 3.4 – Technical measures used in Scottish public libraries to prevent copyright infringement

Over half of the local authorities who responded to the FOI request state in their AUPs that their internet access is filtered in order to prevent users accessing illegal sites. This has been interpreted to include those sites which offer illegal downloads, although it is acknowledged that filtering of such sites can often be difficult due to the changing addresses of links. Further research would be required to confirm the extent to which public library filtering tackled websites facilitating copyright infringement as a priority. It is also noted that a number of the local authorities do not employ internet filtering methods due to a commitment to information freedom, an important ethical aspect of library and information professional practice.

Only four of the responding local authorities explicitly stated in their response or in their AUP that the Wi-Fi service offered was password protected, which is advised by Pedley (2011) as a means to put off criminals using the connection for cybercrime. However, such protections could exist in other public libraries but may not be seen as directly relating to copyright infringement prevention measures and as such may have been overlooked by

those responding to the FOI requests, especially if Wi-Fi connection is the responsibility of a centralised IT department rather than the libraries.

Finally, thirteen of the local authorities specifically state in their AUPs that there are restrictions on materials which can be downloaded using the public internet connection. Most commonly, downloading materials on the hard drive of library computers was prohibited and downloading onto removable devices was limited to USB sticks, which often had to be vetted by staff in advance of use. Two local authorities noted however, that there were restrictions on internet bandwidth and firewalls in place which would automatically prevent downloading of any materials.

3.1.2.7 Posters and notices

A prominent feature in the FOI request responses obtained was the reference to copyright posters and notices being displayed above photocopiers and next to digital resources. In all twenty responses noting poster usage, the posters used were those produced by other organisations, most commonly Cilip. Examples of the Cilip posters displayed are reproduced in Figure 3.5. These posters cover both copyright and the use of photocopiers and scanners and copyright and works in electronic form. The posters cover key information relating to the exceptions to copyright protections which public library users are most likely to be able to take advantage of. It also provides information on the limitations on what can be copied for both traditional tangible materials and digital resources. However, these posters do have limitations on the detail of information they can provide, for example they will not provide information on any specific licensing agreements which the library may have in place in relation to certain digital resources and as they are generic they cannot provide targeted information which may be appropriate for certain groups, for example those with disabilities. There is also the key drawback that posters and notices are passive in the information they provide: they depend upon the user taking the time to read and digest the message they are conveying.
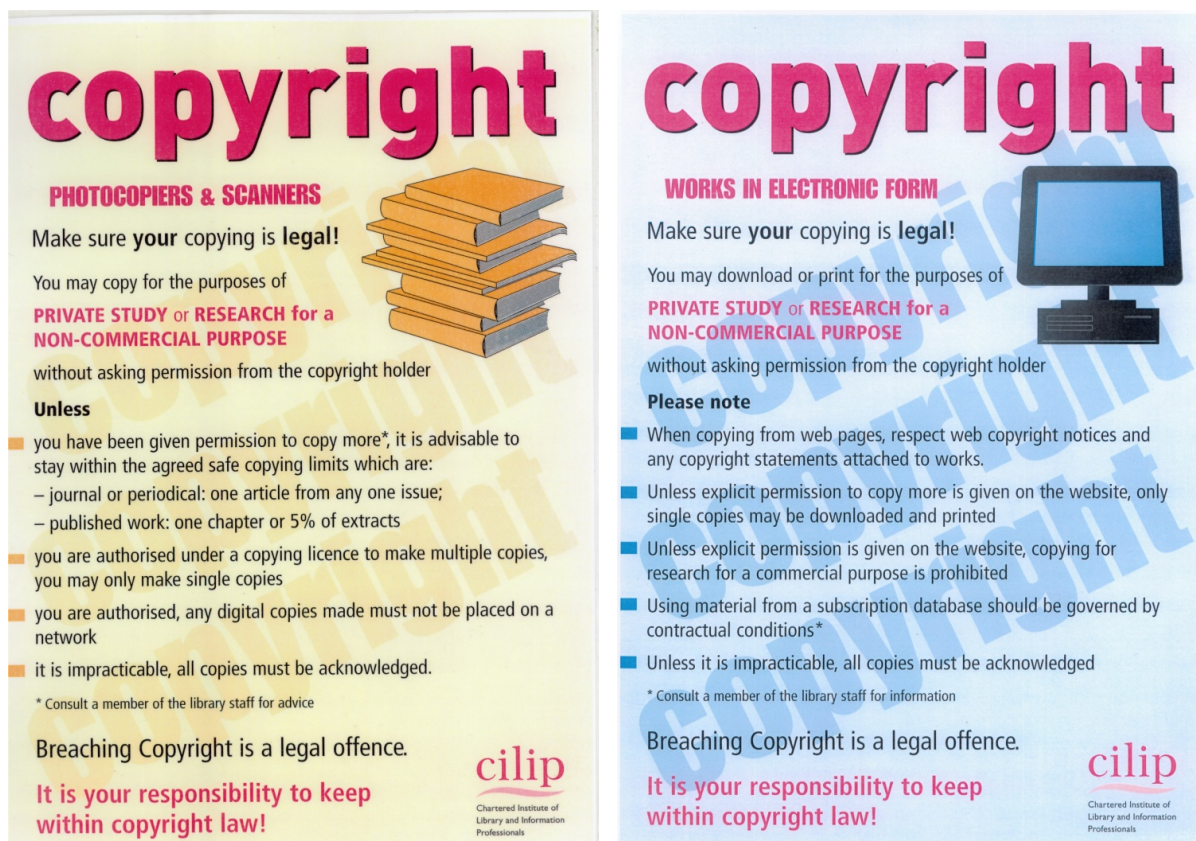
Figure 3.5 – Copyright awareness posters produced by Cilip

3.1.2.8 Other

When coding the information obtained through the FOI requests, the category of 'other' was used for measures which did not fit within those categories identified in the literature. Three main measures were picked up within this category, namely:

- Eleven local authorities required copyright declaration forms to the completed by library users where they wished staff to copy library materials, these required users to confirm they had not been provided with the same copy on another occasion and that the single copy was for the users sole private use.

- Three local authorities had a designated staff member whom copyright queries would be fielded, with one local council also mentioning that complex copyright queries would be forwarded to legal advisers.

- Two local authorities mentioned the use of the CLA sticker scheme for commercial copying and provided guidelines on how works.

3.1.3 Research question three

RQ3. How have Scottish public libraries responded to the potential increased risk of legal action for copyright infringements by its users following the passing of the Digital Economy Act 2010?

In order to ascertain the awareness of Scottish public libraries of recent discussions regarding changes to the law in relation to digital copyright infringement, as contained within the DEA, local authorities in Scotland were asked to provide copies of any reports, minutes or correspondence mentioning the impact of the DEA on their services. The results of this question are contained in figure 3.6.
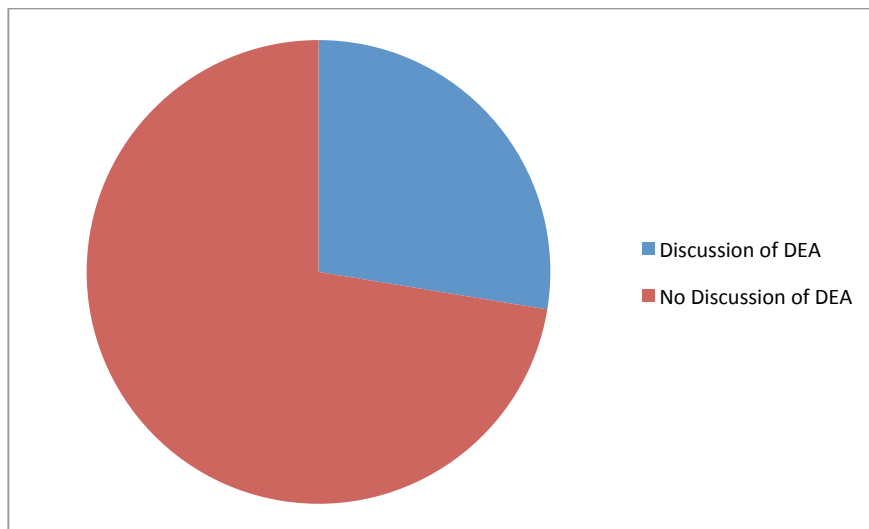
Figure 3.6 – Comparison of public libraries in Scotland treatment of the DEA

As illustrated in Figure 3.6 above, only eight out of twenty nine respondents noted that there had been any consideration of the DEA's implication on public libraries as internet service providers. Within these eight positive responses, the researcher was guided to the statements published by Cilip and LACA in relation to the DEA and Initial Obligations Code, however no local council could produce recorded evidence of their own discussions reflecting upon these statements and advice. One council did note that they now have in place measures requiring users to log-in to Wi-Fi in order to meet obligations under the DEA to be able to identify users of their internet services.

The lack of discussion in relation to the DEA and its potential implications for public libraries as public internet service providers is perhaps unsurprising due to the lack of progression in implementation of the Initial Obligations Code and amidst speculation that due to the voluntary agreement between entertainment industry bodies and ISPs the DEA provisions relating to Copyright Infringement Notices and Reports will never come to fruition.

3.1.4 Research question four

RQ4. What is the potential risk level for Scottish public libraries being found liable for the copyright infringements of its users?

To garner an idea of the potential risk Scottish public libraries face from users and staff infringing copyright using their facilities, local authorities were asked in the FOI request to provide details of any recorded copyright infringement incident which has occurred between the years 2010-2013. Every local authority which responded to the FOI request answered that there had been no recorded incidents over this time frame. From this information it may be interpreted that either the risk of public library facilities being used for copyright infringement is extremely low, or that copyright infringement incidents are not being recorded by staff. Some explanations provided in the FOI responses would allude that it is the latter, for example it was noted by three separate local authorities that:

"Staff cannot monitor all copying which is carried out in the library"

"Access to the internet by the public through library computers is not monitored to the extent that copyright could be determined"

"Staff who become aware that a member of the public is downloading illegally should be given an informal warning, and point out if this behaviour continues the user may be banned from internet access in the library. Staff are not required to record instances of this."

As such, an accurate evaluation of copyright infringement risk has not been able to be obtained through the use of FOI requests, which are limited to the provision of recorded information. In order to gain further information on this research question, a different methodological approach would be required, for example interviewing staff or users anonymously or undertaking observations around library copying facilities and computers.

3.2 Qualitative Analysis of FOI Request Responses

In undertaking a qualitative analysis of the data obtained through the FOI requests, a 'directed content analysis' will be taken, whereby two key issues around the implementation and use of copyright policies in public libraries will be further explored, namely: (1) the language used to convey copyright policies and guidance, in particular focusing on whether equal weight is given to the positive rights of users to copy materials in certain circumstances as against the prohibitive language used to warn users not to breach copyright laws and; (2) the differences, if any, in the approach taken by public libraries policies to tackle digital online copyright infringement as opposed to more 'traditional' means of breaching copyright such as using photocopiers or scanners.

3.2.1 Positive language vs. negative language use in copyright policies

From the twenty four user copyright policies and six staff copyright policies obtained through the FOI requests, the statements pertaining to copyright were extracted and the language analysed. Only those documents produced by the local authorities were included in this qualitative analysis in order to provide a more accurate reflection of the views taken by local authorities as opposed to professional or governmental bodies, as such documents

such as the posters produced by Cilip and guidance by the IPO were not included. The language was coded into three categories: (1) Negative language, which would include statements that copying protected materials was prohibited or unacceptable or more generally that illegal uses of facilities was forbidden; (2) Neutral language, for example statements which conveyed that any copying must be line with copyright law or licence conditions and; (3) Positive language, this category encompasses policies and guidelines which expressly state what users or staff can legally copy or download.

Negative language was used by the majority of the authorities, with thirteen using exclusively negative language in their policies and six using a mixture of negative and other language categories to convey their policies. Within the authorities who exclusively used negative language, no details were provided as to what users could actually legally copy, print or download. Example typical statements were:

"Downloading and distribution of copyrighted music, movies and any other copyrighted materials in any manner that is in breach of the law of copyright or otherwise illegal is strictly prohibited"

"Users must not transmit any material in violation of any laws. This includes, but is not limited to: copyright materials, pornographic materials; racist material; or material protected by a trade secret"

"Any public access of illegal, offensive or controversial material may be subject to further action"

While it is acknowledged that such language is important to get the message across to users that copyright infringement will not be tolerated in public libraries, it does little to provide clarity on what users can and cannot do legitimately under current laws, which is what an effective copyright policy should be aiming to achieve (EIFL, 2012). It further has ethical implications, as information professionals have duties to the users of their services to help them gain access to copyrighted works and the knowledge they contain as well to intellectual property rights holders (Pedley, 2011). The brevity of these policy statements

do little to educate or empower the user and may be seen as merely providing protection for public libraries from any copyright infringement complaints. Information services also run the risk of being accused of facilitating "copyright creep" where purely negative language is used, causing staff and users of the service to be overly cautious in using copyright protected materials and therefore providing materials with copyright protections which exceed the legislative scope (Aulisio, 2013). As previously noted, the negative policy statements are in all cases part of a wider Council policy, most being contained within an AUP, and as such the library authorities may have deemed it inappropriate to provide more detail on copyright within this policy. Indeed, many authorities refer to posters produced by Cilip as providing guidance on copyright law, however, as already noted posters are limited in the information they convey and ideally staff should be able to provide information to users on copyright should they be approached, which could cause problems if there are no guidelines or policies in place for them to refer to.

Neutral language was used in nine of the policies received from the local authorities. The neutral policy statements once again did not fully go into detail about copyright exceptions however, it did acknowledge that certain copying or downloading could be done within the law. Examples of such statements included:

"Users should satisfy themselves that the use to which they intend putting downloaded material does not conflict with copyright restrictions. Users should be aware that the publication of material on a website does not in itself guarantee that it is free of copyright restrictions. The conditions imposed by the website on use of the material – such as crediting the copyright holder or maintaining the integrity of the material – should be carefully observed"

"Users can download material from the internet in accordance with copyright restrictions; under UK law copyright material sent over the internet or stored on web servers will generally be protected in the same way as material in other media"

"You must ensure that you do not break any laws of copyright. If any site gives you specific permission to copy information you may make as many copies or prints as you wish. If any

site specifically forbids copies of the information being made you must respect this and under no circumstances should you make any copies or prints. If no mention is made of copyright issues on the site you may make one printed copy for your own use but no other copies may be made"

Such statements provide users with the impression that they can copy materials, however, acknowledges that there will be restrictions on what they can do. Such language shows an attempt by public libraries to address the competing interests of publishers and distributors against those of readers and researchers (Armstrong et al, 2004). It could also be viewed by some as the council passing responsibility to the user to interpret the relevant copyright legislation rather than taking responsibility for guiding users, indeed two local authorities noted they did "not prohibit specific online activities as long as they are not considered illegal, offensive, obscene or troublesome to other computer users or to Council". Another council noted in their policy that it was a golden rule that staff should avoid making copies for the public and should instead direct them to self-machines and with Cilip posters above, and even set up the machine but not press the copy button, in order to minimise copyright infringement risks.

Arguably the most suitable way of achieving the balance of protecting both intellectual property owners and library patrons is through the use of policy statements which set out the rights and responsibilities of users of information in both a clear and comprehensive manner, which highlights the positive rights of users rather than just noting illegal copying must not be done. This approach was taken by eleven of the local authorities who provided details of what could actually be copied and educated staff and users about their rights. Some of the local authorities did this through stand-alone copyright guidance which summarised the current laws around copyright and detailed what could be legitimately copied from different types of materials available at the library. These policies, however, were aimed primarily at staff and it was unclear in some cases as to whether users could also be provided with these guidelines. Other council areas provided details about the most applicable exceptions to copyright protections for their library users in library user policies or library management rules. A good example of this was one council who provided a summary in their ICT acceptable use policy as follows:

"If you are in any doubt about copyright limitations, ask a member of library staff, but you should generally follow by these rules:

- *Scanning a copy of complete works is prohibited*
- *Small extracts can be scanned/copied for the purpose of private study (one chapter, or 5%, whichever is the smaller amount)*
- *Only a single copy of a given page can be made*
- *No more than one article per journal/magazine issue may be copied"*

This policy statement is educating the user and making them aware they have positive rights to copy materials in certain circumstances, while also still providing that the library will provide assistance where required thus acknowledging that the information professional needs to take certain responsibility over copying in their library.

It can therefore be seen that the language used by libraries in their policies and guidelines take a variety of approaches. While most public libraries in this research used negative and prohibitive copyright statements in their policies, the majority did not solely rely on these, instead using a mixture of negative, neutral and positive statements. The policies which provided the clearest message to users regarding their rights and responsibilities under copyright laws were those which used positive statements, which set out clearly what could in fact be copied legally.

3.2.2 Differences in policies addressing digital copyright infringements and 'traditional' copyright infringements

The provision of computer access has become a key aspect of public library services, as reflected by the fact that every local authority in Scotland provided computer facilities to its users. While this development provides users with the ability to access an almost infinite amount of information, it also gives users an additional means of committing copyright infringement. Consequently public libraries have had to address this potential risk, as noted by McMenemy et al:

While maintaining the traditional photocopier watch to ensure that users do not abuse copyright in this traditional way, the attention of librarians is increasingly moving to technological mechanisms for breaching IPR (McMenemy, 2007, p73)

However, the results of the data obtained through the FOI requests showed that some of the public libraries did not view digital copyright infringement as part of its copyright infringement minimisation programme, as although they said that there was no copyright policies in place, there was in fact provisions dealing with copyright infringement, or more generally illegal acts, in their AUP. Overall, nine of the FOI responses failed to acknowledge their own AUP as part of their copyright infringement policies, even though they contained direct reference to copyright issues or prohibited illegal acts in general. While this could be due to omissions by the person responding to the request, it does indicate that there may still be a preconception in public libraries that their responsibilities for copyright infringement minimisation programmes still only relate to the traditional means of copying, such as photocopying, scanning or photographing.

In handling traditional copyright infringement, the majority of local authorities noted that they prominently displayed posters and notices above or next to photocopier machines. The notice universally used was that produced by Cilip, as reproduced in Figure 3.5 above. This poster sets out both what can and cannot be copied under the private study and non-commercial research exception and places responsibility on users to ensure that they are not in breach of copyright restrictions. Ten of the FOI responses also explicitly noted that the Cilip poster 'Copyright – Works in electronic form' was also displayed in their libraries around points where computer access was provided. However, this once again shows a discrepancy in how digital and traditional copyright infringements are treated, as the placing of educational notices around photocopiers has become normality in public libraries, yet the use of posters relating the digital works is yet to obtain this status. It is further of note that none of the FOI respondents produced their own notices or posters. While it is acknowledged that using posters of a trusted professional body should not be criticised, it may show a lack of confidence by public libraries in engaging with their users on this topic, particularly those of certain user groups such as teenagers who may be more amenable to copyright information if provided in a way targeted to this group. Such notices also provide

very generalised information, as is appropriate for the medium of a poster, however it may not address the considerations for all types of materials held by the library, for example maps, photographs or CDs/DVDs. This may be a particular issue now that recent changes to copyright law have extended the exemption for private research and study to all types of copyrighted materials.

Some of the respondent libraries noted that they had copyright declaration forms in place for use where staff were asked to photocopy materials on behalf of library users. These forms asked users to confirm that the copies were for personal use and copies of the same materials had not been requested previously. Such forms allowed for the library to provide evidence that they were not actively facilitating copyright infringement and provided a degree of risk alleviation. Such forms were not used for access to digital resources or for the control of downloads or printouts from library computers. As such, it appears that a more laissez-faire attitude is taken in respect of monitoring printing, completed at often centralized printers, and that downloading at library computers is treated as being akin to using a self-service photocopier, whereby users are expected to take responsible for ensuring that their actions are not in breach of copyright law.

Where stand-alone copyright policies were place, these predominantly covered traditional copyright issues, such as how much could be copied from hard-copy materials available at the library, such as books, maps or records. None of the stand-alone policies contained sections dealing exclusively with downloading or printing from library computers, although some of the AUPs did mention that works on the internet are also likely to be covered by copyright protections. As previously noted, the language used by AUPs was predominately negative and the information it provided on copying from digital resources was limited to providing a general prohibition of acting in breach of copyright law, infringing intellectual property rights or using facilities to access illegal materials. The policies which were not limited to use of ICT facilities but more generally rules of management of the library or specifically copyright policies provided greater detail regarding the applicable exemptions to copyright protections, why copyright protections exist and how long rights attach to different mediums. This implies that there is less emphasis on copyright education in the use of computers, or perhaps that it takes less priority over other important issues in the

use of computers such as preventing access to offensive, violent or pornographic materials. It additionally may show an unwillingness by public libraries to take an active responsibility as a guardian of digital intellectual property rights, as due to the much higher numbers of computers as opposed to photocopiers, and the complex nature of digital rights management, public libraries do not have the required resources to monitor computer access or train staff to the level required to effectively enforce more detailed digital copyright policies.

This analysis of the treatment by public libraries in Scotland of digital and traditional copyright infringement issues has indicated that there still appears to be a divide in their treatment. Most responses to the FOI requests focused on the traditional forms of copyright infringement, in particular the use of photocopiers, and if the issue of digital copyright infringement was discussed it was contained within an AUP which briefly dealt with the issue by stating copyright infringement was prohibited. This does not address the new digital copyright issues effectively, and fails to acknowledge as commented by Armstrong et al (2004, p49) that "the information revolution is here to stay and part of the price to be paid is legal and technical complexity". In both cases posters were used by local authorities to give an overview of what could and could not be copied under the private study and non-commercial research exemptions; however the use of the Cilip poster dealing with electronic works was less common. Other than these posters, very few local authorities provided users with more information on what they could actually copy and a targeted approach addressing the needs of different user groups, both for digital and traditional materials, was not taken. It therefore appears that while more information is provided for traditional copyright infringement methods, both traditional and digital copyright issues are dealt with in a passive manner.

CHAPTER FOUR: CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

From the analysis of the data obtained, it can be concluded that there is currently no uniform programme of copyright infringement minimisation measures in place at Scottish public libraries. The comprehensiveness of the measures in place vary from local authorities who have full policies, training schemes and technical measures implemented to those which only display posters above copying facilities. Different approaches to the issue of copyright infringement were taken by the public libraries, with some responding to the FOI request with a plethora of information regarding how copyright issues were handled within their area while others provided a minimal answer that no policies were in place, even omitting to consider their own AUP copyright provisions as part of their guidelines. These inconsistencies may lead to variations in the quality of services provided in public libraries within Scotland, as certain local authority areas will have well trained and informed staff on hand to guide users on their rights and obligations under copyright law, while others will take a distinctively passive approach in placing the burden purely on users to read appropriate notices and research the law themselves. It further will affect the ability of library staff to uphold their own professional and moral standards in relation to copyright issues as those local authorities who have clear procedures in place are likely to increase staff confidence to approach users acting in breach of the legal and moral rights of intellectual property owners.

The analysis of copyright infringement preventative measures used by libraries, as compared to those recommended by the literature, also revealed that certain measures were vastly underused by the public libraries. In particular, active education of staff and/or users was only noted by four of the local authorities responding to the FOI request. This included the training of staff in copyright law and their legal and moral responsibilities in adhering to it correctly. This could stop both the facilitating of copyright breaches using public library resources, and just as importantly, stop 'copyright creep' where staff are overly cautious in applying the law and wrongly prohibit copying which user have the right to do. The use of education and training will also allow for staff to be kept up to date with

changes to the law, such as the recent amendments to the Copyright, Designs and Patents Act 1988, as even a brief session at a team meeting can raise awareness of new rights and obligations much quicker than it often takes to update policies, guidelines and notices. Indeed, it was noted in two of the responses to the FOI requests that changes to policies were still to be implemented in light of legislative changes despite the fact that these had already come into force. Education of users could also ensure to a certain extent target those users who are likely to undertake copying or downloading more frequently, such as students or researchers, and provide this information in a way which they find relevant and understandable (Pedley, 2005). This is likely to be more effective than passive notices which can be easily overlooked or ignored.

Another copyright infringement preventative measure which the research highlighted as underutilised was that a full standalone copyright policy. Most local authorities contained their copyright policy statements within an AUP, which was kept to a prohibitive statement saying that copyright infringing activities were not permitted. Further information regarding the purpose of copyright protections, permitted exemptions to copyright, general rules for users, procedures for staff and consequences of breaching copyright law were not provided. Standalone policies could also provide a means for public libraries to inform staff and users of any applicable licence conditions in place regarding the use of particular materials they hold, which otherwise may not be openly available for consultation. Copyright policies which contain more in-depth information such as this is more likely to achieve the key aim of copyright policies to "provide clarity on copyright issues that arise during the provision of library services, and to help manage risk for the library and its parent institution" (EIFL, 2012, p1).

The research undertaken also showed that the mitigation of risk of copyright infringement by 'tradition' means, such as photocopying, was treated differently from that of digital or online infringement. Posters pertaining to copyright issues were more likely to be displayed around photocopiers than computers and where more comprehensive policies were in place dealing with copyright these focused on the copying of traditional tangible materials rather than electronic resources, which have their own unique set of copyright considerations. While further research is necessary to understand the reasons for this difference of

treatment, it may be speculated that an uncertainty over the application of the complex legislative framework for copyright in the digital realm may have a role to play, as may the difficulties in enforcing any digital copyright infringement policy, indeed it was noted by one respondent to the FOI request that their public libraries lacked the capability to monitor computer use to the extent where infringement could be observed. Education of users in the legality of downloading and sharing materials online has been noted as a key element of preventing beaches of intellectual property rights on the internet (Kantar Media, 2013) and as such the DEA provisions have been diluted in a voluntary scheme whereby ISPs send copyright infringers educational notices telling them how to access materials legally and the potential consequences of their action (BBC, 2014). This move to focus on education of users rather than sanctioning infringers could be reflected by public libraries, whose key role is the provision of information, thus evidencing their acceptance of moral responsibility in educating users in copyright issues and reducing the risk of being brought into legal proceedings as a facilitator of copyright breaches.

In response to the FOI request concerning discussions by local authorities regarding the Digital Economy Act 2010 (DEA), confirmation was garnered that this was not a topic considered in any great detail, if at all, by the local authorities in Scotland. While this is perhaps unsurprising due to the delays and lack of progression in its full implementation, its potential implications on public library internet provision was great enough to be discussed by the main professional bodies of the library professional, namely Cilip and LACA. Cilip has also published a report on the impact of the DEA on educational institutes and public libraries and provided recommendations on actions which should be taken to avoid the risk of being found liable for the online copyright infringements of users (Cilip, 2012), which would have warranted acknowledgement by public libraries in Scotland. As such, the fact that only eight out of the twenty nine respondents to the FOI request could provide evidence that they had considered these discussions of the DEA, it seems to be a low priority in the future planning of public libraries. This should perhaps be a concern as although a 'three strikes and you're out' system may not be implemented any time soon, and public libraries may argue they are not an ISP, the DEA still raises important ethical and legal copyright issues which will not disappear regarding the responsibility libraries have to

intellectual property owners for protecting their rights in the digital realm and how this can be achieved without breaching the privacy of its users and their rights to access information.

Finally, the research also showed that within the twenty nine Scottish local authorities who responded to the FOI request, there were no recorded incidents of copyright infringement. The reason for this complete absence of recorded infringements could be that libraries are not used for infringing activities, or more likely, that library staff do not have the time or procedures in place to record any infringements. As noted by one respondent, infringements in their public libraries were dealt with on an informal basis and as such would not be recorded. Another local authority noted that they did not have the resources available to monitor users in their computer usage to the extent that they would pick up online copyright infringement.   Due to the lack of accurate data regarding actual copyright infringement incidents in public libraries conclusions cannot be drawn regarding the correlation of certain preventative measures and their effectiveness. Instead what can be commented upon is that public libraries may not currently have in place effective means of monitoring and recording infringements, which may need to change in the future should they be classed as an ISP and are required to provide information about infringing users to intellectual property owners.

4.2 Recommendations

A number of key recommendations can therefore be made based on the information gathered and analysed, namely: (1) that public libraries work together to produce a standard policy covering copyright issues applicable to libraries and how infringements can be minimised, along with scope to adapt this to be applicable to the actual resources available at individual libraries; (2) education programmes should be established for staff and users on the copyright provisions most applicable to them, including activities and resources targeted for certain categories of users such as teenagers or researchers; and (3) awareness should be raised of digital copyright infringement and information provided on an equal basis to 'traditional' copyright infringements.

Turning to the first recommendation, EIFL (2012) have produced a useful guide to developing a library copyright policy which could be used as a starting point for public library discussions on a uniform policy. This guide is reproduced in full in Appendix 1. It notes that policies must not be so rigid as to be unsuitable for everyday use and should be based on an assessment of risk (EIFL, 2012). Consultation should also be undertaken with a group if representative stakeholders, such as staff and different types of users. The production of a basic skeleton policy for public libraries to work from would prevent the variances in policies seen in this research and would also provide for a framework for public libraries to build on, providing library professionals with a base line from which they can argue that they are implementing agreed minimum standards for public libraries should they be brought into legal action in the future. It also means that users should receive a more uniform service and know in what ways public libraries can assist them in copyright issues.

In relation to the second recommendation, educational programmes may need to be developed in partnership with other services or organisations. For example, issues of copyright infringement may be able to be communicated to teenagers in partnership with secondary schools during computer based lessons or lessons on information literacy in general. This age group may also benefit from more interactive methods to engage with copyright issues, such as quizzes or group role play. Where libraries offer their own educational programmes on computer literacy, research or use of their resources, it should be considered whether a short unit on copyright law would be appropriate to be included. In terms of staff education, training on copyright issues should be included within the induction training of staff and changes to the law should be tackled in a timely manner within team meetings, with open dialogue encouraged in relation to ethical duties and practical application of copyright laws. External training should be considered, particularly for senior members of staff, where they will hold ultimate responsibility for training of others or answering complex user queries.

For implementation of the third recommendation, public libraries may consider offering more training and written procedures for staff in handling online infringements, additional notices and posters being prominently positioned near computer stations and printers and

education of users as to legal ways to download or copy information from the internet. Digital copyright infringement will always be a difficult area to balance user and intellectual property owners rights, however it is area where there has been much recent dialogue between the Government and the creative industries, and as such public libraries need to be aware of their potential liabilities for user infringements using their facilities and how these may change in the near future. As digital copyright infringement is an area where creative industries feel they are at particular risk, and due to the vociferous nature of their lobbying for better protections, public libraries may be prudent to take steps to manage their risk exposure in this area in advance of future legislative changes or legal action.

4.3 Areas for future research

This research has provided a picture of copyright infringement minimisation practices in Scottish public libraries as they currently stand. Further research is required to ascertain the actual risks that public libraries face from users using public library facilities to infringe copyright and to gain a better understanding of why local authorities are taking different approaches to copyright issues. This would need to be undertaken with a methodology different from this research, focusing instead on unobtrusive observation or surveys of library users and staff, which is more likely to reveal the realistic level of infringements occurring and the motivations behind library policy decisions. This would also allow for the effectiveness of passive measures such as posters and notices to be more fully evaluated. Additionally, as the geographical area of this research is limited to Scotland, future research could extend the study to other areas of the UK, which will allow a comparison to be made of the approaches to copyright infringement within the UK or provide confirmation of the validity of the results of this research.

Bibliography

Adediran, P. (2014). The digital economy act and the voluntary copyright alert program 2015. Available at: http://pailsolicitors.co.uk/digital-media-entertainment/digital-economy-act-voluntary-copyright-alert-program-2015 Last accessed 9 July 2014

American Library Association (2008). Code of Ethics of the American Library Association. Available at: http://www.ala.org/advocacy/proethics/codeofethics/codeethics Last accessed 9 July 2014

American Library Association (2008). Copyright. Available at: http://www.ala.org/advocacy/copyright Last accessed 9 July 2014

Armstrong, C., & Bebbington, L. W. (2004). *Staying Legal: A Guide to Issues and Practice Affecting the Library*. Facet Publishing: London

Aulisio, G. J. (2013). Copyright in light of ethics. *Reference Services Review*, *41*(3), pp. 566-575.

Barrell, L. (2014). Government announces target for voluntary copyright alert programme this year. Available at: http://www.mablaw.com/2014/04/government-announces-target-for-voluntary-copyright-alert-programme-this-year/ Last accessed 9 July 2014

BBC (2014). Deal to combat piracy in UK with 'alerts' is imminent. Available at: http://www.bbc.co.uk/news/technology-27330150 Last accessed 9 July 2014

Beck, S. E., & Manuel, K. (2008). *Practical research methods for librarians and information professionals*. Neal-Schuman Publishers: New York

Department for Business Innovation & Skills (BIS) (2010). Online Infringement of Copyright: Libraries, Universities and Wi-Fi Providers. Available at: http://webarchive.nationalarchives.gov.uk/+/interactive.bis.gov.uk/digitalbritain/2010/02/example-infringement-notifications/ Last accessed 9 July 2014

Bourke, G., Worthy, B., & Hazell, R. (2012). Making Freedom of Information Requests. UCL Constitution Unit: London

British Library (2014). Copyright for Education and Research. Available at: http://pressandpolicy.bl.uk/imagelibrary/downloadMedia.ashx?MediaDetailsID=56 Last accessed 9 July 2014

Brown, G., & McMenemy, D. (2013). The implementation of internet filtering in Scottish public libraries. *Aslib Proceedings,* 65(2), pp. 182-202

Bryman, A. (2012). *Social research methods*. Oxford university press: Oxford

Cilip (2012). Code of Professional Practice for Library and Information Professionals. Available at: http://www.cilip.org.uk/cilip/about/ethics/code-professional-practice Last accessed 7 July 2014

Cilip, Joint Information Systems Committee, Libraries and Archives Copyright Alliance, research Libraries UK, Scottish Library and Information Council, Scotland's Colleges, Society of College, National and University Libraries and Universities UK (2012). Public Library, University and Educational Public Intermediary submission to the Secondary Legislation Scrutiny Committee on the Digital Economy Act. Available at: http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/online-infringement-Copyright-for-Knowledge.pdf. Last accessed 24 March 2014.

Clausen, H. (2004). Intellectual property, the internet and the libraries. *New library world*, 105(11/12), pp. 417-422

Cornish, G. P. (1997). *Copyright: interpreting the law for libraries, archives and information services*. Facet Publishing: London

Coulter, C., Negishi, M., and Foslett, E. (2010). UK Steps Toward "Digital Britain" with the Introduction of the Digital Economy Act 2010. *The Computer & Internet Lawyer*, 27(9), pp. 25-31

Davies, M.B. (2007). Doing a Successful Research Project using Qualitative or Quantitative Methods. Palgrave MacMillan: Basingstoke

Department for culture, media and sport (2011). Next steps for implementation of the Digital Economy Act. Department for culture, media and sport: London.

EIFL (2012). Developing a Library Copyright Policy. Available at: http://www.eifl.net/english-developing-library-copyright-policy Last accessed 24 March 2014

Farrand, B. (2010). The Digital Economy Act 2010: A Cause for Celebration, or a Cause for Concern? European Intellectual Property Review, 32(10), pp. 536-541

Foster, C., & McMenemy, D. (2012). Do librarians have a shared set of values? A comparative study of 36 codes of ethics based on Gorman's Enduring Values. *Journal of Librarianship and Information Science*, *44*(4), 249-262.

Hauptman, R. (2002). *Ethics and librarianship*. McFarland: Jefferson

Holland, C. (2010). The Digital Economy Act: What are the Implications for Libraries?. *Legal Information Management*, *10*(3).

Horten, M. (2014). UK ISPs & music industry broker 4-strikes copyright anti-piracy deal. Available at: http://www.iptegrity.com/index.php/digital-britain/964-uk-isps-a-music-industry-broker-4-strikes-copyright-anti-piracy-deal Last accessed 9 July 2014

IFLA (2012). IFLA Code of Ethics for Librarians and other Information Workers. Available at: http://www.ifla.org/news/ifla-code-of-ethics-for-librarians-and-other-information-workers-full-version Last accessed 9 July 2014

Intellectual Property Office (2011). Copyright Essential Reading. Intellectual Property Office: Newport

Intellectual Property Office (2014). Exceptions to copyright: Libraries, archives and museums. Intellectual Property Office: Newport. Available at: https://www.gov.uk/government/publications/changes-to-copyright-law Last accessed 9 July 2014

Jackson, M. (2014). UK ISPs could implement voluntary piracy warning letters by end of 2014. Available at: http://www.ispreview.co.uk/index.php/2014/03/uk-isps-implement-voluntary-piracy-warning-letters-end-2014.html Last accessed 9 July 2014

Kantar Media (2013). OCI Tracker: High volume infringers analysis report. Available at: http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/online-copyright/w4/HIGH_VOLUME_INFRINGERS.pdf Last accessed 9 July 2014

Killock, J. (2014). Will 'voluntary' copyright enforcement protect users' rights? Available at: https://www.openrightsgroup.org/blog/2014/will-voluntary-copyright-enforcement-protect-users-rights Last accessed 9 July 2014

Lawal, I. (2009). *Library and information science research in the 21st century: a guide for practicing librarians and students*. Chandos Publishing: Oxford

Libraries and Archives Copyright Alliance (LACA) (2012a). The Digital Economy Act 2010 Impact on educational institutions and public libraries. Available at: http://www.cilip.org.uk/sites/default/files/documents/Digital%20Economy%20Act%20-%20impact%20on%20libraries.pdf Last accessed 24 March 2014

Libraries and Archives Copyright Alliance (LACA) (2012b). Response to Ofcom's Draft Initial Obligations Code – Digital Economy Act. Available at: http://www.cilip.org.uk/sites/default/files/documents/Online%20Copyright%20Infringement%20%28LACA%20response%29.pdf Last accessed 24 March 2014

Mendis, D. (2013). Digital Economy Act 2010: fighting a losing battle? Why the 'three strikes' law is not the answer to copyright law's latest challenge. *International Review of Law, Computers & Technology*, *27*(1-2), 60-84.

McClure, C., Bertot, J. C., & Zweizig, D. L. (2010). Public libraries and the Internet. ABC-CLIO: Santa Barbara

McMenemy, D. (2008). Internet access in UK public libraries: notes and queries from a small scale study: EDITORIAL. *Library Review*, *57*(7), 485-489.

McMenemy, D., Poulter, A., & Burton, P. (2014). *A Handbook of Ethical Practice: A practical guide to dealing with ethical issues in information and library work*. Chandos: Oxford McMenemy, D. (2012). Emergent digital services in public libraries: a domain study. *New Library World*, *113*(11/12), 507-527.

NIPC Law (2012). Damages for Infringement of Copyright in Photographs: Hoffmann v Drug Abuse Resistance. Available at: http://nipclaw.blogspot.co.uk/2012/01/damages-for-infringement-of-copyright.html Last accessed 12 August 2014

NLS (2012). Online infringement of copyright: Initial Obligations Code Ofcom consultation June/July 2012. Available at: http://stakeholders.ofcom.org.uk/binaries/consultations/online-notice/responses/National_Library_of_Scotland.pdf Last accessed 24 March 2014

Norman, S. (1999). *Copyright in public libraries*. Library Assn Publishing: London

Norman, S. (2004). *Practical copyright for information professionals: the CILIP handbook*. Facet Publishing: London

Ofcom (2012). Online Infringement of Copyright and the Digital Economy Act 2010: Notice of Ofcom's proposal to make by order a code for regulating the initial obligations. Available at: http://stakeholders.ofcom.org.uk/consultations/infringement-notice/ Last accessed 24 March 2014

Oppenheim, C. (2011). UK copyright: in a state of extreme flux. *Cilip Update*, May 2011, pp. 43-45

Orlowski, A. (2012). YARR! Library Wi-Fi PIRATES can't be touched by Queen's men! Available at: http://www.theregister.co.uk/2012/11/21/libraries_pirate_friendly_yarr/ Last accessed 9 July 2014

Out-law (2012).   ISPs will first determine whether public Wi-Fi providers are subject to anti-piracy code, Ofcom says. Available at: http://www.out-law.com/articles/2012/november/isps-will-first-determine-whether-public-wi-fi-providers-are-subject-to-anti-piracy-code-ofcom-says/ Last accessed 9 July 2014

Out-law (2014). Voluntary copyright alert programme could be operational before end of 2014, says UK government. Available at: http://www.out-law.com/en/articles/2014/march/voluntary-copyright-alert-programme-could-be-operational-before-end-of-2014-says-uk-government/ Last accessed 9 July 2014

Poulter, A., Ferguson, I., McMenemy, D., & Glassey, R. (2009). Question: where would you go to escape detection if you wanted to do something illegal on the internet? Hint: shush!. In *Global Security, Safety, and Sustainability*, pp. 1-8

Pautz, H. (2013). Managing access to the internet in public libraries. *New Library World*, 114(7/8), pp. 308-318.

Pedley, P. (2005). *Managing digital rights: a practitioner's guide*. Facet Publishing: London

Pedley, P. (2007). *Digital copyright*. Facet Publishing: London

Pedley, P. (2008). *Copyright compliance: practical steps to stay within the law*. Facet Publishing: London

Pedley, P. (2011). *Essential law for information professionals*. Facet Publishing: London

Pedley, P. (2012). *The E-copyright Handbook*. Facet Publishing: London

Pickard, A. J. (2013). *Research methods in information*. Facet Publishing: London

Posner, B. (2012). The ethics of library resource sharing in the digital age. *Interlending & Document Supply*, 40(2), 119-124.

Savage, R. (2013). Fines for copyright infringement reveal risk reality. Available at: http://www.rtsmedia.co.uk/blog/2013/04/11/fines-for-copyright-infringement-reveal-risk-reality/ Last accessed 12 August 2014

Skala, M., Bonfield, B., & Torpey, M.F. (2008). Enforcing Copyright. Available at: http://lj.libraryjournal.com/2008/02/ljarchives/enforcing-copyright/ Last accessed 9 July 2014

Stalla-Bourdillon, S. (2012). Liability Exemptions Wanted! Internet Intermediaries' Liability under UK Law. *Journal of International Commercial Law & Technology*, *7*(4), pp. 289-299

Sturges, P. (2002). *Public Internet access in libraries and information services.* Facet Publishing: London

Uckfield News (2012). Uckfield college ordered to pay thousands for copyright infringement. Available at: http://uckfieldnews.com/uckfield-college-ordered-to-pay-thousands-for-copyright-infringement/#sthash.huP5xxF9.dpuf Last accessed 12 August 2014

Ward, P. (2013). Digital Economy Act 2010: copyright – Commons Library Standard Note. Available at: http://www.parliament.uk/business/publications/research/briefing-papers/SN05515/digital-economy-act-2010-copyright Last accessed 24 March 2014

White, B. (2014). Changes to UK copyright law and how they could affect you. Available at: http://www.cilip.org.uk/cilip/news/changes-uk-copyright-law-and-how-they-could-affect-you#sthash.dzTvjQ89.dpuf Last accessed 7 July 2014

Wildemuth, B. M. (2009). *Applications of social research methods to questions in information and library science*. Libraries Unilimited: Westport

Williamson, K. (2002). *Research methods for students, academics and professionals: Information management and systems*. Charles Stuart University: Wagga Wagga

Appendix 1 – Developing a Library Copyright Policy: An EIFL guide

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knowledge without boundaries

Developing a Library Copyright Policy
An EIFL guide

This guide is intended to highlight issues when considering the creation of a copyright policy for your library, how to go about drafting a policy and the elements that a library copyright policy might contain. We welcome links as more examples of library copyright policies. Libraries or librarians from EIFL partner consortia are free to contact the EIFL-IP Programme for advice or support on developing their own policy.

It is available online at http://www.eifl.net/copyright.

I. What is a library copyright policy?

A library copyright policy is a tool to provide clarity on copyright issues that arise during the provision of library services, and to help manage risk for the library and its parent institution. It should aim to achieve three basic objectives:

- **Compliance** – consistency in managing the copying of copyrighted materials by library staff and users in order to avoid infringing activities, and compliance with the copyright law in your country and the licences applicable to electronic resources in your library.

- **Guidance** – clear guidelines to staff and users of the library on aspects of library services and the use of library resources that relate to copyright.

- **Education** – educating library staff and end users such as academics and students about copyright and what they may and may not do.

The policy should be reviewed and updated regularly to reflect the information environment in which the library is operating, in particular changes in national legislation or to the licences that govern the use of electronic resources in the library, changes to the uses made of library materials by staff and end users or the introduction of new services.

II. Why do libraries have one?

A library may decide to create a copyright policy on its own initiative to provide information to staff and users on an integral aspect of library work. A library may also be asked by the parent institution to develop a policy as part of a wider institutional policy on intellectual property. In either case, a library copyright policy aims to answer common questions asked by library staff and users in relation to copyright and the provision of library services. It often has an FAQ section to help answer common enquiries. A library copyright policy is also a tool to reduce liabilities for the library and its parent institution by providing clear instruction on what is and what is not allowed.

III. Do I need a copyright policy?

Firstly, consider whether a copyright policy is beneficial to your library. Drafting a copyright policy takes time and energy and, in some cases it might be better not to have a policy than to have one that is too rigid for everyday use.

Initial questions to consider:

- What library services do we provide, and which ones involve copyrighted content?
- How do the services fit within my national copyright law and/or the licences held by the library?
- Examples of library activities that hold a risk of liability:
  - ➢ Self-service copying by users (photocopying, printing, downloading)
  - ➢ Copying for users by library staff
  - ➢ Inter-library document supply to end-users
  - ➢ Making of course packs
  - ➢ Digitisation of library materials
  - ➢ Certain uses of orphan works e.g. digitisation
- What risks *are not* acceptable to take?
- What risks *are* acceptable to take?

When considering the amount of risk, you must consider the likelihood of your institution being sued by rightsholders or organisations that represent rightsholders in your country, such as a publishers' association or a reproduction rights organisation (RRO). It is important to note that the risk will normally be carried by the institution as the library is not usually a separate legal entity. Therefore it is essential to discuss the issue of risk and responsibilities with the authorities in your institution. Librarians are not usually sued in a personal capacity by rightsholders for the activities they undertake or condone. However, there may be other consequences, such as impact on career prospects if a risk is undertaken by the librarian on behalf of the institution without their prior knowledge or authorisation.

- Will the policy be followed? If not, how will we deal with it?

If the policy is not followed, what are the legal, institutional and other consequences for staff, the library, the institution?

- Is there an institutional policy on copyright or intellectual property? If yes, will the library policy fit the institutional policy?

IV. **Creating one**

If you decide to draft a copyright policy, it should

- help provide clarity on your national copyright law, including the freedoms available to libraries and users and help to ensure compliance with the law;
- provide library staff with sufficient information to support their decisions on rights clearances and digitisation issues;
- bring certainty to resolving questions on copyright issues that arise regularly; and
- help to ensure compliance with any licence agreements held by the library.

The policy might include some or all of the following elements:

1. Purpose of the policy
2. Statement of principle on the role and mission of the library to provide access to knowledge and learning resources and its responsibility to comply with all relevant national legislation.
3. National copyright law primer – relevant provisions, especially exceptions & limitations
4. General rules for users – to promote compliance with the law and licences
   - User copying
   - Academic staff copying for educational and research purposes
   - Copying by students for educational and research purposes
   - Accessible copies for people with disabilities
   - Use of digital cameras or hand-held scanners in the library
   - Format shifting
   - Using library material on electronic learning tools, e.g. WebCT, Moodle, etc.
5. Procedures for copying by library staff, document ordering and digitisation
   - For users' personal use
   - For delivery of teaching and learning (in classroom or distance learning)
   - For research purposes
   - For library internal purposes
   - For people with disabilities
6. Permission seeking / copyright clearance – advice on how to go about it
7. Copyright in works produced by students e.g. thesis and dissertations
8. Plagiarism
9. Open access repositories managed by the library – repository licences and rules
10. Disclaimer
11. Index and/or table of contents
12. Who to contact about copyright matters
13. FAQs

V. What do other library copyright policies look like?

Many library (and institutional) copyright policies are available online. Below are some examples. It is important to note that they are written to be in line with the national copyright law of the country where the library (or institution) is located. So while their structure can give you ideas, **their content may not be suitable for use in your own country. Their inclusion is by way of example only and does not imply any recommendation or endorsement.**

A-Z list of selected UK Higher Education Institution copyright pages
http://www.lboro.ac.uk/library/skills/crightpages.html

Fair Use and Copyright Guidelines and Policies (US) http://fairuse.stanford.edu/library_resources/
(links to copyright policies of selected US colleges and universities, associations and organizations.

Here are two useful templates:

Bibliotheca Alexandrina (Egypt) http://www.bibalex.org/libraries/presentation/static/15680.aspx

University of Oxford, Bodleian Library (UK)
http://www.bodleian.ox.ac.uk/bodley/services/copy/copyright

VI. FAQs

Frequently Asked Questions are a good way to provide clear and concise information to help answer questions from library staff or end users.

Below are examples of questions from Oxford's Bodleian Library. You can find the answers to these questions at http://www.bodleian.ox.ac.uk/bodley/services/copy/copyright but **remember that the answers may not be applicable in your country.**

Questions applicable to everybody	Questions applicable to staff
Q 1-1 How much may I photocopy from books and journals? Q1-2 When else can I copy material? Q 1-3 How long does material stay in copyright? Q 1-4 If the work is out of copyright, may I then copy it freely? Q 1-5 I own this book/journal, so why can't I photocopy as much as I want of it? Q 1-6 May I scan this article to include in a website? Q 1-7 May I copy this article onto a CD-ROM? Q 1-8 What may I do with a web page without seeking permission? Q 1-9 May I include this link in my web page? Q 1-10 Can I download or print articles from electronic journals? Q 1-11 What is 'literary material' in copyright terms? Q 1-12 How do I get permission to copy material? **Questions applicable to students** Q 3-1 May I reproduce this material for my thesis / dissertation / project /assessed essay?	Q 4-1 I wrote this paper / chapter / book, so why can't I photocopy as much as I want of it? Q 4-2 Can I copy this for my research? Q 4-3 Do I need permission to show a copyright image by making a 35mm or OHP slide for a one-off lecture? Q 4-4 Do I need permission to show a copyright image using an epidiascope or similar device? Q 4-5 May I print out a web page and duplicate it for my students? Q 4-6 May I make multiple photocopies to hand out in class, either piecemeal or as a pack of course readings? Q 4-7 May I copy for Distance Learners? Q 4-8 What are the rules on copying for Visually Impaired students? Q 4-9 I wrote this article, so can I put a photocopy of it in the library's Short Loan Collection? Q 4-10 May I reproduce this material in an exam question I am setting? Q 4-11 May I make copies to hand out to people other than students and fellow-staff?
Questions applicable to libraries Q 5-1 What are the rules on copying done by Library staff (eg Special Collections material, remote sites, remote readers)? Q 5-2 What does the CLA licence let me do? Q 5-3 What are the rules on copying audiovisual materials? Q 5-4 What are the rules on copying unpublished materials?	**Questions on special materials** Q 2-1 What is 'artistic material' in copyright terms? Q 2-2 What are the rules on copying maps? Q 2-3 What are the rules on copying UK Official Publications (HMSO publications, Government publications)? Q 2-4 What are the rules on copying UK newspapers? Q 2-5 What are the rules on copying printed music and recorded music? Q 2-6 What are the rules on recording radio and TV broadcasts (not Open University)? Q 2-7 What are the rules on recording Open University TV broadcasts? Q 2-8 What are the copyright issues involved in Oral History and similar projects? Q 2-9 What are the rules on making slides from artistic works (eg from illustrations in books)? Q 2-10 May I include this image in my web page?

VII. How to go about drafting a library copyright policy

Consultation

Since the range of library activities and services in support of teaching, learning and research by staff, academics and students is wide a process of consultation will help identify issues for which a policy might be necessary.

It is therefore advisable to **consult with a range of representative stakeholders**:

- Library colleagues - especially front-line staff and those who deal with copyright questions and issues such as clearance (permission seeking), licences for digital material and reprographic copying licences (if the library has any).
- Academic, administrative and managerial staff
- Student representatives such as the student union or library student committee

Undertake a risk assessment

You should then **undertake a simple assessment of the risks** for the activities and services provided in the library, or for any planned new services with regard to potential copyright infringements or for litigation that the institution might face as a result. The risk assessment should be carried out together with senior library management, the library or institution's legal adviser (If there is one) or the institution's law school (if there is one).

Include a Disclaimer

It is important to include a disclaimer in the copyright policy. A disclaimer limits the liability of your institution for the information provided in the policy, but

i. A disclaimer will not completely protect you if the information you provide turns out to be wrong and someone who has been affected decides to seek redress. It does, however, make clear the basis on which the advice or information is being offered and the constraints that apply.

ii. The disclaimer should point out that the information, interpretation or advice is being offered in good faith and that it does *not* constitute legal advice. Legal advice should be sought from the institution's legal department.

A common disclaimer reads as follows:

The content of this document is not intended to constitute, and receipt of it does not constitute, a contract for legal advice or establishment of a legal relationship. Whilst every effort has been made to ensure the information in this communication is accurate, [name of the institution] does not accept responsibility for any action or inaction, legal or otherwise, based on the information contained in this document.

Consult again

Circulate the draft policy to the stakeholders consulted at the beginning. It might be useful to organise a meeting for feedback to take into account stakeholder comments before finalising the policy. This will help to promote understanding and ownership of the policy by stakeholders so that it is seen as a helpful tool to which they contributed.

It is important to get the library copyright policy formally adopted or approved by the parent institution.

VIII. Education and promotion

For the policy to be a success, in addition to being visible, it should be actively promoted through an **education and training programme** for staff and end users.

- For library staff, this might take the form of short seminars plus perhaps a one-day course delivered by local library copyright experts. The course might focus on different aspects of the policy and also provide general training to raise awareness of copyright issues.

- For the institution's staff and students, training in small bites can be offered at different stages as part of library induction and information literacy skills training

- Such face-to-face activities can have a beneficial spin-off for the library, as they \increase its status within the institution as a centre of expertise and knowledge.

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