

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT

PROPOSED AMENDMENT TO THE COPYRIGHT (BAILIWICK OF GUERNSEY)
ORDINANCE, 2005

The States are asked to decide: -

Whether, after consideration of the Policy Letter, entitled “Proposed Amendment to the Copyright (Bailiwick of Guernsey) Ordinance, 2005”, dated 30th July 2020, of the Committee *for* Economic Development, they are of the opinion to:-

1. Amend section 56 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005, to (i) extend the exception to apply to all types of media (including audio-visual works and sound recordings), (ii), extend application of the exception to curators of museums and galleries, and (iii) enable multiple copies to be made.
2. Direct the preparation of such legislation as may be necessary to give effect to the above decision.

The Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

30th July 2020

Dear Sir

1 Executive summary

- 1.1 Intellectual property in literary and artistic works, such as novels, music recordings, film recordings and paintings, is protected in the Bailiwick pursuant to the Copyright (Bailiwick of Guernsey) Ordinance, 2005 (the “**Ordinance**”).
- 1.2 An area for amendment of the Ordinance has been identified, by the Committee *for* Economic Development (the “**Committee**”), to update Guernsey’s legislation and to enable the use of modern technology in the preservation of works held by libraries, archives, museums and galleries, without infringing copyright protection.
- 1.3 This policy letter details a proposed amendment to the Ordinance, which the States are asked to approve.

2 Background

- 2.1 In general, copyright material cannot be copied without permission of the copyright holder. Some exceptions to the general prohibition exist, including for certain uses by libraries and archives.¹ The exceptions seek to balance the commercial interests of the creator and the ability to make materials accessible for the public. Where an exception exists users are not required to obtain prior permission for use from the copyright holder.

¹ Sections 50 to 59 of the Ordinance.

- 2.2 In particular section 56 of the Ordinance provides an exception to copyright infringement, permitting librarians and archivists to copy works, to help minimise wear and tear on fragile items or to replace lost, destroyed or damaged items. Section 56 provides that a copy may be made, without infringing copyright, of any item in the permanent collection of a library or archive, where it is necessary to preserve or replace a copy of such an item.² This can be done where the replacement or preservation copy is required within that same library or archive, or for a permanent collection of another library or archive, and it is not reasonably practicable to purchase a copy of the same.
- 2.3 This exception has some limitations, including that:
- 2.3.1 it only applies to literary, dramatic or musical work, any illustration accompanying the work or, in the case of a published edition, the typographical arrangement. It does not apply to artistic works, sound recordings, films or broadcast. Such works can only be copied lawfully with permission of the copyright owner;
 - 2.3.2 a single copy is permitted to be made. Backup copies or the use of preservation technology (i.e. making multiple copies) are precluded; and
 - 2.3.3 only prescribed libraries and archives are able to benefit from the exception. It does not apply to other institutions, such as museums or galleries.
- 2.4 Obtaining consent of the copyright owner, for works not included within the scope of an exception, may be impractical as it may not be possible to easily trace the owner. Further, the costs of obtaining permissions can be prohibitive.
- 2.5 The States Archivist has reported an issue regarding the ability to protect local sound recordings, which are vulnerable to loss from physical degradation, and as the technology to play them disappears from production. In order to preserve the recordings they need to be migrated to more modern formats through digitisation, which is not currently permitted without the consent of the copyright owner's permission, and the Committee has been advised that this is not practicable.

² Section 56 of the Ordinance.

3 Proposed amendment to the Ordinance

3.1 It is therefore proposed that section 56 of the Ordinance be amended to:

3.1.1 extend the exception to apply to all types of media (including audio-visual works and sound recordings);

3.1.2 extend application of the exception to curators of museums and galleries; and

3.1.3 enable multiple copies to be made.

3.2 The proposed amendment is consistent with copyright protection in other jurisdictions, including in the UK, and is in conformity with international intellectual property convention.

4 Consultation

The Committee previously issued a public consultation on the proposed amendment, and no objections were raised.

5 Compliance with Rule 4

5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

5.2 In accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the proposition above has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

5.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the proposition above has the unanimous support of the Committee.

5.4 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the propositions relate to the duties of the Committee including competition, innovation, diversification and regulation in the economy.

Yours faithfully

C N K Parkinson
President

Vice-President
A C Dudley-Owen

D de G de Lisle
N R Inder
J I Mooney