

Review of the Management of Parliamentary Copyright

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The review group met five times between January and April 2009, reporting in July 2009

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List of Recommendations

The nature of the internet – international, fast-moving, unregulated and unimaginably vast – provides invaluable opportunities for Parliament to communicate more effectively with the public. This is already being exploited by changes to the website, and further changes will be introduced in the months and years ahead. However, the internet also requires that traditional models of copyright management and enforcement be reconsidered. This is perhaps best illustrated by the failure of the recorded music industry to control illegal sharing of music files via the internet despite spending millions of pounds on enforcement. This report makes a number of recommendations on the future management of Parliamentary copyright which are intended to exploit the opportunities and, as far as possible, manage the risks.

Overall Approach

The very act of placing digital material about Parliament on the Internet creates a risk that the material will be misappropriated. The risk can only be mitigated to a certain extent, raising the very real possibility that there will be cases which anger Members and provoke calls for action [para 43].

It is therefore important that the correct balance is found between protecting Parliament's material and enabling its re-use for legitimate purposes. Stricter licensing measures might be considered undesirable as this would undermine Parliament's public information function and would be unlikely to deter the most serious offenders. Strict enforcement of copyright in all cases would require a significant increase in the resources available to take on this task. However, this is an issue which can only be decided by the Speaker and the Clerk of the Parliaments, and Members and Peers should be invited to take a view on how to balance the risks against the opportunities so that the administration may make policy on a firmer footing, with commensurate levels of resourcing [para 44].

To prevent Parliament from being seen as unnecessarily impeding the re-use of material, the simplest possible licensing mechanism which is consistent with providing adequate protection for copyright material should be adopted [para 45].

Possible Changes to Click-Use

It is likely that the Office of Public Sector Information (OPSI) will make a number of announcements on public sector licensing in the near future. It is recommended that the Printing and Publishing Management Group (PPMG) should consider the implications of any announcements from OPSI of changes to the presentation of Click-Use licensing designed to promote re-use of public sector information [para 52].

A Common Approach to Licensing across the Public Sector

PPMG should consider the following options for reform of Parliament's participation in the Click-Use licensing system under its service level agreement with OPSI. The option which in the opinion of the review group would bring the best balance of protection and convenience is Option 2.

Option 1

Parliament should negotiate with OPSI to license Parliamentary material under the common public sector licence, under the standard terms. This would make it easier for members of the public and organisations to re-use Parliamentary material and also reduce the cost of our service level agreement.

Option 2

Parliament should negotiate with OPSI to license Parliamentary material under a common public sector licence, on condition that the generic licence is capable of accommodating any conditions of particular relevance to Parliament. This would provide greater protection for Parliament but still make it easier for members of the public and organisations to re-use Parliamentary material and would reduce the cost of our service level agreement.

Option 3

Parliament should maintain a separate Click-Use system for Parliamentary material but discuss with OPSI the possibility of removing some of the current conditions of re-use, with the aim of ensuring that only those conditions which are essential to protect our rights are retained [para 59].

PPMG should consider renegotiating the service level agreement with OPSI in order to obtain more timely advice on developments in the field of copyright and reduce the burden of reporting for OPSI, given that the information on take-up of Click-Use licences contained in the current biannual reports does not appear to be of any practical use [para 60].

Changes to Parliament's Approach

The copyright page on the parliament.uk website is likely to prove off-putting to many users. It should be simplified, and start with a clear statement that Parliamentary copyright material is available for re-use subject to conditions. It should be easy to

locate details of copyright arrangements from any point on the Parliament website, although it is not necessary to incorporate a full copyright statement on every page [para 61].

A link to the source database should be included on the copyright page. Parliament should also explore the possibility of making more source data available in an XML format as well as or instead of html: this would increase the ease of reuse by third parties [para 62].

At present there are separate licensing arrangements for different types of material, including variations in the conditions under which material is licensed. These should be brought under a common licensing scheme where possible [para 63].

References to Library Copyright on the website copyright page should be removed as this distinction has no basis in law and there is no reason to apply different conditions to Library publications [para 64].

The Click-Use scheme is limited to the online versions of traditional Parliamentary publications. It should be extended to include descriptive material from the Parliament website, data files and a collection of images of Parliament. If content becomes available on the site in new formats the expectation should be that it will be licensed through Click-Use unless there are strong reasons to the contrary [para 65].

Where different licensing arrangements continue to be necessary (such as, for the time being at least, audio-visual content) the differences should be summarised prominently on the website copyright page in a simple tabular format with links to further information [para 66].

Licensing Audio-Visual Content

Allowing video clips of Parliamentary proceedings to be more widely available on the internet carries a risk of reputational damage to the House but also provides an opportunity for those proceedings to be seen more and understood more generally. Given the way the technology works, the ability to enforce copyright in this area is virtually non-existent. It is therefore recommended that:

- a) the proposal to enable video clips to be placed on YouTube and similar sites is endorsed by both Houses; and
- b) an experiment is conducted allowing video clips on YouTube and similar sites to be embedded on other sites. The Group on Information for the Public (GIP) should monitor the success of the experiment and recommend whether this practice should be discontinued or made permanent [para 86].

Licensing Images

It is recommended that charges for the reproduction of images should only be imposed for high-volume commercial activities such as merchandising, where a reasonable commercial return can be achieved; for images of works of art owned by Parliament; and for non-standard uses such as the creation of new works of art, theatrical productions etc where there is a higher risk of reputational damage. In support of the goal of publicising the work of Parliament an adequate collection of images should continue to be available for re-use for commercial and non-commercial purposes without charge. Licensing for such images should be brought within the Click-Use framework [para 90].

Where it is believed that a reasonable income can be generated from the licensing of high-definition images the initial policy decision to charge for each broad collection of images should be subject to agreement by the Group on Information for the Public (GIP). In such cases, in order to reduce the administrative burden caused by charging, the arrangements for licensing and charging for a given collection of images should be simplified, codified and published online. If, in the future, images are made available through a system that enables them to be downloaded and paid for online (an e-commerce system), the licensing of those images for most uses could be incorporated within the system [para 91].

The arrangements for the supply and licensing of images not available online, whether charged for or not, should be simplified and codified. In all cases, third parties using images owned by Parliament should continue to be required to acknowledge the source of the images [para 92].

The administrative costs of charging for images should be reviewed periodically to determine whether it remains cost effective [para 93].

Licensing Computer Code

PPMG should consider any proposals from OPSI on the licensing of computer code [para 94].

Third Party Material

The current arrangements for publishing biographies and photographs of Members of both Houses should be reviewed with the aim of providing material which can be reused under Parliamentary licence, to coincide with the next election [para 96].

Background

Copyright Law

1. *Halsbury's Laws of England* defines copyright as "the exclusive right to do, and to authorise others to do, in the United Kingdom, certain acts in relation to literary, dramatic and musical works, in relation to artistic works and in relation to sound recordings, films, broadcasts, cable programmes and published editions of works. The acts concerned vary according to the subject matter; in general, the existence of copyright protects the maker of a work from the appropriation of his labours by another."
2. The automatic right of an author, artist or composer to prevent another copying his work is embodied in the *Copyright, Designs and Patents Act 1988*. A copyright owner may also license the use of all or part of his work, subject to the terms of a contract, be it written, oral or implied.
3. Primary infringement of copyright is committed where a person does, or authorises, the following acts in respect of a "whole or any substantial part" of the work:
 - copying the work
 - issuing copies to the public
 - renting or lending copies to the public
 - performing, showing or playing the work in public
 - broadcasting the work, including by cable
 - making an adaptation (e.g. a translation) of the work or performing any of the above in relation to the adaptation
4. There can, therefore, be no infringement unless a substantial part of the work is copied, adapted, broadcast or performed in public.
5. In addition to licensed activities, a wide range of exceptions to copyright are permitted: these include fair dealing (for private study, criticism, review or news reporting), incidental inclusion, public interest and reproducing (directly) speeches - unless the speaker expressly prohibits this.
6. If copyright is infringed, the owner may bring civil proceedings, as may an exclusive licensee. Infringement of moral rights is actionable as a breach of statutory duty owed to the person entitled to the right. Making for sale or hire, importing or dealing with infringing articles is a criminal offence under section 107 of the 1988 Act.

Copyright and the Internet

7. The internet and the ease of digital copying which it enables pose a challenge to existing copyright protection. A recent discussion paper by the Intellectual Property Office (the operating name of the Patent Office) contains a useful description of the changed landscape:

Technological change has brought a notable shift in consumer behaviour - consumers are now able to create and copy for themselves in ways not previously possible. This has led to phenomena like file sharing, and also to a situation where consumers see the near-zero cost of digital reproduction and are reluctant to pay more.

Many consumers and SMEs appear to have clear expectations about how content should be accessed and used and its value. The existing system can often be seen as too restrictive by users— preventing use of works for education, enjoyment and follow-on creativity.

Meanwhile the online world has raised issues for rights holders seeking to exploit their works. The emergence of open access models such as 'Creative Commons' provide valuable choice for creators but it is important that those who seek financial incentives for creation should be able to access them.¹

8. The Government's position is that there should be an effective balance between the rights of content owners and users.²

Parliamentary Copyright

9. Section 165 of the *Copyright, Designs and Patents Act 1988* creates a separate category, Parliamentary copyright, which applies to works "made by or under the direction or control of" either House. The Controller of Her Majesty's Stationery Office (HMSO) manages Parliamentary copyright on behalf of the Speaker of the House of Commons and the Clerk of the Parliaments under a Service Level Agreement dated 14 December 2006. HMSO operates within the Office of Public Sector Information (OPSI) which is part of the National Archives. OPSI has UK central policy responsibility for government policy on the re-use of public sector information.

¹ The future: developing a copyright agenda for the 21st Century, December 2008

² Ibid

Click-Use Online Licensing

10. A few years ago HMSO developed an online licence known as Click-Use to facilitate and encourage the re-use of public sector copyright material in the UK. This is consistent with the UK's responsibilities under the Re-use of Public Sector Information Regulations 2005.³ A separate Parliamentary Click-Use licence was developed by OPSI on behalf of both Houses. The scheme works by enabling third parties to download a free licence which gives immediate permission to use specified categories of material. Parliament's Click-Use licence does not differentiate between commercial and non-commercial use. OPSI is currently conducting a review of the effectiveness of Click-Use in promoting re-use of Crown copyright information.
11. As of 30 September 2008, 1,243 Parliamentary Click-Use Licences had been taken out online through the www.opsi.gov.uk website since the Parliamentary Click-Use Licence was launched in August 2005. 206 new licences were taken out in the first half of financial year 2008-09. This represents a 27% increase over the figure reported for the previous six months. Typically, before Click-Use licensing was introduced between 9 and 15 new licences would be taken out each month. In the period April – September 2008 an average of 34 licences were taken out each month. OPSI suggest that the significant rise in the number of Parliamentary Click-Use Licences taken out testifies both to increasing levels of interest in the Parliamentary process and the simplicity of the online licensing process.⁴
12. Through the Click-Use system OPSI is able to analyse the number of licences taken out by different user groups. Private individuals account for the largest licensee group in respect of Parliamentary material; other groups include consultancy, education and training, public administration, and publishing.

Audio-Visual Coverage of Parliamentary Debate

13. In addition to standard television coverage a variety of Parliamentary audio-visual content is broadcast on the internet (known as "webcasting") via the Parliament website. This includes:
 - Broadcast-quality footage of the Commons and Lords chambers, Westminster Hall and any committee content taken by broadcasters (coverage ad hoc, mainly by BBC)
 - web camera coverage of some other committees; and
 - an audio web feed of all other committees

³ S.I. 2005 No.1515

⁴ Management of Parliamentary Copyright for the House of Commons and House of Lords: Report on the period 1 April 2008 – 30 September 2008

14. All broadcast-quality footage is produced by PARBUL, the Parliamentary Broadcasting Unit Ltd, a non-profit making company through which broadcasters meet their agreed share of the cost of Parliamentary broadcasting. Under the PARBUL arrangements the broadcasters jointly meet all operational and maintenance costs related to televising. The funding shareholders recoup some of their costs by sub-licensing the use of live and up to 14 day old audio-visual material by other broadcasters and webcasters. Parliament's right to webcast is enshrined in the licences granted to PARBUL by the Speaker and Clerk of the Parliaments.

Recent Developments

New Uses for Public Sector Information

15. In the years since the Click-Use licence and the Re-use of Public Sector Information Regulations were introduced, new means for the re-use of public information have emerged. This involves web based publishing services, where information is drawn from a number of sources, often combined with geospatial data, and re-presented. Examples of this range from mySociety's TheyWorkForYou.com, which presents Hansard data in a way which can be navigated more easily than the official version, to a large number of sites which provide information to help parents looking for schools.⁵ In general, services of this kind are provided free to the public and are funded by private fundraising, grant or on-screen advertising.
16. The Government has been very supportive of initiatives of this kind, seeing them as generating economic activity as well as being useful to citizens, and this appears to reflect an all-party consensus. The Cabinet Office commissioned an independent review of "new developments in the use of citizen- and state-generated information in the UK" and the resulting report, *The Power of Information*, was published in June 2007. The report's joint author, Tom Steinberg, was one of the founders of mySociety. Tom Watson, a Parliamentary Secretary at the Cabinet Office, subsequently established a taskforce to follow up the report's proposals. The report of the taskforce contains a number of recommendations which may be relevant to the management of Parliamentary copyright.⁶

Audio-Visual Material on the Internet

17. Within the past five years there has been an explosion of video content on the internet. This ranges from use of the internet as an alternative medium for broadcasting mainstream television programmes or films to the much more varied use of video clips by corporations, non-commercial organisations and the public. Sources for video clips include television, music videos, film trailers and amateur content.
18. Mass posting of video clips on the internet became practicable when free hosting of personal content became widely available and technical advances meant that it became easy to upload clips and integrate them with other content. Audio-visual content now features widely in social networking sites such as MySpace; personal sites, including blogs (web logs); and above all video-sharing sites of which YouTube is the pre-eminent example.

⁵ See, for example, www.upmystreet.com/enter-location/local/schools/

⁶ Power of Information Taskforce Report, February 2009

19. The rapid growth of YouTube is illustrated by its transition from a small “start-up” company in February 2005 to acquisition by Google in November 2006 for \$1.65 billion.⁷ In January 2009 YouTube received nearly 400 million visits.⁸

Risks and Opportunities presented by the Internet

20. The Copyright review group invited a team from the Office of Public Sector Information (OPSI) to discuss issues concerning the management of Parliamentary copyright. Carol Tullo, the Director of OPSI and Controller of HMSO, observed that there had been an important shift in Government policy on copyright in public sector information: the emphasis had changed from using copyright as means of control to being an enabler of third party use. Nevertheless she argued strongly that a balanced approach had been maintained, protecting the rights of the owner and taking account of factors such as data protection and security. Crucially, the licensing of copyright had been maintained.

21. OPSI believes that the risks of the misuse of text-based copyright material identified when Click-Use was introduced have not been realised. Over the intervening years the public has continued to push for more and easier access to public sector information; the Government is experimenting with more transparent, online consultation mechanisms (a trend which is likely to increase); and the presumption is now that all content on Government websites should be available for re-use unless there is a good reason for restricting this (such as ensuring that the public should always refer to the most up to date version, as with FCO travel advice).

22. OPSI’s view of the risks concerned with text-based material is shared widely within Parliament. Today concerns about the misuse of Parliamentary copyright material are more likely to focus on audio-visual coverage of Parliament. The emotional impact of video is usually greater than text, and a lay audience is more likely to view video in an uncritical frame of mind than with text. On the other hand, these same factors make the use of appropriate video content by Members, the House, broadcasters and others as a powerful tool for deepening public understanding of the work of Parliament.

⁷ Financial Times, 10.10.06

⁸ <http://siteanalytics.compete.com/youtube.com/?metric=uv>

Breach of Copyright

23. Re-using copyright text-based material published on the Internet is very simple due to the copy and paste facility offered by web browsers. More sophisticated users are likely to use a technique known as screen-scraping, which enables all of the text content from a site or defined part of a site to be captured automatically. Until recently it has been much harder to capture and re-publish audio-visual content on the Internet but due to the technological advances described above, content which is made available by its owners or others who are licensed to use it can now be captured and re-used without permission with relative ease.
24. YouTube displays a copyright warning at the time of uploading a video clip, but this is widely ignored. In response to an ongoing lawsuit for breach of copyright issued by the broadcaster Viacom, YouTube introduced an experimental system called Video Identification which checks uploaded videos against a database of copyrighted content with the aim of reducing violations.

Risks from Misuse of Audio-Visual Content

25. The ease with which content owned by PARBUL and Parliament can be appropriated and re-used gives rise to a number of reputational risks for Parliament. The risks also apply to other forms of digital content but, as discussed above, tend to be more acute with video.

Disrespectful use of content

26. Parliament imposes constraints on the use of audio-visual content designed to protect the dignity of Parliament and the accuracy of any record of its proceedings. Thus broadcasters must not edit coverage of Parliamentary proceedings to alter its context or use it for the purposes of bringing the institution into disrepute or for advertising. Individuals who upload Parliamentary content to the Internet do not seem to pay any heed to these restrictions (if, indeed, they are aware of them at all). This ranges from clearly inappropriate editing and usage to a more benign desire to identify the most noteworthy speeches or highlights of speeches.
27. A search on YouTube revealed that the most popular video clips of Gordon Brown in the House of Commons on the site as of 28 March 2009 were extracts from:
1. PMQs of 10 December 2008, when he accidentally claimed to have “saved the world”; and

2. PMQs of 21 March 2007, apparently showing the then Chancellor picking his nose on the front bench.

28. YouTube and other sites enable viewers to append comments to video clips and these are often intemperate. In the case of the two examples quoted above many of the comments posted are disrespectful in the extreme.

Use out of context

29. Coverage of debates or oral questions can be edited or modified to give a misleading impression, particularly if taken out of context of the wider exchange. This is perhaps not far removed from the use of short clips from PMQs or Select Committee hearings on television news programmes, although mainstream broadcasters are heavily regulated and are also bound by the terms of the Speaker's Licence (and the Lords equivalent) on the use of broadcast material from the Chamber.

Use on inappropriate websites

30. Clips of Parliamentary proceedings may be misrepresented or used on websites that express extreme views, are defamatory or employ a scurrilous approach.

Manipulation of content

31. It is possible to use special software to copy video or audio clips and alter them. This might include splicing words from the clip together, superimposing entirely new words or altering the picture. The purpose might be satirical (manipulated clips have been used on the impressionist Rory Bremner's television programme) or to mislead. The use of this technique does not appear to be common with Parliamentary content, but there were reports of fake video footage having been used during the US election campaign.

Opportunities Presented by Audio-Visual Content

32. Access to video footage of Parliament through the conventional broadcast media is governed by the broadcasters' priorities and schedules, and is largely restricted to short clips in news programmes. Making audio-visual clips of Parliamentary proceedings available on the Internet is an obvious mechanism for bypassing the traditional routes and providing direct access to the public. Authorised video coverage of Parliament is already available in a variety of locations on the web. It is amongst the most popular content on the Parliament website. Broadcasters such as the BBC who participate in PARBUL also feature Parliamentary

coverage. A number of MPs include in their website video footage of their speeches.⁹ The use by third parties of Parliamentary video coverage under licence is quite limited in the UK, presumably due to commercial considerations. In the USA the popular liberal-leaning political blog the Huffington Post features footage of congressional debates and committees.¹⁰

33. On 28 March 2009 the most popular YouTube clip searching on the name Gordon Brown, ahead of the extracts from PMQs described above, was a speech in the European Parliament on 26 March by Daniel Hannan, a Conservative MEP. Mr Hannan was responding to a speech by Mr Brown made on a visit to the Parliament. He is reported to have posted the speech on YouTube himself having failed to attract interest from the traditional news media. This does seem to provide evidence that footage of genuine parliamentary and political debate can be promoted to a very wide audience using sites such as YouTube.¹¹

Mitigating the Risks

Licensing

34. Whilst licensing remains the most cost-effective and proportionate way of controlling the use of Parliamentary content the paradox remains that those users most likely to misuse the material are unlikely to apply for a licence. Indeed, there is currently no avenue for users who wish to download Parliamentary material to obtain a licence for it.

Monitoring

35. It is not practicable for Parliament to monitor the use of its audio-visual content on the internet reliably. Two factors contribute to this. The first is the sheer volume of audio visual content available. The second is that, given the current state of technology, searching for (or, more accurately, finding) specific video content systematically usually depends on the content having been “tagged” with appropriate metadata.¹² An unlicensed clip from Parliament may be embedded in a political blog in such a way as to make finding it with a web search tool all but impossible. Even where metadata is used, there is no standard which would facilitate systematic searching.

⁹ See Jo Swinson’s site: <http://www.joswinson.org.uk/pages/allvideos.html>

¹⁰ e.g. http://www.huffingtonpost.com/rep-alan-grayson/on-goldman-sachs-ditching_b_187314.html

¹¹ See <http://www.guardian.co.uk/politics/2009/mar/28/daniel-hannan-tory-mep>

¹² Metadata is information about information, similar to a catalogue record describing a book although often less formal

Digital Rights Management

36. This refers to the use of technology to control access to and impose limitations on the use of digital content. It can be used as a means of reinforcing an existing licensing regime. The use of DRM is controversial as the restrictions it imposes can go beyond the restrictions imposed by copyright law and cause inconvenience to legitimate users such as those who have bought copies or obtained a licence. It would not be desirable to use it for text-based materials as this would be disproportionate, probably ineffectual, and contrary to public expectations about the availability of public sector data for re-use. It would also require unacceptable changes to the way the material was presented online.
37. In the future, technology may offer Parliament and PARBUL the opportunity to use DRM to prevent the embedding of audio-visual clips in selected websites, although this would not help where Parliamentary material was being hosted externally. The desirability of taking up this option would need to be discussed by the parties to the PARBUL agreement.

Enforcement

38. The nature of the internet – international, fast-moving, unregulated and unimaginably vast – presents serious practical issues for copyright enforcement. This is perhaps best illustrated by the failure of the recorded music industry to control illegal sharing of music files via the internet despite spending millions of pounds on enforcement.
39. For Parliament, the risk of being seen to take heavy-handed enforcement action against individuals or organisations who place video clips on the internet will often be a greater risk than doing nothing. Clips and the individuals responsible for them can become a cause célèbre, with the charge of censorship being made, overshadowing the copyright issue. Content that is taken down tends to spring up again on a larger number of sites.
40. Enforcement of copyright is likely to be a practical option only in a limited number of circumstances. These might include:
- Commercial web sites where the balance of interests to the owners of the site favours a low-risk approach to litigation – where the site owners have substantial retail or manufacturing interests, for example. In contrast, the business model of sites based mainly on file-sharing (such as YouTube) requires them to take an aggressive approach to defending claims of breach of copyright.
 - Web sites linked to traditional media channels that are subject to a strict regulatory regime, such as newspapers or broadcasters.

- Sites created by individuals where the use of the content is so offensive that a strong public consensus for its removal is created.

41. This list is not exhaustive, and each case where a breach of copyright is reported will need to be judged on its own merits, balancing the risks and benefits of acting and not acting. However, it is important for both Houses to be aware that in the digital era, producing and making available video footage of Parliament in session will inevitably result in re-use of that footage in ways which would not be welcome.

Licensing of Parliamentary Material: Proposals for Changes

Overall Approach

42. Informing and educating the public about Parliament is a core task of both Houses. In recent years a strong expectation has arisen that public bodies should make data available for reuse in electronic formats, to support initiatives of the kind described earlier in the report. It is accepted by the Group on Information for the Public that the reach of accurate and timely information about Parliament is improved if it is made available by third parties as well as by Parliament itself. The strategy for improving public awareness and knowledge of Parliament therefore needs to encompass providing bulk electronic data for re-use.

43. The risks stemming from re-use, and the means of mitigating them, are discussed above. The very act of placing material about Parliament on the Internet creates a risk that the material will be misappropriated. The risk can only be mitigated to a certain extent, raising the very real possibility that there will be cases which anger Members and provoke calls for action.

44. It is therefore important that the correct balance is found between protecting Parliament's material and enabling its re-use for legitimate purposes. Stricter licensing measures might be considered undesirable as this would undermine Parliament's public information function and would be unlikely to deter the most serious offenders. Strict enforcement of copyright in all cases would require a significant increase in the resources available to take on this task. However, this is an issue which can only be decided by the Speaker and the Clerk of the Parliaments, and Members and Peers should be invited to take a view on how to balance the risks against the opportunities so that the administration may make policy on a firmer footing, with commensurate levels of resourcing.

45. Indeed, Parliament's reputation is suffering unnecessarily among more technologically inclined Members and commentators because the current licensing arrangements are perceived to present an unnecessary barrier to reuse. It is important that Parliament does not allow policy on licensing to be determined by the exception: there will always be a small number of documents and other materials which raise more complicated issues, but we should treat these as exceptions from the main thrust of our approach. To prevent Parliament being seen as impeding unnecessarily the re-use of material, the simplest possible licensing mechanism that is consistent with providing adequate protection for copyright material should be adopted.

Possible Changes to Click-Use

46. The final report of the Power of Information Task Force, which was established by the Cabinet Office, considered the role of Crown Copyright:

When the public sector publishes information people should understand that it is intended for re-use. Action is required to improve understanding of Crown copyright, which the Taskforce found to be mis-understood by creators and re-users of data. Crown Copyright, despite its historic name, is designed to encourage re-use in the majority of cases yet the Taskforce found little appreciation of this. There were even suggestions that it was deterring potential re-users.¹³

47. This argument may also be applied to Parliamentary copyright by analogy: as with Crown copyright, the licensing of most Parliamentary copyright material is carried out through the Click-Use scheme, using similar terms and conditions.

48. It was noted above that OPSI agrees with the task force's view. OPSI believes that Crown and Parliamentary copyright are valuable to users of information as a guarantor of information quality and provenance, but that users often assume both regimes impose more barriers to re-use than they actually do. OPSI contends that this detracts from the good work which Government departments and Parliament are doing to make their material more accessible.

49. OPSI recently carried out a survey of current Crown copyright licence holders and others in order to test the extent of the problem and identify the barriers to re-use. More than a thousand responses were received within 24 hours of the launch of the survey. OPSI's preliminary interpretation of the survey responses is that a majority of respondents perceive the current arrangements to be unduly restrictive.

¹³ Power of Information Taskforce Report, February 2009, <http://poit.cabinetoffice.gov.uk/poit/>

50. The response of the Power of Information Review to these perceived barriers was to recommend that the purpose and nature of Crown copyright could be presented in a clearer manner to the online user:

The use of symbols within creative commons is helpful in making the scheme intelligible to a broad range of non-expert users. OPSI may wish to give consideration to how government licensing could benefit from a greater use of symbols and other graphical means of conveying licensing information – perhaps the creation of a 'Crown Commons' branded licence.

Recommendation 12

OPSI should begin a communications campaign to re-present and improve understanding of the permissive aspects of Crown Copyright along the lines of creative commons by end June 2009. This should be combined with 'permission to scrape' being given over Crown Copyright data, removing any risk of prosecution under the Computer Misuse Act. This might fall under the banner of a 'Crown Commons' brand. OPSI should begin a communications campaign to that end by end June 2009.¹⁴

51. OPSI believes that the Creative Commons licensing system¹⁵ does not present a viable alternative to Crown and Parliamentary copyright, due in part to its name which users confuse with the House of Commons. Nevertheless OPSI agrees with the task force that the use of colour, layout and symbols has potential to reduce the perceptual barriers and is experimenting with the aim of creating a more “user-friendly” interface. A series of announcements on public sector licensing arrangements is due shortly.

52. It is likely that OPSI will make a number of announcements on public sector licensing in the near future. It is recommended that the Printing and Publishing Management Group (PPMG) should consider the implications of any announcements from OPSI of changes to the presentation of Click-Use licensing designed to promote re-use of public sector information.

A common approach to licensing across the public sector?

53. The Power of Information Task Force observed that there is a wide range of rules governing copyright, licensing and re-use of public sector information, with significant variations in licensing even within the same part of the public sector:

For instance, while working with the Home Office on crime mapping, the Taskforce found 'dead end' copyright notices on some police websites (e.g. Northants) with no apparent provision for reuse, and more permissive statements on others (e.g. the

¹⁴ Ibid

¹⁵ An alternative copyright licensing system which allows copyright owners to communicate which rights they wish to reserve and which they will waive in order to promote re-use.

Metropolitan Police). So a potential reuser of crime information might face over forty different copyright policies for the different forces.

This inhibits innovation, reuse and debate of vital public information such as crime statistics. Inconsistency in licensing is a particular inhibitor of economic activity - SMEs seeking to reuse the information as part of a business need unambiguous intellectual property clearance - several complained to the Taskforce. Clear re-use policies can also be important for people seeking to re-use public information to lobby public bodies for better public services.¹⁶

54. The task force observed that Crown copyright has the advantage of being a “consistent framework for licensing developed by experts after widespread consultation”, and proposed that Click-Use could be used as the basis for a common licensing system for the public sector. They recommended:

- Government should ensure that there is a uniform system of release and licensing applied across all public bodies; individual public bodies should not develop or vary the standard terms for their sector.
- The system should create a 'Crown Commons' style approach, using a highly permissive licensing scheme that is transparent, easy to understand and easy to use, modeled on the 'Click Use' license, subject to the caveats below.
[...]
- The Government should report on the options for these three recommendations by end 2009 and if required, statutory measures should be brought forward not later than the 2009/2010 session.¹⁷

55. As noted earlier, OPSI is sceptical about the use of the word “Commons” in the possible re-branding of Crown copyright. Nevertheless it strongly agrees that it is desirable to maximise the “interoperability” of public sector information by unifying licensing arrangements across the many thousands of organisations within the sector. Like the task force, it believes that users require a “one-stop-shop” solution.

56. Parliamentary copyright is distinct from Crown copyright under Section 165 of the *Copyright, Designs and Patents Act 1988* and there are good constitutional reasons why this should be so. However, it might be feasible to use a common Click-Use licence for Parliamentary and other public sector material provided that the conditions considered necessary to provide adequate protection to our rights over the material were incorporated in such a licence. At the very least, Parliament should work with OPSI to revise the current set of conditions for licensing Parliamentary copyright material as some do not appear to serve any useful purpose.

¹⁶ Op cit

¹⁷ Ibid, Recommendation 8

57. It is certainly true that the position of Parliament within the broader public sector is not analogous to, for example, one of the hundreds of local authorities; and potential re-users of Parliamentary data are less likely to want to combine it with a large number of other public data sets. Nevertheless, the existence of a separate Click-Use system for Parliament creates an additional barrier to re-use and its merger with the wider system should be considered. The Scottish Parliament has already opted to participate in the generic public sector scheme.
58. The administration of Parliamentary copyright material using a generic public sector licence would reduce the costs of our service level agreement as OPSI would not have to administer a separate licensing system. Moving to a generic licence would, however, remove the ability to identify users who wished specifically to re-use Parliamentary content. At present Parliament does not monitor systematically the use of its material under Click-Use licences, as the additional costs incurred would not yield corresponding benefits, so any advantage provided by this ability is not exploited.
59. PPMG should consider the following options for reform of Parliament's participation in the Click-Use licensing system under its service level agreement with OPSI. The option which in the opinion of the review group would bring the best balance of protection and convenience is Option 2.

Option 1

Parliament should negotiate with OPSI to license Parliamentary material under the common public sector licence, under the standard terms. This would make it easier for members of the public and organisations to re-use Parliamentary material and also reduce the cost of our service level agreement.

Option 2

Parliament should negotiate with OPSI to license Parliamentary material under a common public sector licence, on condition that the generic licence is capable of accommodating any conditions of particular relevance to Parliament. This would provide greater protection for Parliament but still make it easier for members of the public and organisations to re-use Parliamentary material and would reduce the cost of our service level agreement.

Option 3

Parliament should maintain a separate Click-Use system for Parliamentary material but discuss with OPSI the possibility of removing some of the current

conditions of re-use, with the aim of ensuring that only those conditions which are essential to protect our rights are retained.

60. PPMG should consider renegotiating the service level agreement with OPSI in order to obtain more timely advice on developments in the field of copyright and reduce the burden of reporting for OPSI, given that the information on take-up of Click-Use licences contained in the current biannual reports does not appear to be of any practical use.

Changes to Parliament's Approach

61. There is much that Parliament could do independently of OPSI to make clear to users our generally permissive approach to managing Parliamentary copyright. The copyright page on the parliament.uk website is likely to prove off-putting to many users. It should be simplified, and start with a clear statement that Parliamentary copyright material is available for re-use subject to conditions. It is important to ensure that details of copyright arrangements can be located easily from any point on the Parliament website, particularly the publications area, although it is not necessary to incorporate a full copyright statement on every page.

62. Bulk download of Parliamentary material is usually carried out from the so-called "source database", a repository of Parliamentary publications in digital format administered on our behalf by TSO. It is located at an unrestricted internet address (URL) but that URL is not linked to from the Parliament website: instead, third parties are directed to contact TSO. TSO have advised that they are content for a hyperlink to be created from www.parliament.uk to the source database. A link to the source database should be included on the copyright page. Parliament should also explore the possibility of making more source data available in an XML format as well as or instead of html: this would increase the ease of re-use by third parties. It is considered unlikely that this would increase the risk of falsification or distortion of Parliamentary data because the principal barriers to such activity are not about the format of the source data.

63. At present there are separate licensing arrangements for different types of material, including variations in the conditions under which material is licensed. These should be brought under a common licensing scheme where possible. We return to some of the separate licensing arrangements later.

64. References to Library copyright on the website copyright page should be removed as this distinction has no basis in law and there is no reason to apply different conditions to Library publications.

65. The Click-Use scheme is limited to the online versions of traditional Parliamentary publications. It should be extended to include descriptive material

from the Parliament website, data files and a collection of images of Parliament. If new content becomes available on the site in new formats the expectation should be that it will be licensed through Click-Use unless there are strong reasons to the contrary. OPSI is confident that material such as images and XML files¹⁸ could be licensed successfully using the Click-Use mechanism in the same way as conventional text.

66. Where different licensing arrangements continue to be necessary (such as, for the time being at least, audio-visual content) the differences should be summarised prominently on the website copyright page in a simple table format with links to further information.

Licensing Audio-Visual Content

67. We have considered the implications for copyright of the proposal which has been put to the House of Commons Administration Committee and the House of Lords Information Committee to allow Members to place clips of their speeches - taken from the official TV recordings of House proceedings - on searchable video-sharing sites such as YouTube.

68. This is a significant development but it would not resolve another issue which a number of Members have raised: whether permission should be given for Members to share clips of speeches with other sites such as blogs. This is known as “embedding”. The House of Lords Information Committee’s first report of 2008–09, *Are the Lords Listening?*, recommended that:

People should be allowed to embed the House’s proceedings on their websites, so that our proceedings can have as wide a distribution as possible on the internet.¹⁹

What is the difference between putting videos on YouTube and “embedding” them?

69. YouTube is the most popular purpose-built video-sharing site. It is like a library – but the video clips are watched online rather than taken out. Also, unlike a conventional library, the videos are placed on the site by users. Anyone who registers with YouTube can supply (upload) a video clip. They must comply with the site’s rules (which prohibit content that is defamatory, pornographic or in breach of copyright). These rules are not necessarily enforced by YouTube.

¹⁸ Extensible Mark-up Language. The Parliament website currently contains XML source files of the digitised historical Hansard. It is likely that in the near future a wide range of XML files of contemporary data will be available.

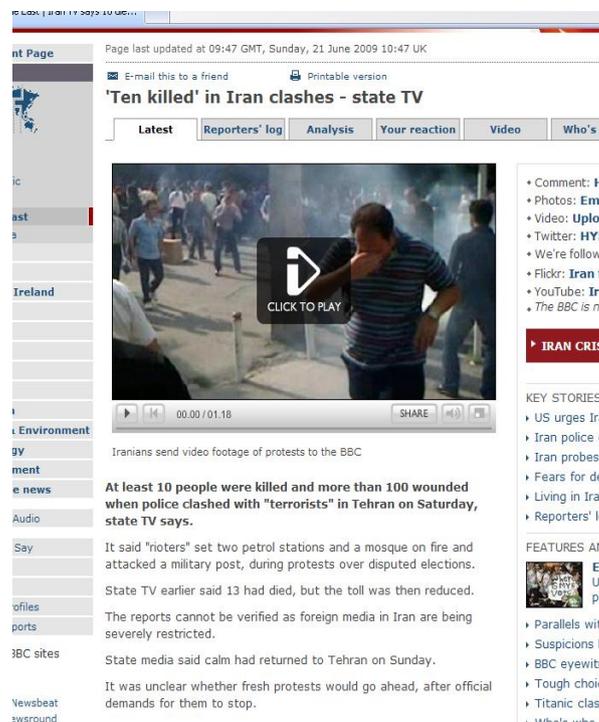
¹⁹ Creating connections between people and Parliament, HL Paper 138, 15.7.09, para 44

70. YouTube has no editorial policy other than the restrictions mentioned above, although users can comment on clips and often do so intemperately.

71. Those watching videos on YouTube do not automatically copy the video clip onto their own computer, and so cannot alter the content. To copy material from YouTube (or official sites such as the BBC or Parliament websites) requires a deliberate act using special software. Nevertheless, such software is not difficult to obtain and it should be recognised that increasing the circulation of clips on sites such as YouTube increases the risk that they will be misappropriated.

72. There is a facility that enables a person who puts a video clip on YouTube to give a general permission for themselves or other people to create a link from another website (such as a blog) to the clip. This enables people to watch the clip via the other website and is known as **embedding**. The proposal to allow Members and the Web Centre to place clips on YouTube explicitly prohibits them from enabling embedding, although it will be practically impossible to enforce this.

73. A key difference between posting clips on YouTube and embedding them on other sites is that when they are embedded the clips can take on a context from the rest of the site. It is very common to see clips embedded in online news articles, as in this example from the BBC:



74. Embedding clips in this way is rapidly becoming the norm and an increasingly sophisticated community of users expects to be able to do this. The difficulty comes when a site is not bound by the rules of objectivity and decency etc that

apply to broadcasters. A clip may be used to illustrate the editorial line of the site, perhaps in a way that displays a lack of political balance, an offensive viewpoint or a disrespectful attitude.

75. Monitoring the extent of embedding will be virtually impossible. Where embedding that is contrary to licensing conditions is discovered, it is likely to be very difficult to take enforcement action.
76. During the next election campaign it is very likely that candidates and parties will be making full use of new techniques and platforms such as YouTube and social networking sites, to reach a wider and younger portion of the electorate. The US Presidential election of 2008 gives an indication of just how pervasive this might become. Following the election the expected arrival of a cohort of new Members is likely to increase the pressure to permit greater use of these techniques with video footage of Parliamentary proceedings.

Risks and Opportunities

77. The risks associated with audio-visual content are discussed earlier in this report [para 20]. The main risk of enabling Members or broadcasters to place video clips of speeches on YouTube and similar sites is that users will post inappropriate comments against them. As noted above, placing clips on YouTube also increases their visibility and therefore increases the risk that they will be copied and altered or otherwise misused.
78. With embedding, it will not be possible for Parliament to control the context in which clips are placed. This leads to the additional risk that the clip will be juxtaposed with extreme or scurrilous text. Although all of these risks are real they are likely to be confined to a very small minority of cases.
79. One question for Parliament is whether increasing the availability of video clips of parliamentary proceedings on the internet will undermine the commercial viability of TV broadcasting of the House through PARBUL. The review group considered this issue and found that broadcasters do not appear to consider it a significant concern. The current PARBUL agreement is due to end in 2011 and widespread consultation will be needed on what type of arrangement should succeed it.
80. The potential benefits of both YouTube and embedding are that:
- The reputation of Parliament is gradually enhanced by wider access to discussion in Parliamentary proceedings of topics that are relevant to the public – not just through PMQs and major debates
 - The objective of both Houses to connect with the public and achieve greater transparency is promoted

- In particular, it will be easier to connect with a younger audience for whom the use of audio-visual content is commonplace
- The undeserved reputation of Parliament as a technical Luddite is counteracted. The public may begin to see Parliament as being modern and in touch with modern methods of communication

81. The risks of not embracing these delivery methods are that it becomes ever harder to engage with the public as the perception grows that Parliament is inaccessible and remote from the mainstream of public debate on the web.

82. The next stage might be for Members in both Houses to consider a one year experiment allowing Members, the Web Centre and PARBUL broadcasters to enable clips they place on YouTube and similar sites to be embedded on other websites. If the experiment did not give rise to problems it might be made permanent.

83. It is important for Members in both Houses to be aware that whatever decisions on copyright are taken, there is very little prospect of controlling the use of video clips of Parliamentary proceedings effectively. The relatively low incidence of abuses to date is probably more to do with a lack of interest than the current licensing rules providing an effective control and deterrent.

84. Allowing video clips of parliamentary proceedings to be more widely available on the internet carries a risk of reputational damage to the House but also provides an opportunity for those proceedings to be seen more and understood more generally. Given the way the technology works, the ability to enforce copyright in this area is virtually non-existent. It is therefore recommended that:

- a) the proposal to enable video clips to be placed on YouTube and similar sites is endorsed by both Houses; and
- b) an experiment is conducted allowing video clips on selected sites to be embedded on other sites. PPMG (The Printing and Publishing Management Group) should monitor the success of the experiment and recommend whether this practice should be discontinued or made permanent.

Licensing Images

85. The practice of charging for commercial use of Parliamentary copyright material has grown less common and is now largely restricted to digital images, including photographs of the Palace, photographic images of works of art in the Parliamentary collection and image files of documents held by the Parliamentary Archives.

86. The Web Centre makes available a collection of images of Parliament for re-use through the website Flickr, using a Creative Commons licence. The Clerk of the

Records has reconsidered the value of charging for commercial use of images owned by the Archives and is likely to drop the practice. The Speaker's Advisory Committee on Works of Art, on the other hand, has requested that the forthcoming works of art website should eventually include an e-commerce module enabling the sale online of a selection of high-definition digital images from the collection (subject to negotiation with the artist, where he or she owns the copyright to the work). This facility will not be available with the first release of the site this calendar year but may feature in future iterations. The current online Image Library may in time make use of the same facilities.

87. Where charging for images is carried out on an ad hoc basis, very little revenue is raised and it is likely that in most cases the administrative costs outweigh any benefits. The widespread availability of free images on the Internet has lessened the likelihood of being able to generate a reasonable return for digital images.
88. It is recommended that charges for the reproduction of images should only be imposed for high-volume commercial activities such as merchandising, where a reasonable commercial return can be achieved; for works of art owned by Parliament; and for non-standard uses such as the creation of new works of art, theatrical productions etc where there is a higher risk of reputational damage. In support of the goal of publicising the work of Parliament an adequate collection of images should continue to be available for re-use for mainstream commercial and non-commercial purposes without charge. Licensing for such images should be brought within the Click-Use framework.
89. Where it is believed that a reasonable income can be generated from the licensing of high-definition images the initial policy decision to charge for each broad collection of images should be subject to agreement by the Group on Information for the Public (GIP). In such cases, in order to reduce the administrative burden caused by charging, the arrangements for licensing and charging for a given collection of images should be simplified, codified and published online. If, in the future, images are made available through a system that enables them to be downloaded and paid for online (an e-commerce system), the licensing of those images for most uses could be incorporated within the system.
90. The arrangements for the supply and licensing of images not available online, whether charged for or not, should be simplified and codified. In all cases, third parties using images owned by Parliament should continue to be required to acknowledge the source of the images.
91. The administrative costs of charging for images should be reviewed periodically to determine whether it remains cost effective.

Licensing Computer Code

92. The prototype site for digitised historical Hansards features software developed by PICT using open source software as its basis.²⁰ It is in the spirit of such an approach that the resulting code should be available for re-use by others. The Power of Information Task Force commented on this issue and recommended that OPSI should investigate how source code can be handled within the public sector information framework, and look into appropriate licensing terms drawing on best practice in the open source community. OPSI informed us that this was already under consideration. **PPMG should consider any proposals from OPSI on the licensing of computer code.**

Third-Party Material

93. The licensing arrangements within Parliament are further complicated by the presence of material where the copyright is owned by third parties. This does not appear to create particular problems where the material is not published on the Parliament website, although it further complicates the issues raised by the WhatDoTheyKnow website, which automatically publishes responses to FOI requests made through the site.

94. However, where content is available on the Parliament website, third party copyright ownership tends to restrict its availability for re-use by the public. This includes audio-visual content and certain photographic images (dealt with elsewhere in our report); and biographies and photographs of Members which are provided by the publisher, Dods. The availability of more easily re-useable profiles and photographs of Members would help to publicise the work of Parliament and individual Members. Some of this material will need to be updated after the General election. The current arrangements for publishing biographies and photographs of Members of both Houses should be reviewed with the aim of providing material which can be reused under Parliamentary licence, to coincide with the next election.

²⁰ "Open source software is defined as computer software for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that meets the Open Source Definition or that is in the public domain" – Wikipedia