

This is a response from Jisc Collections and Janet Ltd, trading as Janet, to the Intellectual Property Office's [technical review of education amendments](#) to the *Copyright Designs and Patents Act 1988*. Janet is the operator of the UK's National Research and Education Network, which connects universities, colleges and schools together and to the public Internet. The company also operates the UK Access Management Federation for Education and Research, which is used by both on-site and distance learners to gain securely authenticated access to a wide range of distance learning and research content. This response considers the technical implications of the proposed changes.

Recordings and Extracts for distance learners

We welcome the proposal's recognition that authenticated access to an on-line learning system can provide equivalent and sufficient protection for intellectual property rights whether students are on premises or distance learners. However we are concerned that the wording used in the draft sections 35(1A)(b) and 36(1)(b)(ii) does not match how distance learning is delivered and could lead to confusion benefitting neither learners, instructors nor rights-holders.

The draft sections prescribe distance learning as taking place "through a secure electronic network which is only accessible to such members of staff or pupils". However the networks that most distance learners use are the broadband services in their home or workplace, which will not satisfy that literal description. The limitation of access to members of staff or pupils takes place through authentication to the on-line learning system, not by using a dedicated electronic communications network. We therefore suggest using instead the phrase "from a secure authenticated on-line learning system which is only accessible to such members of staff or pupils".

Making available of recordings

We also suggest that the draft wording of section 35(1A) may create an unnecessary and inconvenient restriction by its requirement that recordings be "communicated to the public by a person situated within the premises of an educational establishment". Since the amendments accept secure remote access by learners as providing equivalent IPR protection we suggest that they should treat instructors in the same way rather than continuing to rely on their physical location. IPR in broadcasts will continue to have additional protection from the unamended s35(1) requirement that recordings be made on premises.

Requiring, in addition, that the instructor be on premises when they place material on the on-line learning system does not appear to increase IPR protection, and will prevent instructors updating courses when working from home or from a different educational organisation. Distance learning courses, especially those designed to enhance workers' skills or for continuing professional development, benefit greatly from being taught out of hours or by external experts. Requiring tutors to develop and maintain courses in a particular location would severely limit these benefits. We therefore recommend that this restriction be amended, like that for learners, to cover access across a network to secure on-line learning system.