

## Intellectual Property Bill: Committee Stage, House of Commons

28 January 2014

### Summary

- Universities UK supports **Clause 20** of the Intellectual Property Bill which provides a qualified exemption from Freedom of Information requests for pre-publication research.
- We also support amendments tabled by Iain Wright MP which would extend the scope of the new exemption to cover material generated in the course of planning research.
- We also support **Clause 4** which allows for acts for the purposes of experimentation and teaching not to infringe design rights. This briefing gives our reasons.

### Clause 20: Freedom of information: exemption for research

1. Universities UK supports the provisions in **Clause 20** of the Bill, which amends the Freedom of Information Act 2000 (FOIA) to create a new, qualified, exemption for pre-publication research.
2. The Clause makes clear that the exemption requires that disclosure of the information would be prejudicial to the interests of the research programme, an institution or individual undertaking it, or an individual participating in it. Exemptions with similar effects exist in the Freedom of Information Act (Scotland), and in Irish and US legislation.

#### *Why an exemption is necessary*

3. Universities are defined as 'public authorities' under the FOIA. However, they are also autonomous bodies which operate in a highly competitive environment, competing domestically and internationally for research grants, external funding, publication in major journals, prizes and reputation.
4. Although increasing access to research information and data has an important positive function in advancing knowledge and understanding, this has to be balanced with the right of researchers to benefit from their own work and further their own careers. For this reason, Universities UK strongly supports moves to increase access to research information and

data through data sharing plans, open access repositories and other initiatives. However, we believe that the manner and timing of publication should, within reason, rest with the originators of the research.

5. Premature publication through Freedom of Information Requests of information and data from research programmes could:

- a) **Harm the quality and reputation of UK research:** There is a risk that misleading information may enter the public domain before it has been cleaned, checked, and subjected to analysis and peer review. Researchers may be challenged on their approach or findings before they have had a chance to address any flaws in their work. In relation to health-related research, individuals might misdiagnose or medicate themselves on the basis of misleading information gaining currency supported by incomplete research. This could damage the UK's reputation for quality research.
- b) **Undermine the competitive position of UK research:** University research is fundamental to the UK's global competitiveness. The UK ranks second only to the United States by a variety of measures of research quality. It is also a highly competitive field. Premature disclosure of research information will enable international competitors to profit from work undertaken in UK universities before the originators have had a fair opportunity to protect their ideas or secure grants for future research. This will act as a disincentive to original research.

It may be difficult or impossible to secure publication opportunities in reputable journals if findings are already in the public domain. Publication record influences university income via the Research Excellence Framework, as well as universities' ability to secure future grants and commercial contracts, and attract academic staff and students. This harms universities' competitive interests, if not necessarily their commercial ones. We do not believe that the current 'commercial interest' exemption covers such circumstances.

- c) **Discourage research partnerships with commercial and charitable bodies:** Universities work with commercial and charitable bodies on research projects. We know that the potential for the results of such research to be released to competitors under the FOIA is a barrier to such contract arrangements, and believe that as the risk becomes increasingly clear to companies, they will take research contracts elsewhere – to international competitors, or non-university

research partners. This is not in the best interests of the UK economy, or consistent with other government policy initiatives to encourage collaboration between universities and industry.

Research at an early stage may have *potential* but not actual commercial value – for example by identifying areas for further research which could yield commercially valuable results. Again, current guidance does not explain how the commercial interest exemption might be engaged by such cases.

### *Why existing exemptions are inadequate*

6. Universities UK believes that the current Freedom of Information Act, while applying to universities, was not designed with universities or autonomous research institutions in mind. Existing exemptions in that Act were designed without reference to the university context, and are not always sufficient.
7. Where existing exemptions can be used, the lack of reference to the university context means that universities have to put a disproportionate amount of time, money and effort into arguing the case for the application of particular exemptions.

## **Amendments to Clause 20: Research in the planning stage**

8. Iain Wright MP has tabled an amendment to Clause 20 which would extend the exemption for pre-publication research to material generated in the planning stages. Universities UK **supports** this amendment.
9. We agree with the Wellcome Trust and others that it would be logical to ensure that information generated in the planning phase of research is treated in the same ways as material generated in the implementation phase. This would extend necessary protection to researchers in the process of developing new ideas for research, grant applications, protocols and techniques, plans for joint research, and proposals to third parties, including business.
10. During early discussions with government about the need for an exemption for pre-publication research we had assumed that the planning stages would be covered by the wording we proposed. However, it has become clear that this would not necessarily be the case. Mr Wright's amendment would put the matter beyond doubt.

## Clause 4: Exceptions to Infringement of Design Rights

11. Universities UK also **supports** the provisions of Clause 4, which create an exception to design rights which allow for acts done for the purpose of teaching and experimentation not to infringe design rights in relation to unregistered designs. It would allow a teacher to reproduce protected design features without infringing design rights subsisting in an unregistered design. This extends an exception already in place for UK registered design.

**For further information contact Vivienne Stern on 0207 419 5472 or at [vivienne.stern@universitiesuk.ac.uk](mailto:vivienne.stern@universitiesuk.ac.uk)**

© The copyright for this publication is held by Universities UK. The material may be copied or reproduced provided that the source is acknowledged and the material, wholly or in part, is not used for commercial gain. Use of the material for commercial gain requires the prior written permission of Universities UK.