

SUMMARY OF CURRENT AND PROPOSED COPYRIGHT LEGISLATION

These notes outline the main points of the Copyright, Designs and Patents Act 1988 and the Regulations and Statutory Instruments amending it.

Introduction

The idea behind copyright is rooted in certain fundamental ideas about creativity and possession. Basically, it springs from the idea that anything we create is an extension of "self" and should be protected from general use by anyone else. Coupled with this is the idea that the person creating something has exclusive rights over the thing created, partly for economic reasons but also because of this extension of "self" idea. Copyright is therefore important to ensure the continued growth of writing, performing and creating. Copyright law aims to protect this growth but, at the same time, tries to ensure that some access to copyright works is allowed as well. Without this access creators would be starved of ideas and information to create more copyright material.

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 practise our profession by using this property so we should take all possible steps to protect it, whilst, at the same time, ensuring that the rights and privileges of our users are also safeguarded.

The legislation

Much copyright legislation is not directly relevant to libraries and information centres. The more important pieces of legislation are:

The Copyright, Designs and Patents Act, 1988 which came into force on 1st. August, 1989, subsequent Statutory Instruments and the supporting Regulations. There are a number of these but the Statutory Instruments which affect libraries and archives most are:

SI 89/1012. Copyright (Recordings of Folksongs for Archives) (Designated Bodies) Order

SI 89/1212. Copyright (Librarians and Archivists) (Copying of Copyright Materials) Order

SI 90/2510 The Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies)(No.2) Order

SI 92/3233 Copyright (Computer Programs) Regulations 1992.

SI 95/ 3297 Copyright Rights in Performances: the Duration of Copyright and Rights in Performances Regulations 1995

SI 96/2967. Copyright and Related Rights Regulations 1996.

SI 97/3032. Copyright: Rights in Databases

SI 2003/2498 Copyright and Related Rights Regulations 2003

Defined Terms

Article: an article in a periodical is an item of any description.

Copying a work includes storing the work in any medium by electronic means and making copies which are transient or incidental to some other use of the work.

Extended copyright: the additional term of protection for a work already in copyright.

Revived copyright: the additional term of protection for a work which was out of copyright but which is once again protected.

Private study. Excludes anything that is directly or indirectly for a commercial purpose.

Undefined terms in the Act include:

Original	substantial (and substantially)
reasonable	librarian
(and reasonably)	fair dealing
periodical	commercial

What is covered by copyright

Copyright can subsist in any literary, dramatic, musical or artistic work for the period stated below. There is also copyright in sound recordings, films (and videos), works of artistic craftsmanship, works of architecture and broadcasts.

Legislation makes it clear that electronically stored text and computer programs are classed as literary works covered by copyright.

Ownership of copyright

The **author** is usually the first owner.

Commissioned works: copyright owned by the author – special rules for paintings, photos, before 1989.

Works created as part of **employment:** copyright owned by employer.

Contracts may stipulate different arrangements.

Author's rights

The Act also confers moral rights so that the author also has the right to be acknowledged as the author in some circumstances and not to have a work altered without permission. This does not apply to articles in periodicals or newspapers or to compilations such as encyclopaedias nor to most works created as part of employment.

Owner's rights

The owner has the exclusive right to copy, perform, broadcast, adapt, translate, and issue copies to the public, lend and rent a work or communicate the work to the public by electronic means.

Limitations on owner's rights

Rights cannot be exercised without some limitations in any society. Therefore owner's rights are limited by certain allowances for users.

Three major limitations are placed on owners' rights: (1) Quantity; (2) Purpose; (3) Time

Quantity

Unless a **substantial** part of a work has been copied, no infringement of copyright can be claimed. Substantial is related to both quantity and quality. Amounts which may be copied without permission are also linked to **Purpose**.

Purpose

Various uses are allowed without the owner's permission:

Fair dealing: this is allowed for:

- Research for a non-commercial purpose
- private study with no commercial purpose
- Criticism or review
- Reporting current events

Library copying

Educational copying

Public administration

Visually Impaired Persons' needs

Temporary copies

Time

Where a work was first published in an EEA country or the author is a national of an EEA country then the following rules apply. Non-EEA material and authors are entitled to only 50 years protection, unless the country of origin also offers 70 year protection.

Generally copyright in a **literary, dramatic, musical or artistic work, work of architecture of artistic craftsmanship** lasts for 70 years from the end of the year in which the author died. In the case of **Crown Copyright** this lasts for 125 years from the end of the year in which a work was created **or** 50 years from the end of the year in which it was published with a maximum of 125 years, whether the author has died or not.

Copyright in a **film** lasts for 70 years from the end of the year in which the last of the following died:

- The principal director
- The author of the screenplay
- The author of the dialogue
- The composer of music specially created for and used in the film

Copyright in **sound recordings** lasts for 50 years from the end of the year in which the work was first made, or, if released or performed in public during that period, 50 years from the date of first release. But if publicly played in this first period then 50 years from being played in public.

Copyright in a **computer program** lasts for 50 years from the end of the year in which it was first made.

Copyright in **computer-generated** works lasts for 50 years from the end of the year in which the work was first made.

Copyright in **typography** lasts for 25 years from the end of the year in which the work was published.

Publication right lasts for 25 years from the end of the year in which the work was first made available to the public.

When the author is unknown an **anonymous/pseudonymous** works are protected for 70 years from the end of the year in which they are created, of, if published during that period, 70 years from the end of the year in which they are published. This includes all works without a **personal** author (annual reports of organisations, political pamphlets, press releases, many contributions to newspapers) unless during that time the name of the author becomes known, in which case the usual rules apply.

Copying by libraries

These provisions do not apply to artistic works so librarians cannot copy photographs or maps for other people although individuals may make such copies for themselves.

Where readers copy for themselves on self-service photocopy machines they take responsibility for the copies they make. The Act is clear that the library exceptions apply only when a librarian does, or causes to be done, the copying required. Users who copy for themselves must claim fair dealing as their defence.

What librarians may do for users

These provisions apply to copying done by librarians for users and not to copying done by users for themselves. Any librarian can copy periodical articles, or parts of published works for readers but only if the user signs a declaration form which states that:

- a) a copy has not previously been supplied;
- b) copies are for non-commercial research or private study with no commercial purpose and
- c) the reader is not aware that someone else with whom the reader works or studies has made or intends to make at about the same time a request for substantially the same material for substantially the same purpose and an appropriate payment is made.
- d) The reader agrees that if the declaration is false, the reader is responsible for breaking the law, not the librarian.

In addition, the librarian is satisfied that the requirements of two or more people are neither:

- a) similar nor
- b) related

and no person is furnished with

- a) more than one copy;
- b) more than one article from a periodical issue or more than a reasonable part of a non-periodical work.

Similar rules apply to copying unpublished works but several people can all have copies of the same work, unlike published material.

Librarians need to be aware of the possible implications of these rules. For example, two researchers working in the same laboratory, or even on the same site, probably cannot ask for copies of the same material. Librarians can make one copy only and it must be shared between researchers. The Act specifically does not limit making copies of the same material by researchers themselves. Firstly, copies can be made only in response to specific requests from readers and secondly this would be multiple copying. In addition the Act defines an article as "Article includes an item of any description". So this includes the title page and contents of a journal. To copy both the contents page and an article from the same issue of a periodical for the same reader would be an infringement. Similarly, to make multiple copies of contents pages and circulate them is an infringement. Although at first sight this might seem rather petty, the copyright owners see this type of multiple circulation as an incitement to multiple copying.

Lending and Rental

Rental is an exclusive right of the copyright owner.

Lending as defined in the Act may be carried out by:

- a school or educational establishment;
- a prescribed library other than a public library.

Also lending does NOT include lending between establishments which are accessible to the public. Public libraries may lend only works covered by the Public Lending Right scheme or works which would be eligible for PLR because of their nature but are not for other reasons (e.g. older monographs)

Regulations may be made for lending of other materials if no scheme is available.

DATABASES

Definition

“a collection of works, data or other materials which:

- (a) are arranged in a systematic or methodical way and
- (b) are individually accessible by electronic or other means”

Database Right

Owners of the database right have the right to prevent:

extraction or re-utilisation of all of a substantial part of the database, evaluated qualitatively or quantitatively

Systematic or repeated extraction or re-utilisation of insubstantial parts may be considered as extraction or re-utilisation of a substantial part

Duration of protection

Copyright 70 years from end of the year of death of the author, if there is one, or end of year of first publication if there is no personal author

Database Right lasts for 15 years from year of creation or being made available to the public if this occurs during the 15 year period

Extension

Any substantial new investment begins a new 15 year term of protection

Qualification

To qualify for Database Right substantial investment must have taken place in:

obtaining, verifying, presenting the contents of the database Qualifications

Recent case law has thrown doubt on the protection available for databases which have the result of creating original data rather than obtaining it from elsewhere.

Something which is a database may not also be a compilation

A literary work can qualify as a database if, and only if, by reason of selection or arrangement of the contents the database constitutes the author's own intellectual work.

Fair Dealing

Fair dealing in a database is allowed provided that:

- (a) the source is acknowledged
- (b) nothing is done to the database for a commercial purpose

Database Right - fair dealing

Fair dealing in the *Database Right* is permitted provided that:

- (a) the person extracting the material is a lawful user of the database
- (b) the purpose is illustration for teaching or research and not for any commercial purpose
- (c) the source is indicated

Special provisions exist for public administration

Remote requests

There is a particular difficulty when libraries receive requests by telephone or other non-personal methods of communication. Legally the request can be processed but the copies cannot be handed over until the declaration form has been signed. This may well cause rather long correspondence but there is no easy way round this. One solution is for the declaration to be sent by fax. Fax is widely regarded in legal circles as an adequate substitute for the actual signed document. Much larger transactions than library photocopies are settled in this way! If something is required urgently, the obvious solution is for the requester to come to the library in person. With the increasing use of fax machines, the declaration can be faxed. Failing that, they could find a help prescribed library nearby them who would make the request on their behalf as prescribed libraries do not need to make declarations. The user would make his declaration to the librarian of the prescribed library who was actually making the request.

Payment

The Act requires a payment to be made on every occasion that a request is satisfied by a photocopy. In industry and commerce this is very difficult to organise but the possibility of copying under fair dealing in this context is now far less likely. Otherwise individuals must pay the cost of making the copy, plus a contribution to the running expenses of the library.

Interlibrary copying

These regulations are specifically for libraries which acquire copies to add to their collections. They do not apply to requests made remotely for individual readers. Copying between libraries is restricted to prescribed libraries only. Any library in the UK is prescribed for the purposes of making copies and they may make copies for any library entitled to receive them. However, the type of library prescribed for receiving copies is strictly limited.

Any library in the stated categories not conducted for profit may receive copies to add to its collection. (Conducted for profit includes libraries which are part of, or administered by an organisation conducted for profit.) So only the following types of library may receive copies:

Public Libraries

National Libraries

Libraries in educational establishments

Government Libraries

Local Authority Libraries

Any library whose purpose is to encourage study of a range of given topics, whether in the UK or elsewhere.

Restrictions on interlibrary copying

Only one copy of a periodical article or whole or part of a published edition can be supplied. If libraries want copies of more than one article in a periodical issue or the whole or part of a published edition this can be supplied only with a declaration that the requesting library cannot

trace the copyright owner. Requesting libraries must pay a sum equivalent to but not exceeding the cost attributable to the making of the copy. .

Industrial and commercial libraries can only request material through interlending on the grounds they are acting on behalf of the end-user. Thus the library is not requesting material but only the librarian acting on behalf of the end-user. It is most important that industrial/commercial libraries do not keep material requested through interlending but pass it on to the end-user.

Archival/replacement copying

Any library may copy material in its collection for a prescribed library for replacement or repair if:

- a) the item to be replaced is in the permanent collection for reference, or only for lending to other libraries/archives and will be used only under these conditions in the library receiving the copy;
- b) it is unreasonable to purchase a copy;
- c) an appropriate declaration is signed by requesting library;
- d) the requesting library pays as for ILL.

Prescribed libraries/archives may make copies of all or part of a work in their own collection under the following conditions:

- (a) the work is in the permanent collection for reference or lending only to other libraries.
- (b) the copy made will be used for the purposes described in (a).
- (c) a copy cannot reasonably be purchased.

Public Administration

The Act allows anything necessary to be done for the purpose of parliamentary proceedings, judicial proceedings, Royal Commissions or statutory inquiries. Thus it is not allowed to copy willy-nilly for a solicitor preparing a case but if a matter comes to court and copies are required for the proceedings this is allowed and there are no upper limits. The same is true if a statutory inquiry is being carried out, say, into a planning application.

Abstracts

Where an abstract is published with a scientific or technical article it can be freely reproduced or republished unless the publisher has a licensing scheme to enable royalties to be paid.

Unpublished material

Material, other than artistic works, which was unpublished and of which the author had died before the commencement of the 1988 Act continues to be protected until 2039. This means that the proposed **Publication Right** will be of little use to anyone until this date.

Unpublished material which has been kept in a library, archive or museum which is open to the public and of which the author has been dead for 50 years and the document itself is at least 100 years old may be copied for research or private study or with a view to publication. This does not mean it may be freely published but may be copied by the library for someone contemplating publishing it.

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GRAHAM P CORNISH
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