

Editorial

Copyright in Business

The subject of copyright is assuming increasing importance in modern business, in relation both to protecting a business's own intellectual property and to ensuring that it respects the intellectual property of others.

Companies should now be used to the obligation to check that all software loaded on their computers is paid for and legitimately licensed and it is usually a disciplinary offence if an employee is caught loading or using 'bootleg' software. Not all businesses however are aware of their obligations in regard to printed material, be that books, journals, magazines or law reports.

The Copyright, Designs and Patents Act 1988 controls the use, and abuse, of copyright in the UK, and has been extended to include, *inter alia*, Gibraltar and the Isle of Man (although some jurisdictions still rely on the 1956 or 1991 Acts). The period of author's copyright in literary, dramatic, musical or artistic works has been harmonised as a result of the EU Duration Directive and is now 70 years from the end of the calendar year in which the author dies. In the case of joint authorship the period is measured from the death of the last surviving author. This extension has brought back into copyright Victorian authors such as Thomas Hardy. When the period of copyright protection has expired the work is 'in the public domain' and may be freely copied.

Whether or not the publisher has acquired the copyright from the author by the terms of a contract, the publisher has a separate and concurrent copyright in the typography lasting for 25 years from the date of first publication. The 1988 Act changed the law in providing for copyright to be owned by an employer in respect of works created by employees in the 'course of employment'.

For anyone wishing to make a copy of a work which is in copyright, sections 29 and 30 of the Act allow 'fair dealing', a contentious aspect which permits copying by an individual for his own purposes of research or private study or, in particular circumstances, for criticism and review. This exception is hedged by restrictions and in particular multiple copying of substantially the same material for the same purpose at substantially the same time is not fair dealing (s 40). The British Copyright Council considers that the amount which may be copied from any one publication under the fair dealing exception should be a maximum of one chapter of a book or one article from a journal or one case from an issue of a law report or 5 per cent, whichever is the greater.

Breach of copyright can be dealt with under both the civil and criminal law. The maximum criminal penalty is two years' imprisonment and or a fine; and civil proceedings will result in damages, costs, forfeiture of infringing material and adverse publicity. Among the organisations to have been caught breaching copyright are Manchester City Council, Greenwich College (an American University offshoot in the UK, not the University of Greenwich), Morgan Stanley, Fournier Pharmaceuticals and Dar Al

Handasah. Photocopying of copyright literary works outside the fair dealing provisions may be legitimated by taking out a licence. Various licensing and collecting societies have mandates from rights owners which enable them to licence photocopying. The licence issued by the Copyright Licensing Agency Ltd covers books, journals and magazines published in the UK, USA and fourteen other countries. Some works are specifically excluded from the licence but, except for excluded works, the licence contains a useful indemnity whereby the licensee will be indemnified by the CLA for any copying of works where the CLA does not have a mandate.

The current cost of the licence is typically £12 per fee earning employee or partner for a firm of solicitors, £12 per higher executive officer or above in the Civil Service and £18 per 'relevant' employee in an area of heavy research such as the pharmaceutical industry. Rates vary according to the amount of copying carried on and are applied to those employees likely to use photocopies, not to every employee in the organisation. The CLA licence will permit a basic amount of copying and additional copying may be carried out if the CLA is mandated to permit it and if a transactional fee is paid. The CLA's rapid clearance system for additional copying will be inter-actively available over the Internet by the end of 1997.

The fees collected are distributed to rights owners on the basis of surveys carried out among a statistically valid proportion of the licensees. The whole point of the licensing system is to regularise otherwise infringing actions and to provide an income for rights owners which goes some way to compensating them for the loss of sales of published works caused by the explosion in the use of photocopiers.

As technology moves on, photocopying is being overtaken in some areas by scanning of printed works to form an electronic database. Scanning copyright works, printing them out thereafter and sending the digitised material to another location are all acts protected by copyright legislation and therefore require the permission of the rights owner. In this area the CLA is not mandated to issue a relevant licence so potential users must apply to the rights owner for permission.

Readers should consider the way in which copyright material is being used in their own organisations and, if necessary, apply to the CLA for a licence. Clients should also be warned of their obligations and the dangers of being caught if they are carrying out illegal copying activities.

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