Copyright
interpreting the law for libraries, archives and information services
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Copyright
interpreting the law for libraries, archives and information services
SIXTH EDITION

Graham P. Cornish
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This book tries to set out the basics of United Kingdom (UK) copyright law, concentrating on those areas which may affect libraries, archives, museums and galleries in their daily work. For the sake of brevity this group of organizations will be referred to collectively as ‘libraries’ although whenever this term is met it should be interpreted as including all four types of organization. Some areas have not been dealt with at length if they do not relate directly to libraries, and the whole area of design and patents is left to others far more competent to deal with in those areas where they impinge on the work of libraries. Neither is it intended as a scholarly textbook but rather as a working tool for the practitioner who is faced with actual situations which need to be resolved in an informed and sensible way. Therefore references to case law or even specific clauses of the legislation are not included. The book can be used as a desktop reference work for anyone planning library and information services or kept at the enquiry desk to help decide what can, or cannot, be done for a user. The author’s hope is that it will be as helpful to junior counter staff as to senior managers. It is also aimed at staff in all types of library and information service, whether public, academic, government or private. Attention is given to the different legal situations in which various libraries function. As would be expected, the book focuses on UK law, which it aims to interpret, and the answers found here should never be assumed to apply in other countries. Nevertheless, many of the questions raised are equally valid in any part of the world and should help professionals in other countries to address the issues facing their own libraries.
As libraries and information providers increasingly move towards exploiting their collections or providing new information services, there is a need to look at what rights libraries and others enjoy when they create a work as well as when they wish to use something. Digitization programmes in particular raise many challenging questions and some of these will be dealt with in this book.

The book comprises questions and answers to simplify searching for particular problems and their possible solutions. Because of this there is a small amount of repetition between sections. This is deliberate in order to avoid unnecessary ‘see also’ comments, which tend to confuse or bewilder the user. Obviously not every possible question can be answered but every effort has been made to anticipate those which arise most often. The feedback from many users of previous editions of this book has been most useful in expanding and amplifying some of the paragraphs in this edition. The law is not there to deal in specific terms with any and every possible situation but to provide the framework within which decisions can be made in specific circumstances. There are always ‘grey’ areas of interpretation or circumstance when the law is unclear. Where this is the case, the book tries to offer guidance rather than provide a definite answer, as this is not always possible. Although some of the legislation is still very new, other elements have been in place long enough to make it possible to give some further guidance in areas which were ‘fuzzy’ when the previous edition was prepared in 2009. It should be remembered that what the law does not allow can often be achieved with the copyright owner’s consent through an appropriate licence. Therefore, where the book says that the law prevents something, librarians should first check to see what kind of licence, if any, is available for copying beyond the stated limits. For this reason a chapter on licences has been included in the sure and certain knowledge that it will soon become out of date in such a fast-moving area. In a book of this kind it is not possible to say exactly what existing licences allow as they differ between different types of institution and change with time, but general indications have been given as general guidance.

The author has worked in the field of copyright since 1983 and advised the British Library on copyright matters for 18 years. He has run workshops and seminars in many different sectors of the information industry. He now works as an independent adviser and
trainer in all aspects of copyright under the label ©opyright Circle. The wealth of information and opinion gathered from his contacts has been used to compile this book but it must be remembered that it is written by a librarian trying to understand the law, not a lawyer trying to understand libraries!

Disclaimer

While the advice and information contained in this book are believed to be true and accurate at the date of going to press, neither the author nor CILIP can accept any legal responsibility or liability for any errors or omissions that may be made. Nothing in this book constitutes formal legal advice.

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Acknowledgements

Nobody knows everything about copyright. Consequently, anyone who writes a book on the subject must be indebted to others working in the field. This is certainly true of this author and I would like to thank particularly Tim Padfield, formerly of The National Archives (TNA), for his wisdom on every aspect of archives; Charles Oppenheim, formerly of Loughborough University, for his challenging alternative interpretations of the law; various members of the Libraries and Archives Copyright Alliance; and, above all, the many people who have taken part in the numerous copyright workshops throughout the country at which I have taught and whose questions have so enriched this edition.

My thanks also go to my friend and long-standing colleague Stella Pilling, for proof-reading my text.
List of abbreviations

AACR2  Anglo-American Cataloguing Rules, 2nd edn
CCC   Copyright Clearance Center
CCLI  Christian Copyright Licensing International
CDPA  Copyright Designs and Patents Act 1988
CLA   Copyright Licensing Agency
DACS  Design and Artists Copyright Society
EEA   European Economic Area
ERA   Educational Recording Agency
FOI   freedom of information
HERON Higher Education on Demand
HMSO  Her Majesty’s Stationery Office
IPO   Intellectual Property Office
IPR   intellectual property right
ISBN  International Standard Book Number
ISSN  International Standard Serial Number
MPLC  Motion Picture Licensing Corporation
NESSLi² National E-Journals Initiative
NLA   Newspaper Licensing Agency
OCR   optical character recognition
OS    Ordnance Survey
OU    Open University
OUEE  Open University Educational Enterprises
PLR   Public Lending Right
PPL   Phonographic Performance Ltd
PRS   Performing Right Society
SI    statutory instrument
Introduction

The 1988 Copyright Designs and Patents Act (CDPA) and the many subsequent SIs which interpret and modify it differ substantially from the Copyright Act, 1956. However, some aspects of this old Act still apply to some materials, as do some clauses of the 1911 Act, so it should not be ignored completely. Many definitions have changed and new rights have been introduced. Licensing as a concept is now also a major feature of information delivery but it was in its infancy in 1988.

Users are asked to note that some of the terms used in the Act are not ones that the author would choose to use. Particularly the term ‘disabled person’ is one that is controversial, but this is the term used in the law so it has been used throughout the book.

The introduction of new legislation often has the effect of heightening awareness of the subject, making people keener to know their rights and privileges and generally creating an atmosphere of extreme caution in case anyone puts a foot wrong and ends up in court. While this is a good thing, nobody should become too paranoid. Although there has been a recent tendency for copyright infringement cases to be heard in criminal courts, this is usually where important commercial considerations apply, such as republishing or reproduction in bulk for commercial purposes. Criminal proceedings may also be taken for circumventing or tampering with electronic rights management systems. Most infringements of copyright by individuals are dealt with through the civil courts, if events reach that stage, so that the rights owner must take legal proceedings if it is thought an infringement has taken place. As there are no cases at present involving libraries in the UK, it would be reasonable to assume that a similar route would be taken, given that libraries are not, or should
not be, involved in mass reproduction for commercial gain!

The Act and its supplementary legislation also set the stage for a completely new approach to the use of copyright material. We may know what the law says (even if we do not always know what it means!) so there is now the necessity to develop services outside the exceptions which the Copyright Act makes by talking to the licensing agencies and other rights owners’ organizations to negotiate use of material in return for royalties. Those working in the information industries should not lose sight of this as a real way forward when the law inhibits the introduction of new services without the owners’ consent. Licences granted by copyright owners should override the limitations set by the law but in most cases cannot override the privileges given to libraries by Parliament.

The first edition of this book appeared in 1990 so it is celebrating its Silver Jubilee. When the fifth edition of this book appeared in 2009 one respected specialist in the field commented that it was a pity it had come out just then as a raft of new legislation was expected within months. The months turned out to be five years so it is hoped this edition will be timely, given the major seismic changes to copyright that occurred in the UK during 2014. These changes are the reason for a new edition. There is an extensive index, a list of useful addresses and websites, and suggestions for further reading.
Section 1

Definition and law

1.1 What is copyright?

Copyright is part of a batch of rights, usually called intellectual property rights (IPRs), given to the creators of various types of works. Which right is found in a work depends on its nature but the major strands to IPR are patents, trade and services marks, design right, registered design and copyright. These can overlap to some degree and more than one right may be found in a work. This book concentrates on copyright.

Because it is a property right, copyright is governed by the usual rules of property. The owner can sell it, lend or rent it, leave it in a will or just give it away; similarly others can buy or hire it through licences or other agreements. 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 generally. If there were no copyright protection there would be little stimulus for people to create anything, as other people would be able to take the work and use it in any way they wanted. This mirrors the usual rules of possessing property. 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.
1.2 **Is copyright a monopoly?**
Not entirely. If two people create the same thing independently of each other and without actually copying what the other person wrote or made, then both can claim copyright in what they created, even if they are identical.

*Example:* Two people stand in exactly the same place and take a photograph. The photos are virtually identical but each photographer owns the copyright in their photo because they did not copy someone else’s work.

1.3 **Why is copyright important for libraries?**
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 and the information world generally. We practise our profession by using this property so we should take all possible steps to protect it, while at the same time ensuring that the rights and privileges of our users and our profession are also safeguarded.

1.4 **Why is copyright so often ignored by users?**
Because it is such an intangible thing, there is often a temptation to ignore it. Those who take this approach forget that they, too, own copyright in their own creations and would feel quite angry if this were abused by others. Some of the restrictions placed on use by the law may seem petty or trivial but they are designed to allow some use of copyright material without unduly harming the interests of the creator (author). With the rapid growth of social networks, individuals are becoming more aware of the value of their creations such as photos and poems.

1.5 **Is copyright valuable in terms of financial value?**
In the UK copyright is primarily a property right intended to protect the rights of those who create works of various kinds. The protection is intended to prevent exploitation of their works by others. It follows that copyright cannot exist by itself but only within the work which has been created. For this reason we say that copyright ‘subsists’ rather than exists. Because it is a property it has value. That value will be determined by market forces and how the owner rates it as a valuable resource.
1.6 **So, is copyright just about cash?**
No, authors also need to protect their personal rights, regardless of money. These rights are outlined in Section 3.

1.7 **What is the latest legislation?**
The basic piece of legislation is the Copyright, Designs and Patents Act 1988 (CDPA), which came into force on 1 August 1989. There is also the Exploitation and Regulatory Reform Act 2013, which gives the Secretary of State various powers to change some aspects of copyright. The CDPA has to be read in conjunction with a number of subsequent SIs and the supporting regulations. There are a number of these but the laws and statutory instruments (SIs) which affect libraries most are:

- Copyright, Designs and Patents Act 1988
- 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 and Rights in Databases Regulations 1997
- SI 2003/2498 Copyright and Related Rights Regulations 2003
- SI 2005/223 The Copyright (Educational Establishments) Order 2005
- SI 2006/18 The Performances (Moral Rights etc.) Regulations 2006
- SI 2006/346 Artists Resale Right Regulations 2006
- SI 2012/799 Copyright and Performances (Application to Other Countries) Order 2012
- SI 2013/777 The Legal Deposit Libraries (Non Print Works) Regulations 2013
- SI 2013/1782 The Copyright and Rights in Performances Regulations 2013
- SI 2014/898 Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014
- SI 2014/1372 Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014
- SI 2014/1384 Copyright and Rights in Performances (Disability) Regulations 2014
- SI 2014/1385 Copyright (Public Administration) Regulations 2014
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• SI 2014/1457 The Public Lending Right Scheme 1982
  (Commencement of Variations) Order 2014
• SI 2014/2356 Copyright and Rights in Performances (Quotation and
  Parody) Regulations 2014
• SI 2014/2361 Copyright and Rights in Performances (Personal Copies
  for Private Use) Regulations 2014
• SI 2014/2588 Copyright and Rights in Performance (Extended
  Collective Licensing) Regulations 2014
• SI 2014/2863 Copyright and Rights in Performances (Licensing of

Note that the texts of all this legislation can be found on the website
www.legislation.gov.uk, so extracts are not reproduced in this book. Go to

Note that the government consulted on changing rules for
unpublished materials but decided against taking any action in 2015.

It is important to note that a number of terms used in the legislation
are not defined. It is also worth noting that some SIs that put in place
what the Act says simply give more detail than the Act itself can do. SIs
that implement European directives are far more complicated and may
remove parts of the Act, modify other parts and certainly introduce new
sections and clauses. So never just look at the original Act itself. The latest
batch of SIs (2014) radically changes parts of the Act and introduces
completely new material.

1.8 So, if I have all this legislation in front of me, can I work out
what the law means?
No! In addition to the many SIs, you need to bear in mind that the
language in the Act is full of undefined terms, and case law frequently
changes the way we understand the meaning of the Act.

1.9 How can I keep up with the changes to the law?
There are some suggestions in the list of useful sources of information to
help with this problem.

1.10 Which terms are undefined?
These terms are undefined: ‘original’, ‘substantial(ly)’, ‘reasonable’ (and
‘reasonably’), ‘librarian’ or ‘archivist’, ‘fair dealing’, ‘periodical’, ‘commercial research’, ‘public’ (and ‘publicly’).

1.11 **Are there definitions of some terms?**
Yes. There are sections of the Act devoted entirely to defining words used in the Act itself. But some definitions are contained in the section of the Act to which they relate. Important terms include ‘article’, ‘copy’ and ‘copying’, ‘curator’, ‘museum’, ‘conducted for profit’ and ‘disabled person’.

1.12 **Does the law apply to the whole of the UK?**
Yes, but remember that the Isle of Man and the Channel Islands are not part of the UK. Most (but not quite all) of the 1988 Act does not apply to the Channel Islands, which are still subject to either the 1956 Act or even parts of the 1911 Act, although Jersey and Guernsey are now included as part of UK ratification of the Berne Convention. The Isle of Man passed its own copyright legislation in 1991 so the copyright part of this Act (Part 1) does not apply there. Also the Isle of Man is now covered by the database legislation. In addition, some aspects of remedies for owners relating to infringement and some of the criminal aspects of copyright are handled differently in Scotland because of the different way that Scots law works in these areas. It is to be hoped users of this book never have to investigate these!

1.13 **Any other catches?**
Yes, some phrases and words mean different things in different parts of the law. For example ‘making available to the public’ has several different meanings, as does ‘publish’.