

# Section 1

## Definition and law

### 1.1 What is copyright?

Copyright is part of a batch of rights, usually called Intellectual Property Rights (IPR), 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.

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. 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. 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 quite independently of each other and without actually copying what the other person wrote or made, then each 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 and archives?**

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, 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).

### **1.5 Is copyright valuable in terms of money?**

Copyright is, in the UK, primarily a property right intended to protect the rights of those who create works of various kinds. The protection is 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.

### **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?**

There are two Acts of Parliament which are crucial to copyright. These are the Copyright, Designs and Patents Act (CDPA) 1988, which came into force on 1 August 1989, and the Copyright (Visually Impaired Persons) Act 2002 which came into force on 31 October 2003. The CDPA has to be read in conjunction with a number of 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 89/816 Copyright, Designs and Patents Act 1988 (Commencement No.1) Order
- SI 89/1012 The Copyright (Recordings of Folksongs for Archives) (Designated Bodies) Order 1989
- SI 89/1098 The Copyright (Material Open to Public Inspection) (International Organisations) Order 1989
- SI 89/1099 The Copyright (Material Open to Public Inspection) (Marking of Copies of Maps) Order 1989
- SI 89/1212 The Copyright (Librarians and Archivists) (Copying of Copyright Materials) Regulations 1989
- SI 89/2510 The Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) (No.2) Order 1989
- SI 92/3233 The Copyright (Computer Programs) Regulations 1992
- SI 95/3297 The Duration of Copyright and Rights in Performances Regulations 1995
- SI 96/2967 The Copyright and Related Rights Regulations 1996
- SI 97/3032 The 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 The Artist's Resale Right Regulations 2006
- SI 2008/677 The Copyright and Performances (Application to Other Countries) Order 2008.

Note that the texts of all this legislation can be found on the OPSI website, so extracts are not reproduced in this book. Go to [www.opsi.gov.uk](http://www.opsi.gov.uk) for the text of Acts of Parliament and Statutory Instruments.

## 1.8 **It is important to note that a number of defective Statutory Instruments were drawn up for this Act and never implemented.**

The above list includes all those of direct relevance to libraries and archives. Other SIs with the same title but different numbering were replaced by those listed and the earlier ones should be ignored. This also applies to some SIs which became out of date and were effectively updated with replacements. It should also be noted that a number of terms used in the legislation are not defined. It is also worth noting that 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 will certainly introduce new sections and clauses. So never just look at the original Act itself.

**1.9 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 Statutory Instruments, you need to bear in mind that (a) the language in the Act is full of undefined terms and (b) case law frequently changes the way we understand the meaning of the Act.

**1.10 How can I keep up with the changes to the law?**

There are some suggestions in Appendix 1 to help with this problem.

**1.11 Which terms are undefined?**

The following words and phrases crop up frequently but are never defined: commercial research, fair dealing, librarian, original, periodical, reasonable (and reasonably), substantial (and substantially).

**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. The Isle of Man passed its own copyright legislation in 1991, so the copyright part of this Act (Part 1) does not apply there. The Manx legislation is sufficiently similar to UK law not to cause major problems. 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 that 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'.