on a massive scale. Google is of course not the only organisation working in that field. There is also for example the European Union's Europeana project and many smaller scale digitisation projects. One of the accidental results of the plans for Google Library would be that a vast number of European publications digitised by Google would (for legal reasons) be available exclusively to US based consumers. The fact of the rival Google Library project has undoubtedly given an added impetus to Europeana.

Reference

The Google site with background information and links to documents can be found at: http://www.googlebooksettlement.com/

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Managing Copyright Information

Abstract: A new Law Licence was agreed between the legal profession and the CLA in late 2008 and Paul Rollins of the The Copyright Licensing Agency Ltd, describes its main features and the role of the CLA in enforcing copyright law in the UK.
Keywords: copyright; copyright licensing; legal profession

Introduction

The framework of intellectual property legislation and copyright in particular, forms a bridge between the creators and owners of copyright works, such as content published in books, magazines and journals, and the consumer who wants to use the work.

Copyright does an important job in protecting the interests of creators and those who invest in creativity. If there were no legal copyright protection, it would be difficult for creative people to make a living from their work and less likely that anyone would be willing to invest in it without the opportunity to earn a return and obtain protection from exploitation by others. As technology makes it easier to access creative works, the more vital it is that we respect copyright law.

The CLA Law Licence has been developed specifically to meet the needs of the legal sector, helping to ensure that law firms and barristers' chambers are able to respect the rights of copyright owners and protect themselves against the risks associated with using copyright materials.

This article provides a brief overview of UK copyright legislation as it applies to everyday users of copyright materials and explains all you need to know about when you need a licence and what benefits they may offer.

About the Copyright Licensing Agency (CLA)

CLA is the UK organisation set up by authors and publishers to perform collective licensing of copyright content on their behalf.

CLA was established in 1983 by the Authors Licensing and Collecting Society Ltd (ALCS) and the Publishers Licensing Society Ltd (PLS) to license copying from books, journals and magazines. Visual creators are also represented through an agency agreement with the Design and Artists Copyright Society (DACS).

CLA licenses organisation from across the business, education and government sectors, permitting limited copying under blanket licences, in most cases in return for one single annual fee. Through reciprocal agreements with sister organisations in other countries, CLA licences also include rights to copy from titles published in 30 overseas territories.

About copyright

The main legislation dealing with copyright in the United Kingdom is the Copyright, Designs and Patents Act, 1988.

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Copyright is one of the main types of intellectual property, others include designs, patents and trademarks. Intellectual property allows a person to own things they create in the same way as something physical can be owned. It is the right to prevent others copying or reproducing someone's work. Copyright arises automatically when a work that qualifies for protection is created. The work must be original in that it needs to originate with the author, who will have used some judgment or skill to create the work. Simply copying a work does not make it original.

The main categories of works currently protected in the UK include:

- Original literary works such as novels or poems, including computer programs
- Original dramatic works such as dance or mime
- Original musical works, i.e. the musical notes themselves
- Original artistic works such as graphic works (paintings, drawings etc), photographs and sculptures
- Sound recordings
- Films and broadcasts
- Typographical arrangements (i.e. the layout or actual appearance) of published editions

As a general rule, the owner of the copyright is the person who created it, but an important exception to this is when an employee creates a work in the course of their employment, in which case the copyright owner will be the employer.

The duration of copyright in literary, dramatic, musical or artistic works it is 70 years from the end of the calendar year in which the author dies (if there is more than one author it will be 70 years from the death of the last remaining author).

Copyright infringement

It is an infringement of copyright to do any of the following acts in relation to a substantial part of a work protected by copyright without the consent or authorisation of the copyright owner:

- Copy it
- Issue copies of it to the public
- Rent or lend it to the public
- Perform or show it in public
- Communicate it to the public

For infringement to take place it must involve a substantial part of the work.

Remedies for copyright infringement

There are a number of remedies a copyright owner can obtain in a civil action for infringement, usually the award of damages and the seizing of copies. There are certain acts conducted without a copyright owner's consent which may be classed as criminal offences and may result in fines and/or imprisonment. A company can be guilty of copyright infringement as can an officer of the company who consented or aided the infringement.

Changes to copyright law

UK Copyright Law was amended in 2003 by the Copyright and Related Rights Regulations. This was prompted by an EU Directive passed in 2001 which had the intention of harmonising the laws of copyright among EU member states and also trying to update relevant laws to reflect the realities of electronic information and the internet in general.

The most important change made by this amendment was the effect on the provision of "fair dealing" within copyright law. "Fair dealing" in the context of a published edition, is where a copy may be made for the purposes of research or private study without infringing copyright and without the requirement of having permission from the copyright owner. The law prior to 2003 did not sufficiently differentiate copies made in this way. A corporate entity making a copy for commercial research could make use of this exception in the same way that a private individual would do so for their own study purposes.

The law was changed so that "fair dealing" in this context only applies where a non-commercial purpose is involved, so single copies made by a private individual are still exempt from copyright law, but any copying undertaken in a commercial context is most likely going to require permission from the copyright owner. The definition "commercial" applied within this is often broader than might be expected, with public bodies and charities not generally being exempt.

Legal exceptions

Key elements to be aware of in the legal practice context are the relevant copyright exceptions that may apply. Copying for the purposes of a pro bono case would be exempt on the basis that it is for a non-commercial purpose, but if the case is undertaken in the hope of generating subsequent fee paying work, it is possible that this could be considered as being commercial. Moreover, any copies of published editions made for the purposes of pro bono work cannot then be used for any other fee-paid work.

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The key statutory exception that is relevant in the context of a legal practice is that which exists for judicial proceedings, contained in Section 45 of the Copyright, Designs and Patents Act 1988, which states that

> "…copying is not infringed by anything done for the purposes of parliamentary or judicial proceedings…"

Thus, the copying of material for use in existing proceedings in court or in a tribunal before which members of the Bar are likely to appear is permitted. Copying of any published work not for use in court or in a tribunal would generally require permission. This would include circumstances where copies of published material are made for general information purposes within a firm or chambers, or where copying supports general research not specifically linked to an ongoing case.

Obtaining permission to make copies

Legal practices may need permission if copying takes place from magazines, journals or any other relevant published media, including law reports. It may be for ongoing client work, informational or research purposes within a firm or chambers, or for a management summary. There are a myriad of purposes for which the legal profession might copy published information.

Below is a list of the titles most copied by legal organisations that hold a CLA licence.

- *The Lawyer* (Centaur)
- *Law Society Gazette* (Law Society Publishing)
- *Building* (UBM)
- *Legal Week* (Incisive Media)
- *Solicitors Journal* (Waterlow Legal)
- *New Law Journal* (Lexis Nexis)
- *All England Law Reports* (Lexis Nexis)
- *Industrial Relations Law Reports* (Lexis Nexis)
- *Journal of the Law Society of Scotland* (Law Society of Scotland)
- *Family Law* (Jordan Publishing)

Based on CLA distribution data February 2010

CLA conduct regular surveys with licensed organisations to identify the publications they have available to them. This would include library holdings, subscriptions or ad hoc publications. That information is used to enable licence fees to be distributed to the copyright owners, some 70,000 writers, 10,000 publishers and 11,000 visual artists. The titles above will be familiar to all readers, with these few titles representing a significant proportion of the copying that takes place under our licences in law firms and barristers chambers.

The CLA Law Licence

CLA's Law Licence in its original form was created in 2001 and was a product of discussions with the Law Society and the City of London Law Society. Like other CLA licences available at that time, the licence only covered photocopying, was subject to defined copy limits and offered two fees permitting either nine or 29 copies for each separate purpose. The licence was withdrawn from sale in 2005 pending an update to include additional new rights, although its improved replacement was not introduced until later than expected.

The new Law Licence was launched in November 2008. Pricing was matched to CLA's standard Business Licence so that it offered a straightforward choice based on the licence terms. Since its introduction it has been well received and take up within the sector has been very good.

Main features of the new Law Licence

There are several new permissions granted by the licence in addition to the photocopying and scanning rights previously included, the major benefit being that the licence enables the digital storage of electronic copies for access by staff. It also enables copies to be distributed to third parties such as clients or consultants, including the forwarding of digital copies and the sending of copies to colleagues and clients overseas is also now permitted, something not previously included in any CLA licence.

Copies can be made by any employee or consultant engaged by a licensee and they can be accessed by employees and consultants in the UK and overseas, provided it is by means of a secure network with a log-in procedure.

Copying limits are fairly straightforward:

- Up to 5% of a published edition; a whole article from a magazine or journal or a whole case from a published law report, may be copied for a single purpose.

There is no limit to the number of copies that may be produced or circulated. These limits exist principally to prevent whole magazines or texts being reproduced and substituting for the commercial copies which are the publishers business. The greatest revisions to the licence are in the addition of permissions relating to digital copies.

In the first instance, digital copies may be created and stored on a secure network. Storage has to be on a case, or matter specific, basis. This means that any stored digital copies created under the terms of the licence have to be related to a case or matter rather than a particular subject or area of law. These digital copies may then be accessed by clients and consultants via a secure network

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and may also be stored on individual hard drives or personal areas of network drives.

It is acknowledged that knowledge management systems are widely employed within legal practices and this is permitted by the Law Licence, provided that digital storage is related to a case or matter on which the licensee is engaged. A key consideration for law firms will always be how the CLA licence fits with other knowledge management solutions like direct digital subscriptions.

The Law Licence does not interfere with any digital subscriptions that may be held, as the terms and conditions that relate to the subscription will take precedence. What the licence provides is blanket cover, acting as a "catch-all" to ensure that near total compliance is achieved.

New developments in CLA licences – the addition of digital works

In recent years CLA has added new rights and repertoire to its existing licences covering the Business, Public Administration and Higher Education sectors.

In these cases, the photocopying and scanning rights already included in licences have been complemented by new digital rights permitting the copying and re-use of electronic and online publications as well as limited central storage of extracts and articles. These enhancements allow licensees to copy by printing, scanning or digitally re-using extracts from electronic and digital publications such as e-journals, CD ROMs, online newsletters and digital versions of trade magazines and journals.

New storage rights mean that a business can now copy an article, whether it originated in print or digital format and make it available on their company intranet for access by colleagues for up to 30 days. Inclusion of these permissions has proved very popular and consultation with CLA rights holders is underway for their addition to other licences.

CLA launches its first website content licence

CLA have most recently announced the introduction of its first licence to include website content, after rights holders gave the news Schools Licence their final approval earlier this year.

This means CLA can now replace its current photocopying and scanning licence for schools with a comprehensive digital licence that allows use of content from certain free-to-view websites for teaching, training and lesson preparation and for posting on internal networks.

The new repertoire will becoming available on 1 October 2010 and will help reinforce the copyright message that free-to-view does not mean free-to-copy.

The licence has been developed in response to market research that suggests a high proportion of the UK's 28,000 schools would find it useful to be able to copy from digital publications and websites in addition to printed books and magazines that are already permitted. The licence will cover only text and still images held on websites and permission to use other material, such as sound clips, interactive material and video will not be covered.

CLA is working closely with the Publishers Licensing Society (PLS) who are building the repertoire, focusing on educational publishers whose material will be of most relevance to the sector. Schools are currently signing up to the new licence, which will continue to enable teachers and students to make effective use of the latest information published for schools, while ensuring respect for the rights of creators.

CLA - protecting creativity

Through its licensing activities, CLA aims to obtain fair reward for authors, publishers and visual artists for the copying of their work. By supporting them in this way CLA plays a part in maintaining the value of their work and helps to sustain creativity. Protection of this kind has helped the UK's creative industries grow to support millions of jobs, generating 6.4% of UK GVA whilst enriching all our cultural lives.

If you would like more information about the work of the CLA and the Law Licence in particular, please contact Andrew Greenan (andrew.greenan@cla.co.uk)

If you would like a free booklet containing an overview of copyright and a directory of organisations representing the creative industries, please email pr@cla.co.uk with your address.

See more about CLA at www.cla.co.uk

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