The Libraries and Archives Copyright Alliance

museums copyright group

GUIDELINES ON THE RECENT CHANGES TO COPYRIGHT LAW

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BACKGROUND

How we got to where we are

The European Commission produced a Green Paper on copyright in the Information Society in December 1997. This was hotly debated and considerably modified before it became a Draft Directive. It was finally passed as a Directive on 22nd June 2001 with a requirement to implement it in each Member Country by 22nd December 2002. The UK Patent Office undertook a consultation process and produced draft legislation on 7th August 2003. The final text was published as published on 3rd October 2003 and implemented on 31st October 2003.

Law and timing

The new legislation is called the Copyright and Related Rights Regulations 2003 (Statutory Instrument 2003/2498). The full text of the Regulations can be found on the HMSO website (http://www.hmso.gov.uk/si/si2003/20032498.htm). It came into force on 31st October 2003. As with most SIs it does not set out the law in full but gives changes that are being made to existing law. This is done strictly by listing the deletions, amendments and insertions but rarely giving the full new text.

To understand its implications fully you need both the original Copyright Designs & Patents Act 1988 and many of the subsequent SIs that have amended it. Because this is such a complicated exercise, MCG/LACA have produced these guidelines to try to help you through the maze of legislation.

The new legislation touches on a number of matters which are only occasionally relevant to the delivery of information in museums, archives or libraries. For example, *time-shifting* to listen to a broadcast at a convenient time at home, reception and re-transmission of broadcasts and issues surrounding the ownership of the possible extended length of copyright in some sound recordings. There are also a number of areas expanding performers' rights which have been touched upon but not in minute detail.

Before and after

If something was done before the new law came into force which would now not be allowed, then that action does not now become illegal. For example, the new legislation does not allow fair dealing for commercial research but anything copied for commercial research before it came into force does not now become an infringing copy. From 31st October 2003 onwards, no copying for commercial research is possible under fair dealing.

SUMMARY OF IMPORTANT POINTS

Broadcasts

- Redefined
- Exclude internet transmission
- Restrictions on use for educational purposes when not recorded under the ERA licence
- Cable programmes abolished as a separate class

Sound recordings

Duration of copying in unpublished recordings which have been broadcast or played in public.

New rights

Owners have a new right of *communicating a work to the public by electronic means*. A similar right for performers is introduced called the *making the work available* right.

Temporary copies

Copies made during normal electronic processes, such as transitory copies made by internet service providers, cease to cause problems.

Fair dealing

For research purposes it is restricted to non-commercial purposes.
For private study it is made clear this must not be for any commercial advantage.

Use of material for criticism or review and reporting current events is slightly restricted with conditions of acknowledgement attached.

Educational copying

Some minor changes are made to the use of material for in-class copying and use of material for examinations.

Copying by librarians and archivists

Copying by librarians and archivists is now restricted to non-commercial purposes for both published and unpublished materials.

There are also minor changes in the rules for charging for copies supplied to other libraries.

Technological measures

New laws protect the technical mechanisms for controlling access to materials and date which indicates ownership, authorship and conditions of use.

Visually Impaired People

New laws allow the copying of material for visually impaired people without seeking permission, provided certain conditions are followed.

Playing sound recordings in clubs

New controls are introduced on charging for admission to clubs when sound recordings are played and associated activities such as disc jockeys and selling merchandise.

WHERE NO CHANGES TO THE LAW

Many elements of copyright law are left unchanged by the new legislation so they will only be touched on very briefly in these guidelines. You are referred to the appropriate standard works for further details (see References below in Notices, on page 17).

The nature of copyright

There is no change in the basic idea of copyright. See Cornish, Norman, Padfield, Wienand.

Qualifying for copyright

The rules on originality, the work being recorded (fixed) and nationality are not changed. See Cornish, Norman, Padfield, Wienand.

Ownership of copyright

The general rule is that the author is the first owner of copyright unless the work is made as part of your employment or unless there is something in writing to the contrary. This rule remains unchanged. See Cornish, Norman, Padfield, Wienand.

Authorship

Again, the rules for deciding who is the author of a work are not changed. Remember there are different rules for different types of material. See Cornish, Norman, Padfield, Wienand.

Authors' moral rights

The rights of authors to be named, not the have the work changed and prevent various forms of derogatory treatment are not changed. However, authors' moral rights in the electronic world are now being protected for the first time through the use of electronic rights management information (see that heading in this document). See Cornish, Norman, Padfield, Wienand.

Off air recording for archival purposes

This remains limited to a defined list of institutions (see Cornish, Norman, Padfield, Wienand).

THE CHANGES IN THE LAW

NEW RIGHTS FOR COPYRIGHT OWNERS

What is protected by copyright?

Remember that the world is divided up into different classes of material for copyright purposes – literary, dramatic, musical and artistic works, sound recordings, films (and videos), broadcasts, performances and so on. Almost anything that shows human creativity can be protected.

Most of these are not changed by the new legislation. For information on these see Cornish, Norman, Padfield, Wienand. However, there is a major change to the definition of a broadcast which is important as it makes it clear that the transmission of a website is **not** considered a broadcast. This has been a matter of much debate in the past but the new legislation clarifies the situation.

Broadcasts

A broadcast is now defined as electronic transmission of visual images, sounds or other information which:

- Is transmitted for simultaneous reception by members of the public
- Is transmitted for presentation to the public
- Is transmitted at a time determined solely by the person making the transmission to members of the public

In other words, what we usually think of as a broadcast.

However, any internet transmission is excluded from the definition of a broadcast unless it is:

- Transmission simultaneously by internet and other means
- Concurrent transmission of a live event
- Programmes transmitted at fixed times determined by the person making the transmission

In other words, if something is transmitted by both broadcast and internet, then broadcasting takes precedence and the internet element is not treated separately. This does NOT mean that websites and the transmission of them are not protected by copyright. The content of a website is protected just like anything else. So the words are protected as a literary work, any moving images are protected as film and so on. But transmission of a website is protected in another way as we shall see when looking at the rights that owners have.

It is also worth noting that cable programmes have disappeared as a separate type of copyright work and are included as broadcasts instead.

Duration

Copyright rarely lasts forever and how long it lasts is limited in various ways. Calculating how long copyright in a work lasts can be a very complex business.

Detailed information can be found in Cornish, Norman, Padfield, Wienand. The new law makes one important change regarding duration of sound recordings.

Sound recordings

The duration of copyright in sound recording is now determined as follows:

- 50 years from the end of the year in which it was made or
- If published in that period 50 years from the year of publication or
- If not published but played in public or communicated to the public, 50 years from that event

So, if you have unpublished sound recordings in your archive which are less than 50 years old and allow them to be used in, say, a local radio programme, then the copyright is automatically extended for another 50 years. For example the copyright in a recording made in 1970 will expire in 2020 but if it is played in public in 2003 it will then expire in 2053. Remember that, if your archive does not have rights in the sound recoding, you would need permission to allow it to be broadcast anyway.

Owners' rights

Owners' existing rights are not changed by the new legislation. The right to copy a work, issue copies to the public, perform, show or play the work or make adaptations and translations all remain the same. See Cornish, Norman, Padfield, Wienand. However some changes have been made to the right to broadcast a work and two new rights have also been introduced.

Broadcasting a work

The copyright owner still has the right to control the broadcasting of a work but this is absorbed within a broader right called *communication to the public*.

Right of communication to the public

Although this right existed in previous legislation if you knew where to look, it now appears explicitly alongside the other rights that owners have. What the law does is give the copyright owner the right to prevent anyone else communicating the work to the public by electronic transmission which includes:

- Broadcasting the work
- Making the work available by electronic transmission so that members of the public may access it from a place and at a time individually chosen by them

This clearly includes putting material on a website and therefore compensates for the earlier definition of a broadcast which specifically excluded websites and internet transmission.

So if you want to include someone's work on your website it will be essential that you obtain their permission unless it is work created by one of your employees. This will be especially important in education where using a student's work on a website without their express permission will be an infringement.

It will also be very important to remember this when commissioning someone to prepare, say, publicity material for your services. Failure to include the right of

communication to the public could leave you with material for which you have paid but which you cannot use in the way you want.

Making available right

This is a new right for performers to enable them to control the use of recordings of their performances in the same way as a copyright owner can control communication of the work to the public. The right is defined as *the right to prevent anyone making available to the public a recording of a performance by electronic transmission so that members of the public may access the recording from a place and at a time chosen by them.* In other words, performers can control putting recordings of their performances on to a website. This is important if you want to use, say, a video clip as part of your website presentation.

PERMITTED ACTS

This simply means the use to which you can put all or part of a copyright work without the need to consult the copyright owner or obtain permission from anyone. They include:

- Fair dealing which includes research, criticism and review and reporting current events
- Library privilege
- Non-reprographic copying in the course of instruction or in preparation for instruction

There is also new legislation on temporary copies required for technical reasons. This is perhaps an area of the new legislation which not will affect archives, libraries and museums very much.

Temporary copies

Until now UK law prohibited the making of temporary copies in circumstances which ranged from sending a copyright work by fax to viewing a website. Both of these actions, together with many other uses of material in electronic form, require the making of copies of the work to enable it to be transmitted and viewed. These copies were technically infringing. Clearly this was nonsense in a modern information world. The new law therefore brings common sense into this situation by saying clearly that the making of these temporary copies is no longer a problem. The conditions are that the copy must be:

- Transient or incidental
- An integral and essential part of a technological process the sole purpose of which is:
    - transmission in a network between third parties or
    - a lawful use of the work and
    - of no independent economic significance

This makes it legitimate to view websites but may also make the sending of a faxed copy of a copyright work legal as well, provided the intermediate steps have no economic significance. However, sending a fax which is capable of being stored electronically for further use by the person receiving it would not fall into this category. So it will depend on the technology you are using.

Fair dealing

Fair dealing, as regards quantity, has never been defined legally. The law has limited itself to defining the purposes for which fair dealing could be claimed as a defence. It is the purposes for claiming fair dealing that are changing, not the amount you may copy which remains undefined.

Until now fair dealing was allowed for research or private study. *Research* was not defined but was taken to include any form of research for any purpose, including commercial research of all kinds. In the same way, private study was taken to mean study by an individual for the purpose of personal study rather than research.

For those working in libraries, remember that fair dealing and so-called *library privilege* are not the same thing. See *library privilege* later on in these guidelines.

The new legislation changes all this fundamentally. Anyone wishing to claim fair dealing as a defence to copying anything will only be able to do so if the copying is for research **for a non-commercial purpose**.

The term *commercial* joins a growing list of words used in the Act which are commonly understood but not legally defined. So each person must decide for themselves whether the purpose for which they want to make the copy is for a commercial purpose or not.

However, the Patent Office, the government department responsible for copyright (see http://www.patent.gov.uk/copy/notices/2002/guidance2.htm), has issued a helpful list of what might or might not be considered commercial. These are rather general. However, Professor Charles Oppenheim of Loughborough University has put together a list of possible commercial and non-commercial uses, and this is reproduced, together with one or two additional examples, at the end of these guidelines.

The changed definition of research has serious implications for any library, archive or museum providing self-service photocopy facilities. Users cannot now make copies for commercial research under fair dealing. Some kind of licensing scheme will be necessary otherwise the copies will be infringing. The various licensing agencies are devising viable schemes (such as the Copyright Licensing Agency sticker scheme) to enable this copying to continue but, whatever the solution, it will require additional systems to be put in place to manage the new situation. Whilst this may work for published material, the outlook for a similar scheme for unpublished works may prove more difficult to devise.

In addition, where fair dealing for research purposes is claimed as the reason for making the copy, that copy must be accompanied by sufficient acknowledgement unless this is not possible for reasons of practicality or otherwise. Presumably sufficient acknowledgement would be a reasonably clear bibliographic reference (which library or archive staff might be asked to provide) or some other form of identifier for some artistic works in museums. What reasons there might be for not acknowledging the source are not clear, although it might be possible to find a piece of text or an object whose origins are totally untraceable.

Fair dealing for research purposes still does not apply for research or private study to sound recordings, films or broadcasts.

Private study

Previously private study was, and still is, allowed under fair dealing was not defined. The new legislation confirms the previously held view that the term *private study* specifically excludes *any study which is directly or indirectly for a commercial purpose*. So, once again, the user will need to make this judgement for each copy made for private study purposes.

Many users of photocopy services will be unsure as to whether their purpose constitutes commercial use or not. Staff are advised not to try to help users to decide whether their purpose is commercial or not as this could lead to allegations of liability for any infringement. In any case, staff will not know the full implications of the needs of individual users. CILIP has issued two posters which can be used to draw users' attention to the new law.

Fair dealing for private study still does not apply to sound recordings, films or broadcasts.

Criticism or review

Unlike fair dealing for research or private study, criticism or review applies to any type of work.

There is one significant change to the conditions for fair dealing for criticism or review, namely that the work has been made available to the public. Although it has been thought that this was implied before, the law now makes this clear. So someone discussing the work of an author cannot quote material found in their private papers and not previously accessible to the public. This is partly because to do this would be publishing that material for the first time.

The new legislation says that *made available to the public* includes:

- The issue of copies to the public
- Making the work available by means of an electronic retrieval system
- Rental or lending of copies of the work to the public
- Performance, exhibition, playing or showing of the work in public
- Communication the to public of the work

Whether storing the work in an archive which is accessible to the public is also *making the work available to the public* is not clear but the list is not exhaustive – the law simply says the phrase includes these actions. The list of definitions appears in other parts of copyright law and is equally unclear there as well!

Reporting current events

The remarks made under *criticism or review* above apply also to reporting current events in terms of acknowledgement but, remember that fair dealing for this purpose excludes photographs (and in this respect the law has not changed). Anyone reporting news in a broadcast is excused from acknowledging the source if this is impossible for reasons or practicality or otherwise. Neither does the work have to have been made available to the public already.

Copying for educational purposes

Many of the main provisions for copying for educational purposes remain unchanged (see Cornish, Norman, Padfield, Wienand) but there are important new restrictions. Copying must still be done by the person giving or receiving instruction and must not be one using a reprographic process and the source must be acknowledged but, in addition, the instruction must be for a non-commercial purpose.

Whilst traditional education is probably for a non-commercial purpose, courses in purely commercial colleges, training for staff in commercial companies and any courses offered with the idea of making a profit are almost certainly excluded.

A further restriction is that the copying of *material made available to the public* now carries the additional restriction that the copying must be *fair dealing.* The definition of *made available to the public* is the same as given in the section on *criticism and review* (above).

These privileges were previously restricted to educational establishments, defined in law broadly as schools, colleges, universities or any institution offering further or higher education qualifications. Now they can be enjoyed by any organisation, so long as the educational purpose is non-commercial. This means that libraries, archives, museums and galleries with non-commercial educational programmes can now make use of these limited privileges.

Copying for the setting and answering of examination questions is still allowed, with the only restriction being sheet music scores for the purposes of performing during the exams. However, although the questions must now include sufficient acknowledgement, the answers need not!

Off-air recording for educational purposes

Off-air recording for educational purposes is limited to educational establishments. Just because your museum, gallery or archive has an extensive education programme does not make it an educational establishment in legal terms. Where an institution has an Educational Recording Agency (ERA) or Open University (OU) licence the terms of this must be observed. For material recorded off-air which is not covered by the ERA, there are new restrictions.

Firstly the recording of the broadcast must be acknowledged and the educational purpose must be non-commercial. Secondly, the recording may be used or transmitted only to a person inside the premises of the establishment and the broadcast cannot be received by a person outside the premises. This means that recordings made from cable, satellite or overseas transmissions (all of which are not covered by the ERA) must not be lent out to students (as they may take them home) or transmitted to distance-learning students (who, by definition, are not on the premises). In future, where such recordings are kept in libraries in educational establishments, care must be taken to control their use.

Library privilege

This is not a legal term but a useful shorthand for a fairly complicated set of rules allowing the copying of material by librarians and, in some cases, archivists. For details of the main provisions please refer to Cornish, Norman, Padfield, Wienand.

However, there are some vitally important changes to be noted that will fundamentally change the way we deliver information to some of our readers/users.

Copying for readers/users

The amount of material that can be copied does not change (one article from any one issue of a periodical or a reasonable part of a monographic work or the whole of an unpublished work). However, the purposes for which copying by librarians and archivists is allowed are seriously reduced.

Librarians and archivists may make copies as before provided that the purpose is either:

- Research for a non-commercial purpose or
- Private study

Remember that these conditions only apply when the librarian or archivist makes the copy for the reader/user. Copies made by users for themselves come under fair dealing (see above). Also remember that librarians may technically copy both published and unpublished material but that archivists may only copy unpublished material, even though their collections may include published documents.

Once again the definition of *private study* specifically excludes *any study which is directly or indirectly for a commercial purpose*. Copying for users who require material for a commercial purpose will require the consent of the copyright owner. In the case of published material this may be achieved through a licence issued by one of the agencies covering printed material such as the Copyright Licensing Agency (CLA) or Newspaper Licensing Agency (NLA) but for unpublished material this restriction poses a real problem.

As copying for a publisher who is considering publishing a manuscript is definitely a commercial purpose, it would appear that unpublished material cannot be copied for them, whether it is for scholarly publishing or a "coffee-table" volume. However, a clause in existing legislation which still applies, allows for such works to be copied *with a view to publication* under the following conditions:

- The work must be kept in an archive museum or library that is open to the public
- The author must have been dead for at least 50 years
- The work must be at least 100 years old

This applies only to literary, dramatic or musical works and not to artistic works or works in other formats such as sound recordings or films. This creates a particular problem for folksongs (see below).

The text of the standard declaration forms A & B which users are obliged to complete when requesting copies of published and unpublished copyright material respectively from librarians and archivists has also been amended. Any existing stocks of printed declaration forms should be destroyed and new declaration forms printed and used from 31st October 2003. The text of the existing declaration forms can be found in Statutory Instrument 89/1212 and in Cornish.

The revised model declaration forms A & B can be found on the LACA website at www.cilip.org.uk/laca. Where the declaration requires that the work is for research or

private study this must be amended to *research for a non-commercial purpose* or private study. Note that there is no requirement for the user to show they understand the restricted definition of *private study* and any elaboration of this phrase should not be included in the declaration form. However, it could be explained in any posters put up by libraries or archives to explain copyright to users.

The declaration form continues to provide a defence for the librarian or archivist if the reader/users signs the form knowing it to be false. Once again, staff should not get involved in defining what is and what is not commercial. This may be more difficult if staff are aware of what is being copied and suspect that the real motive of the user is commercial. It is beyond the scope of these guidelines to say what action should be taken should such a situation arise, but some kind of institutional policy to protect employees may be advisable.

Copying for inter-library loan and replacement copies

Libraries may copy very limited amounts of published material for other libraries to add to their collections. Libraries and archives may also provide replacement copies of material that has been lost, damaged or destroyed (see Cornish, Norman, Padfield, Wienand). This does not change but the regulations for charging for these copies do. Previously charges had to be not less than the cost of making the copy plus a contribution to the running expenses of the library or archive but this has now been changed to *a sum equivalent to but not exceeding the cost of making the copy, plus a contribution to the running expenses of the library or archive*.

Folksongs

Certain archives are designated for the purpose of making sound recordings of folksongs. Once such a recording has been made it can be copied for research for non-commercial purposes or private study. This creates a particular difficulty as the definition of a folksong is that the words must be unpublished and of unknown authorship when the recording is made. Therefore nobody has any copyright interest in the words and the condition of making the recording is that it does not infringe any other copyright (e.g. in the music). So copying for a commercial purpose would need the copyright owner's permission but no such person exists. Careful thought is going to be needed to enable this material to be provided to, say, a commercial record company.

Playing sound recordings in clubs, etc

Some libraries and museums carry out promotional work in clubs or even organise their own clubs so it is worth saying that the new legislation sets out the following restrictions:

- That the person playing the sound recording is doing so primarily for the benefit of the organisation and not for financial gain (in other words not acting as a paid disc jockey)
- That the proceeds from any charge made must go to the purposes of the organisation
- That the proceeds from any goods or services sold by the organisation at the time and in the place where the sound recording is played must go to the purposes of the organisation. So for example, no merchandising is allowed by other retail outlets

TECHNICAL MEASURES AND RIGHTS MANAGEMENT INFORMATION

This is largely a new area of law in the UK but it has major implications for anyone generating or providing access to information.

Owners of copyright material in electronic form have been anxious about protecting their rights for a long time. There are two strands to this:

> a) managing access so as to control who can access what and on what terms, together with control over what users can do with a work once they have gained access to it (print, download, view only, network, etc); and
>
> b) making sure that the various pieces of relevant information are attached to a work such as ownership records, licensing conditions, data of use and other useful marketing information. To date these systems have not been properly protected in law. This situation is now put right by the new legislation.

Technological measures

A technological measure is defined as *any technology, device or component which is designed…to protect a copyright work….* In order to qualify for legal protection a technological measure must be effective. A device is considered effective if use of the work is controlled by the copyright owner through either:

- an access control or protection process such as encryption, scrambling or other transformation of the work or
- a copy control mechanism

It is now clearly an offence to try to interfere with such protection mechanisms or get round them to avoid the restrictions (often including payment for use) that copyright owners have attached to them. Anyone deliberately circumventing or avoiding such mechanisms or devising equipment to avoid them may be guilty of a criminal offence as well as a civil one. This acts both ways, as it gives museums, archives and libraries the chance to protect the electronic versions of their collections that they may wish to release via a website for example. On the other hand it poses serious challenges to carrying out those *permitted acts* described above.

The question arises that if a work is protected by an effective technological device so that access to it is controlled entirely by the copyright owner, how can someone access it for legitimate reasons (fair dealing, library privilege, educational copying, etc) which the copyright owner should not be able to prevent or control?

Extensive research has shown that it is not possible to teach a computer to distinguish between a use which should be paid for and one that should not! The legislation provides for a very cumbersome and unsatisfactory solution. In a nutshell what the law says is that if an effective technological measure prevents users from being able to benefit from exceptions such as fair dealing, library privilege or educational copying, they have to make a complaint to the Secretary of State at the DTI. This applies only if there is no suitable licensing scheme available. The Secretary of State may then give to the copyright owner or licensee such directions as seen fit:

- to establish whether any voluntary measure of agreement already subsists
- to enable the complainant to benefit from the exceptions

It is hard to see how these regulations will work in practice and they certainly will not work quickly enough to enable someone wanting information to obtain it in time to meet their needs. The best it can do is to set some kind of precedent and perhaps provide better access in the future.

Electronic rights management information

Electronic rights management information is any information provided by the copyright owner which identifies the work, the author or any other right holder, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information. Any attempt to interfere with this data, remove it or retransmit a work without it will become a criminal offence. As in the case of technological measures, this new law gives museums, archives and libraries new powers to protect their digitised collections or other material they have produced in electronic form.

VISUALLY IMPAIRED USERS

Copyright (Visually Impaired Persons) Act 2002 (implemented 31st October 2003)

Until this new law came into force the UK had no legislation making it possible to make copies in alternative formats for people who are visually impaired. The Copyright (Visually Impaired Persons) Act 2002 provides this right with certain restrictions. Essentially the Act allows a copy of a literary, dramatic, musical or artistic work, or of a published edition, to be made for or by a visually impaired person in a format that they can use. The whole of the work may be copied and it can be either a published or unpublished work, so this applies to archival collections as well as to libraries.

Essentially a visually impaired reader can have a copy of a work made in any format necessary (Braille, Moon, audio, large print etc). The formats are not specified so that there is no restriction if new ways of providing access are devised later, provided that the copies are made under the following conditions:

- The required format is not already available commercially
- The person has lawfully obtained a copy of the original which includes lawful access to the original in a library or archive
- The copy must carry a statement to this effect

Note that the person does not have to have bought a copy nor even possess one but they must have ready and continuous access to a copy to qualify. This is to ensure that the copyright owner is not deprived of a sale in this process. Multiple copies for visually impaired persons may be made under the following conditions:

- They may be made only by educational establishments (see above for this definition) or non-commercial bodies
- The work must not be available in format available commercially
- The copy made contains a statement attached to this effect

Intermediate copies created as a result of making copies in alternative formats can be kept by an approved body for further use but they must notify the copyright owners of intermediate copies kept and must keep records of subsequent use and allow access by the copyright owner to these records. The procedures are simpler in some cases as the CLA licence now includes these uses in a licensing scheme.

It is worth noting that the definition of a visually impaired person is wider than the term might indicate. VIPs are defined in the Act as *one who is blind or partially sighted or has uncorrectable sight-loss or who has a physical disability which makes it impossible for them hold a book or move their eyes*.

This makes it possible to provide alternative formats to people with, for example, chronic arthritis who cannot hold a book but does not include people with dyslexia or other learning difficulties. In addition, where any copying is already covered by a licensing scheme then the terms of the scheme must be observed. Both the CLA and the NLA recognise this need and include the scanning and making of large print copies in their licences. At the moment they do not have the authority to grant licences for other formats such as Braille and Moon. The publishing industry has issued guidelines which are often more generous than the provisions of the Act. See www.pls.org.uk for further details.

CONCLUSION

These notes are a guideline only. They are intended to provide an outline of the changes to the law together with a few reminders of what the law says in more general terms. If you come up against a tough copyright problem, either in terms of what you can copy or exploit, it is always best to seek specialist advice. Some professional organisations offer help and guidance; useful sources of further information can be found in the literature mentioned in these guidelines (full biographical details are provided below). There are also a range of training courses on copyright available and it may be useful to attend one of these.

Finally, remember that copyright is never static. It is not only the law that changes but also the technology, the dynamics of information supply and the expectations of users and authors.

Never take your eye of off the copyright ball. If you do, you may miss a real opportunity or even score an own goal!

NOTICES

Copyright statement

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Disclaimer

Although these guidelines are intended to interpret the law, they do not constitute legal advice. Neither the Museums Copyright Group nor the Libraries and Archives Copyright Alliance can be held responsible for any misinterpretation or inaccuracy in these guidelines. This document is intended to provide guidance for members of staff in archives, libraries and museums on the implications of the new legislation on copyright set out in **Statutory Instrument 2003/2498**. It is not a detailed guide to copyright law in general.

Where the law has not changed users are referred to standard texts on copyright in their areas (for the full references see below). The works are referred to as Cornish, Norman, Padfield and Wienand. Although all these books pre-date the new law, they are still up-to-date for those areas where the law has not changed and you are referred to them for this purpose.

References

The current publications referred to in the text were published before implementation of the Copyright Directive. Revised editions of some of these publications are planned in the near future.

'Cornish': Cornish, Graham P., *Copyright: interpreting the law for libraries, archives and information services,* 3rd revised ed, London, Library Association (now Facet Publishing), 2001.

'Norman': Norman, Sandy, Library Association Copyright Guides (series), Library Association Publishing, 1999. Separate volumes for further and higher education, health libraries, industrial and commercial libraries, public libraries, school libraries and the voluntary sector.

'Padfield': Padfield, Tim, *Copyright for archivists,* Kew, Public Record Office, 2001.

'Wienand': Wienand, Peter, Booy, Anna and Fry, Robin, *A guide to copyright for museums and galleries,* London, Routledge in association with Museums Copyright Group, 2000.

APPENDIX

COMMERCIAL OR NON-COMMERCIAL PURPOSE?

Please note that the examples given below are non-exclusive and do not constitute legal advice. They are intended for broad guidance only to library, information, archive and museum staff with the proviso that it is unwise for them to attempt to advise users (who should make up their own minds as to whether or not their copying is 'commercial' before proceeding). This is important as staff cannot be expected to offer legal advice to users and have no protection if they do so.

These examples are based on guidelines produced by Professor Charles Oppenheim of Loughborough University.

These uses might be considered non-commercial:

- Work done by day-release students in employment but undertaking further education outside their place of work
- Work done by lecturers entirely for their students
- Articles for scholarly journals or papers for conferences unless a fee is anticipated
- Work done for personal professional development
- Work done exclusively for an NHS Trust

These uses might be considered to be commercial:

- Company R&D
- Market research
- Information brokerage
- Articles or papers where a fee is offered
- Work done for spin-off companies owned by universities or similar
- Work done for a private medical facility, including copying which is to be used partly for private work and partly for NHS work
- Work done by students for an employer while on placement
- Research done by students which it is known or expected will be used for commercial purposes
- Work done by charities or non-commercial organisations to earn income even if it is then used to further the charity's aims
- Work done by for-profit companies to earn money which is covenanted to a not-for-profit organisation or charity
- Training or professional development funded by an employer which is linked to a commercial company's work or linked to carrying out a commercial activity

Status uncertain:

- Work done by staff/students in academia sponsored by a commercial company but not necessarily for the benefit of that company
- Work done for charities to raise funds
- Work done to gain a qualification which will ensure a pay rise