

Copyright law and licence agreements

Evelyn Woodberry, Information Resources, Bond University

Libraries are going through a revolution in the acquisition of content as an increasing amount of material is purchased in digital form. As a consequence licences are becoming standard practice for providing access to and use of electronic information, with staff spending an increasing amount of time negotiating licence agreements.

Licences are used to define the limits of the use of a product. They tend to be international in nature, as they are applied in a variety of countries, and in addition are ahead of changes to legislation. When negotiating licence agreements it is important to take into consideration the principles of copyright legislation as specified in the *Copyright Act 1968* and which the new *Copyright Amendment (Digital Agenda) Bill* aspires to apply in the digital age. The *Copyright Act 1968* includes provision for the use of copyrighted materials within a framework which balances the rights of authors, publishers and other copyright owners with society's need for the free exchange of ideas. While licence agreements may not explicitly mention copyright, it is necessary to make sure they do not specifically exclude fair dealing and the library provisions.

In the USA, the Association of Research Libraries (ARL) in 1994 went as far as adopting as part of their statement of principles on intellectual property the following:

Licensing agreements should not be allowed to abrogate the fair use and library provisions authorized in the copyright statute.

Licences may define the rights and privileges of the contracting parties differently than those defined by the Copyright Act. But licences and contracts should not negate fair use and the public right to utilize copyrighted works.

A considerable amount of work has resulted in the production of model licences as reference points, and sets of

principles for licensing of electronic resources which can be used as a basis when negotiating with suppliers.

However, before becoming lost in the technical and legal jargon involved, it is worthwhile listing on a blank piece of paper your particular requirements relating to the use of the content. Once you have established your needs, compare your list with the licence agreement and see how close it comes to meeting your needs.

There are no industry standards and consequently it is important to ask questions of content owners and distributors to obtain conditions which match your requirements as closely as possible.

The most significant impacts for libraries resulting from this trend towards the use of licences are:

- the necessity for the library to develop the capacity to deal with licences as legal contracts, making sure the terms and conditions satisfy the library's needs; and
- the necessity for libraries to establish administrative and computing mechanisms which will ensure compliance with the terms and conditions of the licence.

When dealing with the intricacies of licence agreements it is easy to lose sight of the provisions within the *Copyright Act*, which enable libraries to provide access for their user communities. Checking to see that the fair dealing provisions in particular are part of any licence agreement is critical to the continued application of the principles defined in the *Copyright Act* in the digital age. Various electronic licence agreements are available at: <http://www.library.yale.edu/llicense/publishers.shtml>, <http://www.faxon.com/html/ind.lr.html>, and <http://www.anu.edu.au/caul/>. ■

Some frequently asked copyright questions...

Articles that do not relate to the 'same subject matter'

Is it possible for a library user to request more than one article from an issue of a periodical publication, where the articles do not relate to the 'same subject matter'?

Yes. However, the library user must complete a section 49 request and declaration form for each article requested.

If a library user requests more than one article on the 'same subject matter' from a single issue of a periodical publication, all the articles requested may be listed in the same request and declaration form. For more information, see our FAQ on 'Articles that relate to the same subject matter'.

Related FAQs: 'Articles that relate to the same subject matter' and 'Defining 'periodical publication''

Good faith notices

If a copyright owner cannot be located, will a library be protected from liability if it posts a notice telling others that the library has made every attempt to find the copyright owner?

No. A library will generally not be protected from liability by these types of notices (sometimes referred to as good faith notices). The *Copyright Act* does not permit you to rely on any attempts you have made to locate the copyright owner as a defence to copyright infringement.

Copying legislation and court judgements

May a library copy legislation and court judgements for library users?

A library may photocopy Commonwealth, State and Territory legislation and court judgements for a library user under section 182A of the *Copyright Act*. Under section 182A, the material must be photocopied for a particular purpose. 'Particular purpose' is not defined. The charge applied for such copies must not exceed the cost of making and supplying the copy. Section 182A covers the following material:

- commonwealth and state Acts, territory enactments, and other ordinances, rules, regulations and by-laws made thereunder, and

- judgements, orders and awards of Federal, State and Territory Courts and Tribunals including reasons given for any such decisions.

Supplying documents to libraries and library users in other countries

May a library supply material under the library copying provisions of the Copyright Act to overseas libraries and library users?

It is recommended that overseas libraries and users should be required to follow Australian copyright law when requesting documents. For more information on copyright compliance and document supply services, contact the ALIA National Office.

For more information about ALIA's Copyright Service contact Rosemarie Sebastian-Pillai at the ALIA National Office, phone 02 6285 1877, fax 02 6282 2249, or e-mail copyright@alia.org.au. This is general information about the law. It is not intended to be a substitute for independent legal advice and it should not be relied upon for this purpose.