

Copyright: the professional challenge

Your government department, university or parent organisation has signed copyright licensing agreements. As librarians, you were involved in the discussions about these agreements before they were signed, with legal advice about the impact of your licence contracts on the library's rights to copy or allow copying under the various provisions of the *Copyright Act*. You understand the scope of your licensing agreements — what material and what uses they do and do not cover, or whether you can vary individual clauses in negotiation to fit your client needs more effectively — and you have copies of the agreements available so that you can refer to them when necessary.

If you've nodded your head to all these statements, congratulations! You have a lot more professional control over copyright than many of your colleagues. Members' queries to ALIA's copyright service reveal that some librarians, including those employed in government departments and business enterprises, are not given formal organisational recognition for their expertise and involvement in ensuring copyright compliance.

The same organisations, however, use their librarians as essential resources in informal discussions of the subject. 'Picking the brains' of librarians to formulate management policy, without acknowledging them as the source, may sometimes result. The obvious way of combating this is to ensure that your actions are visible — training and display notices are examples — or, where you have contributed ideas or suggestions, to record and file them appropriately.

For both the librarian and the organisation there are important reasons why library expertise in copyright should be visible. For the librarian, it is a matter of professional competence, promotional opportunity and job security — as has been said many times, you must not only *be good*, but *be seen to be good*.

Changes in law and technology enhance the opportunity for librarians to educate their users about the reasons for copyright, the balancing of competing interests, and the importance of defending the public interest in free access to information while respecting the rights of authors to recognition and reward. The carrying-over of that balance of interests from print to digital information was due to be reviewed three years after the passing last year of the *Copyright Amendment (Digital Agenda) Act*. In fact, the Act is already under scrutiny.

For the organisation, acknowledgement of library expertise improves efficient compliance with the law and is sound decision making. One of the hidden costs in outsourcing library services, for example, may be the loss of library copyright exemptions, when the copying body does not satisfy the library definition in the *Copyright Act* (section 49(9)).

Moral rights

One way in which librarians can assist their organisations is to draw attention to the *Copyright Amendment (Moral Rights) Act 2000*, which became law on 21 December 2000. It may have been overshadowed by the impact of the Digital Agenda amendments. However, it is, of course, just as legally

binding and has ramifications for libraries and for their organisations.

Moral rights now attach to works covered by copyright, including literary, artistic, dramatic and musical works, computer programs, photography and films. Moral rights comprise: the right to be acknowledged as author; the right against false attribution; and the right of integrity; that is, the right not to have the work altered in a material way or in a way that is prejudicial to the creator's reputation.

Unlike copyright, these rights are personal, not economic. They cannot be traded, they are not usually covered by licences to reproduce copies, and they are granted to individuals, not companies. Moral rights last generally as long as the copyright term, fifty years from the death of the author, except for the right of integrity for films, where the right dies with the authors (who include screenwriters, directors and producers, where they are individuals and not companies).

The rights of attribution may impact on library cataloguing practices, although online records or added entries presumably acknowledge all authors in works of multiple authorship. Illustrators and photographers are also entitled to acknowledgement. Where photographs and artworks are used in library promotional material or publications, the photographer or artist must be acknowledged — this is a requirement additional to permission to reproduce.

The right of integrity protects works from being treated in a way that is prejudicial to the author's reputation by materially altering, distorting or mutilating the work. Some examples of infringement from overseas jurisdictions include altering the size of drawings and changing the colour of artworks in publications; morphing images and adapting graphs for websites; altering a building without the permission of the architect; and moving a work of art from the place where it was specifically designed to hang, without the artist's consent.

Creators may consent to acts which would otherwise infringe their rights. There is a defence that the infringing act is reasonable in all the circumstances. Remedies range from a public apology to injunctions and damages.

Libraries and other organisations should review their contracts to consider the impact of moral rights provisions. Such contracts might include building contracts, the acquisition of artistic works, consultancies and other contracts of employment where work created is protected by this legislation. ALIA copyright service welcomes comment on other implications for library operations, either by e-mail at copyright@alia.org.au, telephone 02 6285 1877 or fax 02 6282 2249.

Further information

More information is available from the Australian Copyright Council information sheet G43 at <http://www.copyright.org.au>; from *Lahore's Copyright and Design* service (published by Butterworths); MinterEllison's newsletter of 7 March 2001 and other legal sources. Kristin Stammer provides a clear and entertaining summary in 'The moral of the story: don't cut holes in Blue Poles', *Australian Intellectual Property Law Bulletin*, 13(8): 111–112. ■