LIBRARIANS AND COPYRIGHT

A couple of years ago I was asked by the manager of our printing facility to give an after-dinner speech at a conference he was organising for printers from around the country. When I asked what on earth I could talk about that would interest and amuse printers he replied "Copyright – when you talk about this to groups around the University you always make it so entertaining!". Leaving aside the question of whether New Zealand's expression of copyright law is funny ha-ha or funny peculiar, let us at least all agree that copyright itself is a serious matter.

The first copyright legislation, known as the Statute of Anne, was introduced in Britain in 1710. The purpose of that Act, which is true of most subsequent legislation, was "to support learning and the sharing of ideas". This phrase draws attention to the inherent tension that underlies copyright law: the need on the one hand to protect the rights and encourage the creativity of authors and publishers, balanced on the other hand by the need for society to benefit from the ideas and knowledge incorporated within publications, whether these are in printed, audio-visual or electronic form. Librarians have always been firm supporters of copyright, perhaps because this balance is reflected and paralleled in the inherent role of librarians – to collect and preserve published work for present and future generations, and to make this available to everyone who needs it.

It is said that good copyright law pleases no-one. This is because, in attempting to protect the rights of both copyright owners and copyright users, and to maintain the proper balance between those rights, legislators must use words to express general concepts that will then be interpreted to fit specific instances. In some areas, New Zealand's Copyright Act 1994 achieves precision and clarity. But unfortunately, in too many places the Act is written in a way that defies understanding (try reading s.4, which attempts to define the meaning of "cable programme service" and related terms), or which is plain bizarre (s.44(2) allows multiple copying of the whole of a work for educational purposes, provided that "the copying is not done by means of a reprographic process" – i.e. is copied by hand), or which is less than helpful (for example s.43, copying for research or private study, which implies that the only way you can determine what is "fair dealing" is to go to court, or s.51, which allows librarians to copy an undefined "reasonable proportion").

Nevertheless, New Zealand citizens (including librarians, and the users of libraries) are required to comply with the law, and fortunately help is available – librarians can obtain opinions from their own legal advisors, consult LIANZA's *The Copyright Act 1994: Guidelines for Librarians* (http://www.lianza.org.nz/copyrightact.htm), visit websites which provide information and interpretation of copyright law (for example http://www.waikato.ac.nz/copyright/), or seek the views of Copyright Licensing Limited (http://www.copyright.co.nz).

In her Soapbox article in the last issue of *Library Life* (http://lib.cce.ac.nz/cutenews/example2.php?subaction=showcomments&id=1107418215&archive=&start_from=&ucat=1&) Carmen Vietri, Business Development Manager of Copyright Licensing Limited, makes a number of points with which we will probably all agree – for example, that copyright law complements the objectives of the information profession, by providing an incentive for creators to create and for publishers to invest in publishing. Carmen also suggests that "the general public" are not too concerned with copyright – which is probably true. But the conclusion can not be drawn from this that librarians do not care about copyright, or

that “Many of the activities of New Zealand libraries compete with a copyright owner’s market for their work”.

Carmen raises the question, “how far can the library provisions of the Act legitimately be used by libraries to justify their copying practices?”, and disagrees with one paragraph (11.2) of the LIANZA Copyright *Guidelines*, which states that “While only one copy may be supplied to each person, an individual may request on behalf of the named members of a group that a copy be supplied to each of these named people”. This statement was included on the advice of the LIANZA Copyright Task Force’s legal advisor. In support of her contrary view, Carmen refers to the Judgment of Salmon J. dated 22 February 2002 in the case between Copyright Licensing Limited and the eight New Zealand Universities. But that Judgment, in paragraph 103, gives the Judge’s view that “it is implicit that a request must be made by, or at least on behalf of, the person wanting to use the copy for the purposes of research or private study”. The phrase “or at least on behalf of” would seem, in my opinion, to support LIANZA’s view.

Carmen claims that rights-holders are “concerned that document delivery services offered by libraries are an unfair abuse of the copyright provisions” as set out in s.51 and 52 of the Act, which deal with copying by librarians of parts of published works and of articles in periodicals. In particular, she expresses the concern of rights-holders that libraries record bibliographic data in databases, and then communicate the information to their customers in a variety of ways – “for example, on the Internet, on company intranet sites, or by regular ‘current awareness’ bulletins circulated electronically or in hard copy. These activities market the works to customers, encouraging them to search or browse the database and request photocopies from the library”. Carmen then quotes Kathy Sheat, CEO of Copyright Licensing Limited, as saying that “These practices have a devastating effect on the legitimate market for works, which includes the sale of print editions and the licensing of online and electronic editions of works”.

There seems to be considerable confusion here. First, all libraries create databases of their holdings of books and related resources, and of the journals to which they subscribe. These databases, called Catalogues, are completely legal. One of their purposes is indeed to “market the works to customers, encouraging them to search or browse the database”, but certainly not to encourage customers to “request photocopies from the library”. Second, some libraries create databases of citations to journal articles relevant to their clients, while others subscribe to very expensive indexing and abstracting services which serve a similar role. Again, the purpose of these can be defined in marketing terms, and certainly libraries encourage their users to search and browse these databases. But again, the purpose is not to encourage customers to “request photocopies from the library” – although librarians will do so if requested, as they are explicitly permitted to do under the terms of s.52 of the Act. Third, it is difficult to see how the supply of copies of periodical articles to library users in accordance with New Zealand copyright law can have “a devastating effect on the legitimate market for works”. And fourth, librarians are well aware of the requirement that “where any person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than a sum consisting of the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library” (s.52(2)(c)).

Later in her article, Carmen refers to international copyright conventions, to U.K. law, and to the policies of the British Library. But New Zealand citizens (including librarians) are subject to New Zealand copyright law, as interpreted by the Courts, and not to the laws and practices of overseas jurisdictions. Provided that they comply with the requirements of New Zealand legislation, librarians are completely within their rights to market their informational resources to their customers and to provide copies within the restrictions of the Copyright Act.

Carmen concludes her article by referring to copyright licences available to New Zealand libraries and organisations through Copyright Licensing Limited. Many libraries, particularly those in the educational sector, already have licence agreements with CLL, Screenrights and other RROs, which they value for extending the often restrictive provisions of the Copyright Act and allowing more generous conditions for copying from copyright materials than the Act permits.

Through these partnerships, libraries and RROs seek to maintain the balance that copyright law strives to achieve, for the ultimate benefit of authors and copyright owners, of library users, and of society as a whole.

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