

Copyright News from the United Kingdom

Toby Bainton, EBLIDA Expert Group on Information Law

Basic current situation

Our basic law is the Copyright, Designs and Patents Act 1988 http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1 which was revised, in order to adopt the Copyright Directive, by the Copyright and Related Rights Regulations 2003 http://www.opsi.gov.uk/si/si2003/uksi_20032498_en.pdf.

Important new review of copyright law

EBLIDA members in the UK are pleased that our government is proposing some small changes to the law which could have a very helpful effect. The reasons for the decision to make changes are a little mysterious. Governments do not usually like to alter their copyright laws in small ways. The immediate reason for the changes was a government review of the law, carried out in 2006 by a committee chaired by Andrew Gowers, a journalist http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_biography.cfm.

The most interesting feature of the review is that it was begun by our finance ministry (Her Majesty's Treasury), not by the government department responsible for copyright (which at the time was the Department of Trade and Industry).

Because of its origin in the finance ministry, the reviewing committee acted very independently and seemed more willing to consider changing the law. It is possible to believe that some very high level lobbying of the government took place to get the review started. Not long before the government review, a team of influential people, including Lynne Brindley, Chief Executive of the British Library, had been working on the Adelphi Charter <http://www.adelphicharter.org/> which proclaims the principles of copyright and suggests that they may have been forgotten in recent legislative reforms.

A special consultation was announced last month about the points in the copyright law review mentioned below. Librarians will meet the government officials in February to discuss these topics, and we have the chance to send in written comments too.

Essentially this part of the review concerns changing the exceptions to copyright in the UK.

Changing the UK's exceptions to copyright

Here are the proposed changes to the UK's copyright exceptions.

Education

We have an exception allowing the *recording and showing of television and radio programmes to students* who are physically present in a school, college or university. The government now asks (1) "should this exception also apply when the students are some distance from the school, college or university?" And (2) "should the exception also cover programmes available 'on-demand'?"

Clearly, we should be very happy if the answer to both these questions is 'yes'. The reason for question (2) is that the BBC has begun to mount a pod cast on its website of many of its programmes, so that if you miss the programme when it is broadcast, you can download it later from the website. In current UK law, it is legal to record the broadcast programme for educational purposes, but illegal to record the *same* programme later via the website.

Another current exception allows educational institutions to *copy extracts from published works*. (Actually this exception also makes clear that *if a licence is available from a licensing body*, such copying must be done under the licence. And that is how the copying is generally done in fact.)

The government's questions now are (3) should it be possible to scan and deliver such extracts electronically to students, and (4) should the exception be extended to cover not only text, drama, and printed music, but also film, sound-recording and broadcasts? Naturally, the library world is keen for these extensions to the exception, though we imagine that the same link would be kept with licensing. In other words, the copying would be permitted by law; but if a licensing body had made a licence available to cover the copying, the licence would have to be paid for.

Private study and non-commercial research

A closely-related exception allows 'fair' copying of text, artistic, dramatic and musical works, when it is done in the course of someone's private study or non-commercial research. The government is considering extending this exception to other forms of material, for example film. The government appears very nervous about this idea, but libraries are very happy with it.

Libraries and archives

An existing exception allows libraries and archives to copy text-based material in order to preserve it. The government proposes that copying of sound-recordings, films and broadcasts should be allowed for the same reason, and that the copy the library makes need not be a single copy, but might be more than one copy.

Of course libraries are very much in favour of these sensible suggestions. Restricting the 'preservation copy' to one copy only is not practicable these days. We also agree with another proposal from the government, namely that museums and art galleries should be allowed the same exception.

An annoying feature of the government's consultation is that it largely ignores the existing exception allowing *libraries to make copies on behalf of a person who is doing private study or non-commercial research*. If the 'private study' exception is to be changed, for the benefit of students and researchers, it is essential, we think, for the same change to be made to the exceptions for libraries, so that libraries can make copies on behalf someone else who is entitled to the exception.

Private copying

Like Ireland, the United Kingdom has no exception allowing copying for private purposes (except for private study). A new proposal would create an exception allowing people to copy a work they lawfully own, into another format, so that they can play it back on a different machine (which they must lawfully own).

Librarians have no official opinion on this exception, which seems very sensible. At present, most UK citizens have broken the law by copying something from one format to another for their private use.

Parody

Our government is suggesting a new exception for parody. At first, librarians saw no real official interest in this. But our colleagues in art galleries and museums told us that if, for example, a painter paints a picture which parodies the style of another artist, the painter infringes copyright. And if an art gallery or museum displays the picture, it is guilty of secondary infringement of copyright.

By the same argument, if an author writes a book in the style of someone else, the book may infringe copyright; and if a library lends the book, it may be guilty of secondary infringement.

So librarians will support the idea of an exception for parody.

Other questions

The most important of the government's additional questions is the one about 'remedies' when technical protection

measures prevent people from using an exception to copyright. In theory, if a person (or a library) is entitled to use an exception, and if a technical protection measure prevents the use of the exception, then the person (or library) can appeal to a government minister. This is a ridiculously impractical feature of our law, which has never successfully been used. We intend to use the consultation process to protest about technical protection measures - how they can interfere with exceptions, and how, in practical terms, the user can do nothing about the interference.

From the Secretariat

EBLIDA Executive Committee meeting, Bordeaux, 29th February – March 1st 2008

The EBLIDA EC held its first meeting of 2008 in the main public library in Bordeaux on the last day of February and the first day of March.

On the morning of the 29th the EC had the opportunity to meet with representatives of a number of French library associations and discuss topics of common concern and interest.

The afternoon of the Friday and morning of the Saturday were spent on a number of issues, not least the establishment of the new EBLIDA expert groups and the EBLIDA Knowledge and Information Centre, which will also be on the agenda for the Council Meeting in May.

New EC Member

From March 2008 António José Pina Falcão will replace Helena Patricio as the Portuguese representative on the EBLIDA Executive Committee. We would like to take this opportunity to thank Helena for all her work for EBLIDA and her invaluable contribution to many discussions on the committee and at the same time welcome Antonio back on to the EC.

EBLIDA News

The publication frequency of EBLIDA News was discussed at the EBLIDA EC meeting in Bordeaux and it was decided that from 2008 the newsletter will be published monthly rather than every second week.

Annual Council Meeting 2008

As previously announced EBLIDA will hold its Annual Council Meeting at the Peace Palace Library in The Hague on the Thursday 8th of May 2008, followed by a joint conference with the Dutch Library Association and the Dutch Library Umbrella in Amsterdam on the Friday 9th of May.

The registration deadline is the Friday 18th of April and the agenda will soon be available online.

We hope to see many EBLIDA members at these two events, where there will be lots of opportunity to meet and discuss with colleagues from all over Europe.