

## Copyright, computers, dictionaries and translations

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### INTRODUCTION

Before addressing the subject covered by the title of this paper, I should mention that the word 'copyright' is not susceptible of exact translation. This is because the notion of copyright under the English-based common law is that of a right, attached to a certain type of work, to restrict other people's use of that work. The nearest equivalents in France, Germany, Italy and Spain (*droit d'auteur, Urheberrecht, diritto d'autore* and *derecho de autor*) denote an *author's* right, the justification of which is the natural right inherent in every human being to control the product of his or her skill and labour. The main significance of this difference is that, under Continental legal systems, if there is no author there is no author's right; types of work which are not regarded as having an author, such as broadcasts and cable programme transmissions, are not therefore protected by the law on author's rights. In the United Kingdom, in contrast, the word 'copyright' vests in all types of work, whether they are capable of human authorship or not.

I should also add that copyright is not dissimilar to AIDS. First, more people are affected by it than they realise. Second, copyright problems can spread quickly and soon grow out of control if adequate precautions are not taken. Third, copyright – like AIDS – has as yet no known cure, though many have sought it!

The rest of this paper will be divided into three segments dealing, respectively, with copyright, translations and dictionaries.

## COPYRIGHT

What can most safely be said about copyright is that it is the subject of monumental misconceptions among laymen – and even among many lawyers. I shall now list a selection of basic, vital points which should always be borne in mind when dealing with copyright problems:

*You get copyright automatically.* You don't have to apply for it, or deposit anything, in order to enjoy copyright. It subsists by virtue of the creation of the entity in which it is vested. Nor do you need to put a © or any other sign on a work as a precondition of it being copyright-protected.

*Once you've got copyright protection, you've got it pretty well everywhere that it matters.* Over 100 countries are signatory to the Berne Convention or the Universal Copyright Convention, each of which requires that member states accord the same level of legal protection to foreign works as they do to their own.

*Copyright only protects you against copying or otherwise abusing your own work.* If a person independently and without reference to your own work creates his own, he is not infringing your copyright – even if your work and his are identical.

*Copyright protects form, not content.* In other words, an idea cannot be the subject of copyright – but the words or other indicia in which that idea is embodied are themselves capable of protection.

*Copyright does not last forever.* Most countries allow for protection which lasts until the end of the fiftieth year following the author's year of death. Shorter terms are given for works which are not obviously 'authored', such as sound recordings and films.

*The continued existence of any physical object is irrelevant to the subsistence of copyright.* If a painting or a manuscript is destroyed, copyright continues to exist regardless.

*Copyright does not depend upon the mere fact of publication.* Thus unpublished works are also copyright-protected. However, there are some situations in which published and unpublished works are treated differently, and some species of work (e.g. typographical arrangements of works, broadcasts, cable programmes) effectively depend upon publication for their legal protection.

*Infringing works can still be copyright-protected.* This is because, when one person edits or revises another's work, the first author still has copyright in the underlying work while the editor or reviser has copyright in his or her 'value-added' contribution. Neither of the two can exploit the revised or edited version of the work without the other's permission.

## COMPUTERS

The position of computers has only recently become clear under copyright law in most countries (although the US had special provisions in its copyright law to deal with computer programs as long ago as 1976). The current UK law, the Copyright, Designs and Patents Act 1988 purports to be the most modern law on the subject; it is certainly the longest and by far the most complex. Its provisions have a number of significant rules to govern copyright and computers. A selection of these provisions follows below:

- Works protected as ‘literary works’ under the 1988 Act include computer programs and works created by means of a computer, even if there is no apparent human authorship in them. Databases and databanks are assumed to be literary works (the term includes ‘any table or compilation’), but the Act does not specifically mention them.
- The storage of a literary work in a computer without the copyright owner’s permission is an infringement of copyright.
- Unauthorised use of an electronic databank, or indeed of a computer program, is unlikely to be regarded as an infringement of copyright, unless the act complained of can be viewed as the making of a copy or as a performance. The analogy is made between computerised information and books; if it is not an infringement of copyright to pick up someone else’s book and read it, the same should be true of unauthorised browsing through computer files.
- Transmissions of data by an online data system may themselves be protected as ‘cable programmes’ under section 7 of the 1988 Act.
- Where a work exists in electronic form, back-up copies can lawfully be made by the purchaser of a copy of that work if the copyright owner explicitly or implicitly licenses such copying – but if that purchaser subsequently sells the purchased copy to another, the back-up copy immediately becomes an infringing copy if he or she does not also pass that on to the purchaser.

## TRANSLATIONS

The translation of a work from one language to another has always caused certain conceptual difficulties for copyright lawyers because, if it is to be regarded as an infringement of copyright, it is clearly an exception to the basic principle that copyright protects *the form*, not the *content*, of a work. Some points pertinent to the law of copyright and translation are:

- The rendering of a work from one language to another is an infringement of copyright. This includes translation from one computer language to another as well as renditions from object code to source code, etc.

- A translator's copyright is different from the copyright in the work translated. They vest in different people and expire at different times (unless the original author and his translator die in the same calendar year).
- Translation applies also to the field of visual images. A rendering from 2- to 3-dimensional form, or vice versa, is also a form of translation which will be regarded as a copyright infringement if it is done without permission.

## **DICTIONARIES**

I use the term 'dictionary' here for the sake of simplicity. Terms such as 'databank', 'database' and 'termbank' are not found in the 1988 Act, which regards such reference works, together with encyclopaedias and dictionaries, as 'literary works'. About this species of literary work the following may be said:

- If such a work has been written by more than one person and the contributions of individual authors cannot be separated, it is a work of joint authorship and copyright expires at the end of the fiftieth year following the death of the longest-lived author.
- If a dictionary or similar work is made up of numerous entries which stand as separate literary works, the person who puts them all together is also entitled to copyright in a literary work – even if he should not have written anything himself. This is because there is a separate copyright in a 'compilation'.
- The taking of fragments of another's work for inclusion in one's own work is an area of substantial uncertainty. While the taking of a substantial part of another's work is regarded as a copying and therefore as being an infringement if done without permission, it is a question of fact to be decided in each case as to whether that which has been taken is a substantial part.
- A single entry in a dictionary is itself likely to be separately protectable as a copyright work, if it is not unduly brief. The Court of Appeal in the United Kingdom has indicated that a single word is unlikely to be treated as a work in its own right.
- Each time a dictionary is revised or updated, the revised version becomes a new work with its own claim to copyright protection.
- The United Kingdom's new Act, in section 60, makes special provision for the copying of abstracts of articles in the fields of science and medicine.

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