Copyright and licences

Only one thing is impossible for God: to find any sense in any copyright law on the planet...
Mark Twain, 1903

Moyra McAllister
Advisor, copyright
moyra.mcallister@alia.org.au

The *Copyright Act*

The application of the *Copyright Act* 1968 to print publications is relatively clear, but there are many factors to be considered when we look at materials in digital formats.

To recap the situation for print, you are permitted to make a copy of a work for certain purposes such as research or study, provided that it is a 'fair dealing', ie one journal article or a chapter (or 10 per cent) of a book. Libraries may make fair dealing copies at the request of a user and for interlibrary loan purposes.

Since the passage of the *Copyright (Digital Agenda) Amendment Act* 2001 these copies need not be in hardcopy form, but may be scanned and transmitted electronically (but they may not be stored in digital form).

The Digital Agenda amendments also made it permissible to copy from electronic publications, with similar restrictions to those noted above – the 10 per cent rule is applied to the number of words in an electronic publication, rather than to the number of pages.

Licence agreements

In the last 10 years there has been an exponential growth in the number of databases and collections of journals and other publications in electronic form. Libraries frequently license these collections from publishers and agents rather than purchasing them outright. These licences are a form of contract.

Under current Australian law, contract law takes precedence over copyright law, and activities, which would otherwise be permitted under the *Copyright Act*, are prohibited by the terms of some licence agreements. For example, copyright law permits (in certain circumstances) the copying of a chapter of a book published in digital form, but the licence under which the library has acquired the 'e-book' may prohibit such copying.

Many licences restrict the use of the licensed material to specific categories of users, such as registered students, and to precise physical locations. They may prohibit copying for interlibrary loan purposes. Check your contracts!

Even in cases where a licence does not specifically prohibit copying, it may be physically impossible because technological protection measures (TPMs) are in place. TPMs are devices built into software and hardware designed to prevent copying.

The increased availability of electronic publications has changed the way in which librarians can serve their users' needs. Librarians can, and should, take the initiative when negotiating licenses with publishers to ensure that the terms and conditions do not restrict rights that they, and their users, would otherwise have under the *Copyright Act*.

Licenses for electronic publications should not be allowed to restrict rights libraries (and their users) would have had under the Copyright Act.

You can find more information about licence agreements with examples of model licences on the ALIA website at http://alia.org.au/governance/committees/purchasing/links.html.

Shrink-wrap licences

The foregoing discussion has dealt with licences that take the form of written agreements between parties, but licences can take a number of forms and are often agreed to almost unconsciously. 'Click through' and 'shrink-wrap' licences are two examples. I'm sure we've all clicked the 'I Agree' button on an internet site to obtain access to the linked resources, whether they be software or documents but how many of us have (or have time to) actually read the terms and conditions? In the case of shrink-wrap licences, common on CD-ROMs and computer software, the licence is deemed to be agreed to when the package is opened, but the terms are often not visible before opening.

In 2002 the Copyright Law Review Committee (CLRC) conducted an inquiry into the relationship between copyright and contract law. The committee recommended, among other things, that the Copyright Act be amended to disallow licence agreements that limited certain activities permitted under the Act. To date, the government has not acted on this recommendation.

Blanket licences

To complicate matters even further, there are the licences administered by the collecting agencies, such as the Copyright Agency Limited (CAL), Screenrights, and AMCOS (for music). These licences permit the licence holder to make copies of works without having to obtain permission from each individual copyright owner. They fall into two categories, statutory and voluntary. Educational institutions and government departments are required by law to purchase statutory licenses. Voluntary licences may be acquired by other organisations to permit them to copy for certain purposes. Examples of CAL licences are available at http://www.copyright.com.au/licensing.htm.

Confused?

One hundred years after Mark Twain made the statement with which I started this column, copyright law still doesn't seem to make much sense. It has always been a compromise between the rights of the copyright owner and the user's wish to access copyright material. The rapid technological developments of the last decade have made that compromise more difficult to achieve. But we keep trying. ■