

Biographies

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Richard Whittle is a Senior Lecturer at Sheffield Hallam University. He is the creator of LawSync and has been an expert advisor on disability law and policy since 1998. He has advised a variety of commercial, governmental and non-governmental organisations in this capacity and regularly presents training seminars to the judiciary on disability and equality issues at the Academy of European Law in Trier, Germany.

Peter Griffith is a Senior Lecturer at Sheffield Hallam University. He is a founding member of the LawSync team and has a particular research interest in religion and belief equality law.

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Clarifying Copyright

Abstract: Librarians have an important role to play in providing guidance and assistance to their organisation on copyright compliance. This task is becoming ever more challenging as licence conditions and copyright law are refined and library users want to re-use information in a wider variety of ways. In the following article Dunstan Speight and Jennifer Darroch of Berwin Leighton Paisner LLP discuss a recent pilot project to produce more readily accessible copyright guidance. Although the examples below relate to newspaper copyright issues and are in the context of a City law firm, it is hoped that the ideas will be of more general application.

Keywords: law firms; copyright

INTRODUCTION

It has long been a challenge to provide guidance on copyright compliance, but the difficulties have intensified in recent years through a conjunction of trends in licensing, technology and in the way law firms use information. In preparing our copyright guidance review at Berwin Leighton Paisner we began by reviewing these trends, as a way of understanding the tensions between licensing practice and the way our library users wish to use information.

1. Trends in licensing news sources

Licensing terms and conditions do not remain static but are regularly refined to clarify what is and is not allowed under the licence. Often these revisions will result in more restrictive controls over how material can be copied. Copyright guidance needs to be amended to ensure that it reflects the current terms and conditions.

A number of licences now offer greater flexibility, allowing organisations to negotiate agreements licensing different levels of content and types of usage, for different levels of

fees. The Newspaper Licensing Agency licence is a good example of this, where the licence can be structured to include circulation of press articles from press cuttings agencies and can be varied by content (e.g. UK and/or foreign newspapers). This is a positive trend, but it is time-consuming to administer, as it is necessary to monitor copying within the organisation prior to negotiating relevant terms. During the course of the contract it is still necessary to keep an eye on usage and notify the licensor of any significant changes in copying practice so that the licence can be amended.

A major factor complicating copyright compliance is the fact that some publications are now governed by a number of different copyright provisions. A newspaper such as the Guardian is a good example of this. Content from the Guardian appears in the printed newspaper, the Guardian website and online via news aggregator databases such as Nexis. Rights to copy or re-use this content will be governed by a NLA licence, terms and conditions on the Guardian website and the Nexis terms and conditions. These licences will refer to, and need to be read in conjunction with, copyright legislation and case law. Copying might be forbidden for one of these formats, but permitted for others.

For material not governed by licence arrangements, copyright law will govern how material can and cannot be used. This is a fast-changing area of law and needs to be monitored carefully. For instance, the decision of the Court of Appeal in the Meltwater case in 2011, although primarily concerned with the activities of press agencies, confirmed the High Court's ruling that copyright may reside in the text of a newspaper headline and not just in the full article. A business wishing to provide a link to the article in the form of a headline with a hypertext link to the full article would therefore require a licence from the Newspaper Licensing Agency. (This case is currently being appealed to the Supreme Court).¹

2. Trends in technology

Trends in technology constantly alter the way we use online data. As these technological developments mature so do people's technical skills. Ten years ago, relatively few people would have been able to produce a high quality digital copy of an article from a newspaper and circulate it as an email attachment. Now this is a facility which is taken for granted.

Similarly, it is not long ago that relatively few staff in a law firm would have been experienced in copying and



Dunstan Speight



Jennifer Darroch

editing digital images for use in powerpoints and other presentations. The combination of technological developments and increasing IT literacy has created an environment where it is so quick and easy to reproduce material that users may not give a moment's thought to the copyright implications of their actions.

3. Trends in law firm use of information

Changes to the way law firms operate also create their own copyright challenges. Lawyers are expected to have a greater commercial awareness, leading to a greater flow of business intelligence round the firm. This raises particular issues for news sources and copyright compliance.

In today's highly competitive business environment, lawyers are under increasing pressure to offer additional services to clients as a way of securing or retaining their business. As many law firms have extensive legal and business information resources and alerting services, these could be of potential interest to clients. It is vital that lawyers are aware of the restrictions on circulating such materials.

There is also an increasing demand for content from news and legal publications to enhance the message conveyed by a firm's website or powerpoint presentations. News stories, market data or images are all invaluable at grabbing attention and reinforcing a message. This is true now more than ever before, in an age of increasingly sophisticated professional marketing.

STRUCTURING COPYRIGHT GUIDANCE

The combination of these factors is creating an increasing demand for copying but a minefield of conditions restricting what can or cannot be done.

At Berwin Leighton Paisner, the Library provide guidance on complying with copyright through a number of different channels. Notices are placed next to photocopiers detailing copyright restrictions and prohibitions, copyright warning notices are placed on materials where copying is prohibited or restricted, and staff in the Library and IP department may be asked for guidance on copyright matters. Our main repository for copyright guidance, however, is Infocentral, the firm's intranet site.

The difficulty in presenting copyright guidance on Infocentral lies in balancing an increasing volume of licence terms and conditions with the need for targeted advice.

The guidance needs to make sense of the various sources of rules governing copyright permissions. These include copyright legislation and case law, general licences (such as the Newspaper Licensing Agency and Copyright Licensing Agency licences) and the terms and conditions for individual sources. It also needs to point staff to the specific provisions which relate to the precise circumstances of their request. These include considerations such as

- what is the material to be copied?
- who wants to copy the information (is it an employee of our UK offices or an overseas office)?
- to whom do they wish to send the information (is it within the firm or to a third party)?
- how many people will receive the copied information?
- what use will be made of the information? (Is it to be a one-off request, a current awareness alert, to be posted on an intranet or extranet site or included in a powerpoint presentation?)

Our previous copyright guidance laid down a number of general principles and more detailed commentary on specific licences. The disadvantage of this approach was that the terms and conditions are so detailed for some sources that it is unreasonable to expect busy lawyers to read through them, every time they have a copyright query. This style of presenting copyright information also makes it difficult for librarians answering copyright questions, as it is often helpful to be able to cite the relevant licence provision which permits/prohibits a copyright request. This is particularly important if the librarian is explaining to a library user why a particular item cannot be copied or republished.

The key driver behind the attempt to improve our copyright guidance was to find a way of presenting information related to the precise circumstances of the request and eliminating all the terms and conditions which were not relevant to the enquiry. In our pilot copyright project, we have looked at the copyright conditions surrounding our news sources and how we might produce clear guidance.

Our solution was to present a series of questions on our intranet copyright pages to narrow down the issue. As the user answers each question he is taken through to another page with further questions narrowing the search. As the user moves through the screens the trail of previous answers is displayed at the top of the screen, indicating how the request is being narrowed, e.g.

Internal – Electronic – Publishing to the firm's intranet

The questions are as follows:

1. **Audience:** is the copy to be made available within the firm or externally?
2. **Format:** is the material to be copied in print or electronic?
3. **Purpose:** what use will be made of the copy, e.g. is it a one-off request or a current awareness alert?
4. **Source:** what is the material to be copied?

1. AUDIENCE

Is the material for:

External use Internal use

There is usually a fundamental distinction in the terms and conditions of a copyright licence between what can be copied and distributed within and outside the firm. Licences will often permit a small amount of copying to be provided to clients of the firm on an *ad hoc* basis, but will not allow copies to be made available on a systematic basis. Increasingly, licences will not allow any copying to be made available to third parties.

It is important that this distinction is clearly conveyed in any copyright guidance, hence the desirability of having this as the first question that the users have to answer. Once the user has chosen one of these options, he will be presented with an option relating to the format of the original.

2. FORMAT

Internal use

Do you have:

Print originals Electronic originals

This second question helps simplify the final guidance the lawyers receive. For certain sources, notably news publications, there are different terms and conditions depending on whether the original to be copied is in print or online. This intermediate question is a useful means of excluding irrelevant material in the final guidance.

3. PURPOSE

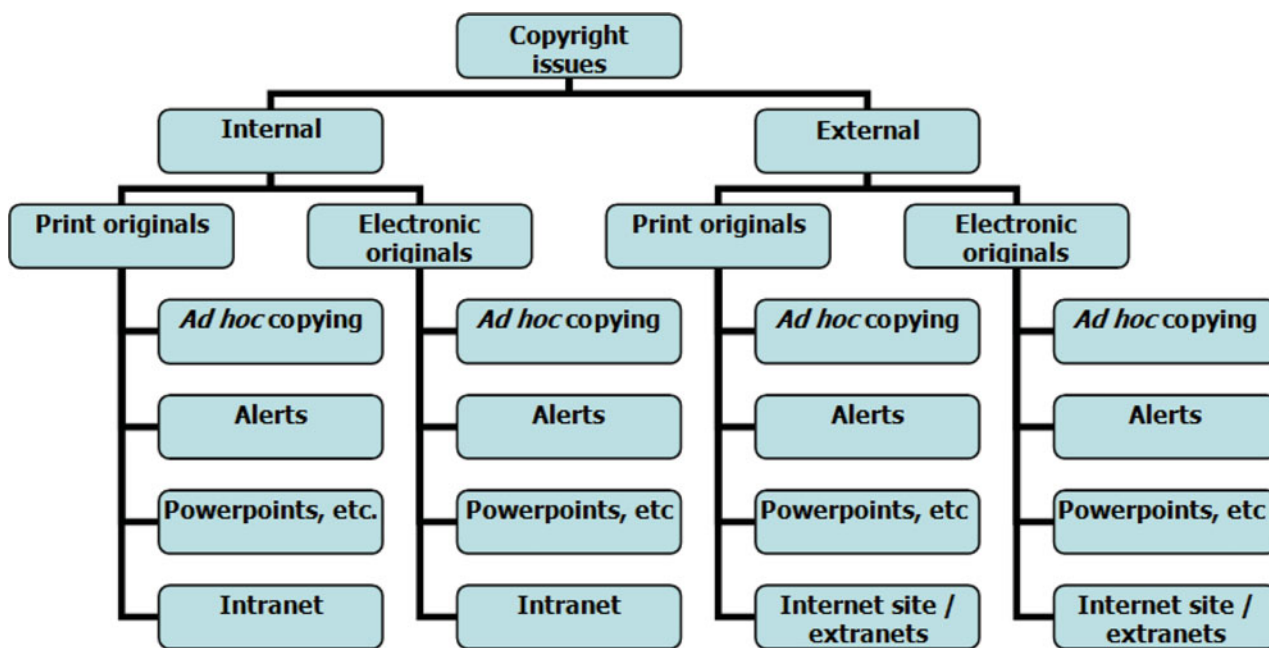
Electronic originals

Is this for:

Ad hoc copying Alerts

Use in powerpoint/handout Publishing on the intranet

It is important to distinguish the purpose behind a request to copy material, as many licences will draw distinctions between different types of use. Prompting the users to consider the purpose of the request is important in conveying the message that copyright licences do not offer *carte blanche* to reproduce material in any format. It is also a useful reminder that copyright is still an issue when adding information to a powerpoint or a set of handouts.



Once the first three questions have been answered, the copyright enquiry has been narrowed down as above.

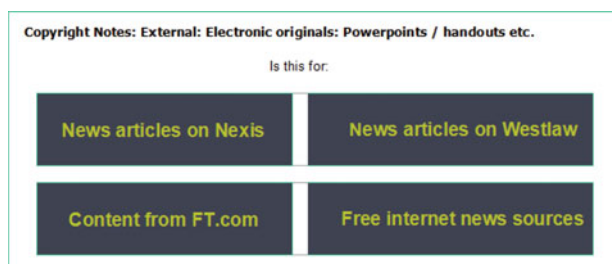
When the user chooses the form in which he wants to use the information, e.g. *ad hoc* copying, he is linking through to a new intranet page, containing guidance only for that type of copying.

The advantage of having this information on separate pages is that users cannot accidentally access the guidance for different types of copying without realising it. (e.g. having clicked through to the information on *ad hoc* copying from electronic sources for external clients, they cannot see the rules relating to internal clients without having to navigate back through the questions).

Readers can, however, easily browse the options for copying permissions for other sources. This can be useful in the context of copying news sources as, in many cases, the content is available on different platforms with different copyright permissions. For instance, it might be that the Nexis and Westlaw licences do not permit the user to copy FT content in the way he wants, but the FT licence might offer a solution.

On the Sources page, therefore, the user is presented with options for different sources, but these are just links embedded within one page.

4. SOURCE



By this stage, the user will have narrowed the circumstances of his request so that he is presented only with the information relevant to his query. In many cases, the guidance will be very straightforward, as in the example below relating to the licence conditions governing Nexis news alerts being sent outside the firm.

Nexis news alerts

Our licence does not allow us to forward these alerts outside the firm. [See clause 2.1 of the Nexis terms and conditions]

In addition to providing the summary guidance, we also provide a reference and hypertext link to the relevant terms and conditions for anyone who wishes to verify this for himself.

The copyright guidance is not always so succinct and licences such as the FT.com terms and conditions provide a number of options for copying.

It is also worth pointing out to lawyers that, in some cases, although the firm's licences do not permit certain usage of information, there is always the option of contacting the rights holder directly for permission to re-use material.

This is particularly relevant in the context of adding news content to powerpoint presentations, as in the example below. Most licence terms do not cover this, but in certain circumstances, publishers will grant permission for us to include extracts. Where the library has requested this in the past, the copyright page on Infocentral is a logical place to summarise any useful guidance we can give, based on previous experience:

Content from FT.com

The FT will only permit quotes of a maximum of 30 words copied verbatim from an FT article. You must also acknowledge the FT as the source of the quote. [See *FT.com copyright policy*]

The permission to quote 30 words applies to the text only. If you wish to include text forwarded as it appears on the website, using the FT's colours, fonts and logos, then you will need copyright permission from the publisher, as copyright exists in the formatting, as well as the content of the information.

When contacting the FT to ask permission it is helpful to provide the following information:

- Title and date of event
- Approximate number of attendees
- What exactly is to be copied
- Whether handouts will be provided or if the material will just appear in the PowerPoint

Copyright permission must also be sought before reusing any images, tables or markets data from the FT website. In many cases, the FT will be republishing this under licence and will not be able to give us permission to use this directly. They will, however, be able to provide contact details for the rights holder.

If you have questions relating to FT copyright issues, please contact [the Library](#)

Offices covered by the firm's FT licence: ...

The process of classifying the different types of copyright requests and then checking the licence provisions relevant to each' has also proved a useful discipline in gaining an in-depth knowledge of the terms and conditions. The act of re-processing information in some way is always more effective in helping one to assimilate it, than simply reading a document.

The exercise has also been valuable in enabling one to consider copyright questions before they arise in the course of work and require an immediate answer. The process also enables one to spot apparent ambiguities or omissions in the licence terms and clarify these with the licensors.

Now that the firm has completed the pilot project on newspaper copyright, we are incorporating copyright guidance on other materials (books, journals, published precedents, internal knowhow and maps) into the structure.

Once the guidance has been completed, the Library will promote it via our intranet site and at internal meetings. In addition to attending the legal work group meetings, we will also be introducing the guidance to support departments such as Marketing and Reprographics, as their work often involves copyright issues. They too should find this guidance helpful when responding to requests as many staff in these departments will know the basics of copyright compliance, but may not be aware of all the subtleties of the licence conditions.

Lawyers and business services staff recognise that copyright compliance is a vital risk issue, but the increasing complexity of copyright licences have made this a difficult topic to tackle in the past. Our intranet guidance tool offers guidance that is practical (it is targeted to specific questions), authoritative (it links to the relevant terms and conditions) and offers solutions where possible (e.g. by indicating what is allowed and what may be negotiated). As such, we are confident that the way in which we have structured our copyright guidance will provide a valuable addition to the firm's knowledge bank and be positively received by our users.

NEXT STEPS

The pilot project has demonstrated that it is possible to create a logical structure for copyright guidance. It provides succinct guidance on specific copyright questions with citations and links to the relevant terms and conditions for people who want to double-check the guidance.

Footnote

¹ Newspaper Licensing Agency Ltd v Meltwater Holding BV, [2011] EWCA Civ. 890

Biographies

Dunstan Speight is the Library Manager at city law firm Berwin Leighton Paisner LLP. He is Chair of the LIM Editorial Board and Chair of the City Legal Information Group.

Jennifer Darroch is a Research Librarian at Berwin Leighton Paisner LLP where she specialises in providing information to the firm's corporate finance teams.

The Library Service at the Berwin Leighton Paisner LLP won the Halsbury's Award 2011 in the category of Best London Legal Information Service in the Commercial Sector.