

Letter to the Editor

I have just seen the review of my book. *Copyright: interpreting the law for libraries, archives and information services*, published in *Education for Information volume 23 issue 4 pages 259–260*, and which was written by Charles Oppenheim. I am concerned that a number of points that he makes are factually incorrect and am providing a summary of the major points refuting his claim that my understanding of the law is wrong.

Whilst I would defend anyone's right to make critical comments about a published work (I am a reviewer for several journals myself) I do feel that to have made such a negative recommendation based on inaccurate interpretation is most disturbing.

Below is a summary of the major points which Oppenheim makes about the book which I consider to be inaccurate or incorrect. The book is arranged in a Q&A manner and comments below relate to specific answers to questions which Oppenheim challenges.

Answer 38. Bequests. The law is specific in that a bequest of unpublished material carries with it the copyright unless stipulated otherwise. This caveat appears in the answer given. See s.93 of the Act.

Answer 48. Despite the statement made by Oppenheim the actual words in the Act state "the owner. . . has the exclusive right to do acts specified in Chapter II. . . ." S2(1). As this is not a legal textbook **my** view is that this is still the best way to present copyright as what is said is consonant with the Act itself. Anyone looking it up as a novice would find it confusing to find different wording.

Answer 58. It is far from clear that databases are frequently covered by copyright. In s.1(a) of the Act it is clearly stated that copyright subsists in *original* literary, dramatic musical or artistic works. In s3A(2) it is clear that a literary work consisting of a database is original if, and only if, . . . the database constitutes the author's own intellectual creation. As most databases do not meet this criterion (being anonymous or the creation of many people) they may not be eligible for copyright protection.

Answer 119. I do not see the problem here. The advice is not conflicting but reflects the rather tortuous way the law is written!!

Answer 260. Oppenheim links this question to document supply when it is not meant solely for that purpose. The situation being discussed applies equally when someone wants something from the stacks or the request is from a remote user in a rural county library service. Careful examination of s.4(2)(a) in SI 98/1212 shows that no copy. . . that be *supplied* to a person and (ii) he has delivered to the librarian. . . There seems to me no reason why the user cannot ask for the copy but cannot receive it until the declaration form has been signed and delivered. Therefore I stand by my answer. Incidentally, this question and answer has appeared in every edition of the

book since 1990 and has never been challenged by anyone working in the copyright field before.

Answer 713. Clarification as to why the Legal Deposit Act has been misunderstood would be welcomed.

Moral rights. Answer 29 states how long moral rights last so I am not sure what the complaint is.

Answer 58 The merely trivial was a term used in a copyright case many years ago and was not defined by the judge. I put this in to show that the courts do not really help us with definitions. Similarly answer 97 refers to “reasonable extract” but it is well known that “reasonable” is an undefined term.

The comment on copying artistic works seems a bit unnecessary. The book is all about copyright works in copyright so any other statement would seem tautologies.

Finally the list of recommended books at the end does come with a warning about their being out of date so I see no problem there either.

The review did point out one or two minor errors of a typographical nature which will be corrected in future editions.

Graham P Cornish
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To The Editor, Education for Information

I am happy to let Graham’s comments stand except on Questions 58 and 713.

This doesn’t mean I agree with him on the other matters; rather, I feel the points are too detailed to enter into discussion.

On question 58, Clause 9 of the Act says the “author” means “the person who creates it”, and a “person” in law usually means either an individual or a legal person, i.e., a body corporate. Whilst I agree there is ambiguity in the wording of the relevant clauses in the Copyright Act, and that there are some legal experts who take the view of Cornish, the majority of texts I have read accept that many databases enjoy both database right and copyright. For example, in the recent British Horseracing Bureau versus William Hill case, legal commentators were surprised that BHB only pursued the case under database right, and not copyright. Perhaps BHB took the view that there was no copyright because of Cornish’s thinking, but the commentators clearly didn’t!

On Question 713, the (relatively) new Legal Deposit Act is nothing to do with “protecting and managing copyright” as claimed, but is to do with the deposit of electronic materials for the purpose of legal deposit.

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