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The GAELIC Human Resources Copyright Workshop, held at the Technikon SA, Florida, on 7 October 1999

The practical side of copyright – applications and administration

Denise Nicholson & Kotie de Bruin

The application of the Copyright Act, 1978, and its Regulations, is fraught with pitfalls.

Denise Nicholson of the University of the Witwatersrand and **Kotie de Bruin** of the Rand Afrikaans University give valuable practical advice on the daily application of copyright in two of South Africa's biggest libraries.

• This article is an edited and shortened version of their papers given at the GAELIC Human Resources Copyright Workshop on 7 October 1999.

Copyright licensing – trends at the University of the Witwatersrand

Denise Nicholson

Transactional licences

In 1992 the University of the Witwatersrand (Wits) opened a **Copyright Services Office** to assist the academics in obtaining copyright clearances for study material. Since November 1996, I have been responsible for the running of this office.

Wits has always applied for permission on a transactional basis, which means that one pays for the actual copies that one makes. In view of the many changes happening on the educational and electronic fronts, we have elected to continue applying for transactional licences at this stage.

We do not have to apply for copyright clearance for every single item we need to copy.

Fair dealing is permitted in Section 12 of the Copyright Act of 1978, as amended, which permits reproduction for the purposes of –

- research or private study;
- personal or private use;
- criticism or review; and
- reporting current events (in the print media, by means of broadcasting, or in a cinematographic film.

Regarding the **exemptions** provided for in Section 13 of the current Regulations, most of Wits' departments follow DALRO's (Dramatic, Artistic and Literary Rights Organisation) guidelines titled *Reprographic reproduction of copyright material for educational purposes*. Reproduction of material differs from faculty to faculty. Some publications in fact permit multiple copying for educational purposes (e.g. the *Journal of cell science*).

Many departments compile **course-packs**, mainly because of the large number of students, the lack of resources in the library, and/or the diversity of the subject.

Library stocks are rapidly diminishing. Regular cancellation of journal subscriptions occurs as a result of high price increases and the decreasing purchasing power of the Rand. **Resource-sharing** through consortia, e.g. GAELIC (Gauteng and Environs Library Consortium), has become necessary to ensure the flow of quality information and the maintenance of academic standards.

Ways of applying for transactional licences

Wits applies for transactional licences by means of the following:

- **Via DALRO**, which has mandates from local and international rights-owners to clear copyright. Copyright fees are payable on **all** requests to DALRO.

- **Via publishers.** Some South African publishers grant permission with reduced fees or no charge. However, some of them have recently given their mandates to DALRO, which means an increase of 80 % to 100% on copyright fees for some titles

  We apply directly to international publishers who are not part of DALRO's repertoire. These charge fees, obviously in foreign currency, but in some instances, they waive or reduce fees. For electronic requirements, we apply directly to publishers and / or database providers, as DALRO does not clear these.

- **Via government departments or the Government Printer.** Material on the Government Web site is in the public domain. Printed material (e.g. the *Government Gazette*) is cleared by the Government Printer at no charge.

- **Via newspapers, magazines, professional societies, associations or NGOs (non-governmental organisations.** Permission is generally granted free of charge, although some charge a nominal fee. We have reciprocal agreements with some professional bodies where information can be copied, without charge.

- **Via educational institutions, libraries, library associations.** There are generally reciprocal agreements and copyright fees are waived. Some charge nominal fees.

- **Via Webmasters.** In my experience, Webmasters are very keen for their material to be disseminated. As long as it is for educational purposes and not for commercial gain, they grant permission and waive costs.

- **Via authors.** If the copyright is held by the author (including out-of-print books), we have found that permission is usually granted without charge.

Acknowledgement must be given in all of the above categories.

Central Copyright Fund

In May each year, our Heads of Departments complete a budget form for Notes and Tutorials and for Copyright royalties for the following year. They calculate how many copies they plan to make during the next year. They budget per student – the amounts vary per course. The following year, these amounts are debited from the students' fees and are credited to our Central Copyright Fund.

Blanket licences

In contrast with transactional licences, where one pays for the actual copies made, one pays for the **potential** copies that **might** be made in the case of **blanket** licences.

There are still a number of concerns about the Blanket Licence in its present format. Although a reduction in the costs was negotiated, the Blanket Licence is still too expensive. With a blanket licence, every student would have to pay a copyright fee. This would mean that students who only need to copy within the ambit of fair dealing would be subsidising other students who copy more than permitted.

The blanket licence **excludes** many local and international publishers. It also excludes clearance of **electronic** material, as well as a number of print categories, e.g. illustrations, liturgical works, multimedia, newspapers, printed music, translations, adaptations, etc. In view of this, a blanket licence may not be an appropriate option in the electronic era.

Electronic licences

New methods of providing study material are being considered by Wits, e.g. digitisation of material and the creation of electronic course-packs. Access to electronic media and the Internet is a reality on our campus.

Under electronic licenses, all rights are specified in legal agreements. Licences confer clarity and predictability and remove the uncertainties inherent in the interpretation and application of copyright law.

Agreements are negotiated between database providers, librarians and lawyers. Standard agreements have to be scrutinized carefully and customised to the needs of the institution or consortium. Protection of "fair dealing / fair practice" is extremely important in these negotiations. Recent international copyright legislation confirms that fair practice exceptions also apply in the digital environment.

Copyright is increasingly included in the subscription fee. i.e. –

- no copyright clearance is necessary; and
- users can make multiple copies, electronic course-packs, reading lists and handouts.

Conclusion

Fair dealing is permitted in our Copyright Act and this right must not be eroded. The exemptions in Section 13 of the current Regulations still apply. Some publications do allow multiple copying for educational purposes. Before applying for clearance, check details inside publications.

It is important to remember that copyright clearance **must** be obtained for any reproductions made outside the ambit of fair dealing and exemptions.

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Copyright application at the Rand Afrikaans University

Kotie de Bruin

Introduction

The Rand Afrikaans University (RAU) started paying royalties to DALRO during the first semester of 1998. Our first payment was based solely on the number of photocopies of articles placed, as well as the number of copies made of specific articles as well as the pages concerned. DALRO undertook to distribute the payment according to the publishers of requests in the second semester.

We then had to develop a system whereby we could handle the applications, i.e. the statistics in the RAU Library, as well as applications by the academic departments.

In the library

We started out by developing a request form that could either be printed or sent to DALRO via e-mail. We found that the method of applying via e-mail worked quite well for us. DALRO responded by returning their quotations by fax to us. As soon as a quotation was received it was checked and, if correct, accepted by fax.

However, we had to develop a long-term plan as well. During the second semester of 1998, we sent an all-inclusive memo to our academic departments, requesting the **lecturers themselves** to apply for permission for reprographic rights of all articles to be placed in the Short Loan Collection.

At the beginning of 1999 this application form was made available on the Intranet of the University, giving all the lecturers access to it. After completing the forms, the applicants have to e-mail them to DALRO to request permission for making a copy. On receipt of the quotation from DALRO, the article, together with the quotation, are handed to the librarian at the Short Loan collection. No copies of published articles are accepted without the applicable quotation from DALRO.

The Library staff checks the quotations and if they are accepted, the invoice is requested. The quotation is filed at the Short Loan Desk. On receipt, the invoices are checked, authorised and sent to a centralised point for payment.

In the departments

The lecturers are personally responsible for the application of permission to use photocopies in handouts and any material distributed to the students as part of their studies.

Administration of the applications is handled by the departments themselves and payment for photocopies is handled by the same person responsible for the payments generated by Short Loan Collection.

Budgeting and payment have been done centrally up to now and the departments are not individually held responsible for the costs.

RAU has decided to stay with the individual transactions and have decided not to sign the blanket license for the time being.

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