

Appendix 4

Recommendations of the Copyright Law Committee on Reprographic Reproduction 1976 (Franki Committee)

Copying within the concept of fair dealing

- (1) The words in section 40 of the *Copyright Act 1968–1973* ‘for the purpose of research or private study’ be replaced, so far as it applies to reprographic reproduction, by the words ‘for the purpose of research or study’. Two members of the Committee would extend this recommendation to the phrase ‘for purposes such as research, study, private or personal use’. Copying within the amended section to remain without remuneration to the copyright owner. (2.18, 2.64–2.68)
- (2) The Act be amended to make it clear that the installation and use of self-service copying machines in libraries does not of itself impose any liability for copyright infringement upon the librarian or librarian’s employer provided notices in a form prescribed by regulation are displayed drawing users’ attention to the relevant provisions of the Act. (2.53)
- (3) For the purposes of section 40, the concept of ‘fair dealing’ be retained, but a provision should be added to the section, so far as it applies to reprographic reproduction along the following lines:
 - (a) In determining whether a dealing with a work in any particular case is a fair dealing the factors to be considered shall include:
 - (i) The purpose and character of the dealing;
 - (ii) The nature of the work;
 - (iii) The amount and substantiality of the portion taken in relation to the whole work;
 - (iv) Whether the work can be obtained within a reasonable time at a normal commercial price;
 - (v) The effect of the dealing upon the potential market for or value of the work; and

(b) Without restricting the meaning of the expression ‘fair dealing’ the making of one copy for (research or study*):

(i) in the case of copying from a ‘periodical publication, of not more than a single article or, where more than one article relates to the same subject matter, those articles; or

(ii) in the case of copying from an edition of a work, of not more than one chapter or 10 per cent of the number of pages in that edition, whichever is the greater, is a fair dealing-with the work. (2.60)

* the words in brackets should correspond with the words used in section 40.

- (4) The Act be amended to make it clear that sections 40 and 43 maybe applied to copying by a library or archives, if that copying is not otherwise permitted and also that the provisions of Divisions 3 and 5 of Part 111 apply to published editions of works dealt with in section 88. (2.69 and 2.70)

Copying by a library for users

- (1) The words ‘reasonable portion’ in section 49(3) of the Act be retained but a provision be added that, in the case of copying from an edition of a work, up to one chapter or 10 per cent of the number of pages in that edition, whichever is the greater, shall be deemed to fall within the words ‘a reasonable portion’. (3.17 and 3.18)
- (2) The words that ‘he requires the copy for the purpose of research or private study and he will not use it for any other purpose’ in section 49(3) be amended so that the words ‘for the purpose of research or private study’ correspond with the words adopted for section 40. (3.21)
- (3) A provision be added to the Act permitting the copying in a library of an entire work or more than a reasonable portion of it where that work forms part of a collection in the library if the librarian has first determined on the basis of a reasonable investigation that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect, and provided a declaration is also made by the user of the library that the copy is required for a purpose specified in section 49(3) as proposed to be amended

and provided the declarations are open for inspection upon reasonable notice and are retained by the library for a period of 12 months. (3.19)

- (4) A library be permitted to supply copies within the limits of section 49 as proposed to be amended without having to require payment for the copies. However, it should not be permitted to make a profit from supplying copies under this section, or under section 50. (3.24)
- (5) There be no requirement for the librarian to be satisfied as to the purpose for which the copy is required under section 49, but the Act should provide that the condition is fulfilled if the librarian or a person acting on his behalf receives in good faith a signed statement by the person requesting the copy, declaring that the purpose for which the copy is required falls within the words of the section and that he will not use the copy for any other purpose. The Act also provide a penalty where the user of the library makes a false declaration. (3.26)
- (6) The provisions of section 49 be extended to ‘archives’ which should be suitably defined. (3.34)
- (7) Section 112 dealing with reproduction by libraries of published editions of works be amended to conform with the recommendations made with respect to section 49. (3.36)
- (8) Copying within section 49 to remain without remuneration to the copyright owner. (3.05, 3.14)

Copying by libraries for other libraries

- (1) The restriction in regulation 4 of the Copyright Regulations which states that the protection of section 50 does not apply where the supplying library has previously supplied a copy of the work to the requesting library unless the librarian of the supplying library is satisfied that the copy so previously supplied has been lost destroyed or damaged, be eliminated except in the case where the requesting librarian requires the copy for the shelves of his library. (4. 15)
- (2) Section 50 of the Act be amended so that it is an infringement of copyright for the requesting library to supply the copy obtained from the supplying library otherwise than in the case where the

librarian of the requesting library or the person acting on his behalf receives in good faith a signed statement by the person requesting the copy declaring that the purposes for which the copy is required fall within the same purposes as we recommend for section 49, and further that he will not use the copy for any other purpose. The librarian of the supplying library should be protected by section 50 provided he is informed that the declaration has been obtained in the requesting library. A penalty be provided for a false declaration. (4.16)

- (3) Where a librarian requests through the inter-library loan system a copy of an article or other work or of part of an article or other work for its own collection, the making of such a copy not be protected by section 50 unless, if a copy has previously been supplied by the librarian of the supplying library to the requesting library, the librarian of the requesting library is satisfied that the copy previously supplied has been lost, destroyed or damaged and so informs the supplying library. (4.17)
- (4) The same provisions recommended with regard to the words 'a reasonable portion' for section 49 be incorporated in section 50. (4.19)
- (5) The requirement in section 50 that before more than 'a reasonable portion' of the work may be copied the librarian by whom or on whose behalf the copy is made must not know the name and address of any person entitled to authorise the making of the copy and could not by reasonable enquiry ascertain the name and address of such person be replaced by a provision that the librarian has first determined on the basis of a reasonable investigation that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect and provided the declaration is open for inspection upon reasonable notice and is retained for a period of twelve months. (4.20)
- (6) Section 50 be extended to archives, which should be suitably defined. (4.21)
- (7) Copying within section 50 to remain without remuneration to the copyright owner. (4.09)

Copying of published and unpublished works for preservation and certain other purposes

- (1) An unpublished work may be copied by a library or archives for preservation or security or for research use in that or another library or archives but provision be made to ensure that this does not cause the work to become a published work. (5.04)
- (2) Where a published work held by a library or archives is damaged, deteriorating, lost or stolen, the library or archives be permitted to make a replacement copy if after a reasonable investigation the librarian has determined that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price and makes a declaration to this effect. The declaration is to be open for inspection upon reasonable notice and is to be retained by the library for a period of 12 months. (5.10)
- (3) It not be an infringement of copyright for a library or archives to make one microfilm or microfiche copy of any work in the collection of the library or archives where it is intended to destroy the original. (5.12, 5.13)
- (4) The words ‘for the purpose of research or private study’ in section 51(1)(d) be replaced by the words adopted for section 40. (5.14)
- (5) Section 51(2), which permits the copying by a librarian of the library of a manuscript, thesis or similar literary work that has not been published, for supplying to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the copy for the purpose of research or private study and that he will not use it for any other purpose, be amended, as far as concerns reprographic reproduction, so that the words ‘for the purpose of research or private study’ be replaced by whatever words are adopted for section 40. (5.15)

Multiple copying in non-profit educational establishments

- (1) A library of a non-profit educational establishment be permitted to make up to six copies of a single article in a periodical without infringement of copyright and without remuneration to copyright owners for use within the library provided that the librarian

making the copies intended that they would only be used in the library and would ultimately be destroyed. (1.46 and 6.02)

- (2) If multiple copies of more than an insubstantial part of a published work other than an article in a periodical are required in a library conducted by a non-profit educational establishment the library be permitted to make up to six copies of that work thereof without remuneration in any case where the work has not been separately published, or if it has been separately published, it has been ascertained after reasonable inquiry that copies cannot be obtained within a reasonable time at a normal commercial price. This right should be subject to the condition that the librarian making the copies intended that they would only be used in the library and would ultimately be destroyed. (1.50, 6.02)
- (3)
 - (a) The Act be amended to provide for a statutory licence scheme permitting a non-profit educational establishment to make multiple copies of parts of a work and in some cases of whole works for classroom use or for distribution to students, subject to recording any copying taking place under the scheme and an obligation to pay an appropriate royalty if demanded by the copyright owner or his agent within a prescribed period of time (say three years). (6.39)
 - (b) The records to be kept in respect of this copying to show as a minimum, the title of the work copied, the number of pages copied, the number of copies made, the author of the work (where known) and the publisher of the work. (6.52)
 - (c) The proposed statutory licensing scheme to extend to the making of copies of published literary, dramatic or musical works in the following circumstances:
 - (i) where the work concerned is not separately published – the whole of that work may be copied;
 - (ii) where the work concerned has been separately published, but copies cannot be obtained within a reasonable time at a normal commercial price – the whole of that work may be copied;
 - (iii) not more than one article in the same periodical publication may be copied unless the articles relate to the same subject matter;
 - (iv) in any other case, not more than a reasonable portion of the work may be copied.
 - (d) Where a work or part of a work that may be copied under the proposed scheme contains an artistic work by way of illustration

or explanation, then the making of the copy not be an infringement of the copyright in the artistic work. (6.58, 6.59)

(e) Legislation provide that up to 10 per cent of the number of pages in an edition of a work or one chapter, whichever is the greater, should always be regarded as a reasonable portion. (6.60)

- (4) The making of multiple copies in any non-profit educational establishment of up to two pages or one per cent of the number of pages (whichever is the greater) in an edition of a work or of two or more works in any period of 14 days be permitted without remuneration and without infringement of copyright provided (except in the case of a diagram, map, chart or plan) the part copied does not comprise or include a separate work. (6.67)
- (5) The Act to permit a teacher or lecturer to make without remuneration and without infringement of copyright of up to three copies of a copyright work or part of a work for the purpose of classroom instruction within the limitations described in paragraph 6.58.(6.6 8)
- (6) A non-profit educational establishment conducting educational courses by correspondence or on an external study basis for students be allowed to prepare, without requests from students, such copies as may be appropriate for the students of journal articles or reasonable portions of works to the same extent as a librarian could provide copies for a person on request made under section 49 of the *Copyright Act*. This should not extend to material reproduced as part of lecture notes. (6.73)

Copying in other circumstances

- (1) The Crown or a person authorised by the Crown be entitled to copy a work in circumstances where a private individual would be entitled to copy it without obligation to the copyright owners. If it be accepted that this is the result presently achieved by section 183 of the Act, no change in the Act would be required. (7.10)
- (2) The Crown not be permitted to rely on section 183 for the making of multiple copies of works for use in government schools, and the recommendations made in respect of multiple copying in non-profit educational establishments to apply to government and non-government educational establishments alike. (7.11)

- (3) The following words be added to section 43, 'or by a fair dealing with such a work for the purpose of or in the course of the provision of professional advice by a legal practitioner or patent attorney as to the legal rights or obligations of a person'. Two members of the Committee would omit the words 'as to the legal rights or obligations of a person'. (7.16)

Crown copyright

- (1) The Act make it clear that any act that is excluded from infringement of copyright under that Act should equally not be an infringement of any prerogative copyright of the Crown. (8.06)
- (2) The Act be amended to make it clear that a person is entitled to make reprographic reproductions of a statute, or an instrument made under authority of a statute, an order, judgment or award of a Court or other tribunal, or of the reasons for decision of a Court or other tribunal. The sale of a copy so made should not be permitted, except that this would not prevent the cost of making the copy being recovered from a person to whom the copy is supplied. (8.07)