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ABSTRACT

Written in an informal style, this brief guide to the complexities of copyright law in England is intended for the world of museums and galleries. Particular attention is paid to the day-to-day problems encountered in photographic copyright. (MM)



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# Museums Association Information Sheet

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## Copyright law concerning works of art, photographs and the written word      by Charles H. Gibbs-Smith

### Introduction

This is only the briefest of brief guides to the complexities of copyright law, and is primarily intended for the world of museums and galleries. It has been written in an informal style, and I hope is sufficiently comprehensible. The bible of copyright law and its problems—which runs to over 800 pages—is the great volume entitled *Copinger and Skone James on Copyright*, 10th edition, by F. E. and E. P. Skone James (London, Sweet & Maxwell, 1965), to which I am deeply indebted. But I would caution the beginner against trying 'just to look something up' in Copinger, since there are very many ifs and ands, provisions, statutory exceptions, and so on, to contend with.

The copyright Act of 1956 has so many weak spots, so many ambiguities, and so many unanswered questions within it, that one can only conclude that those responsible for its drafting did not consult a sufficient number of those concerned with the practical aspects of copyright. The pages of Copinger are littered with such tentative remarks as 'it is submitted that . . .', 'it is apprehended that . . .', or 'the expression . . . is not and was not, however, defined.'

Of all the day-to-day problems of copyright which the museum or gallery man has to cope with, none is more common than those concerning photography, and particular attention has been paid to the subject in these pages. I have encountered quite incredible misunderstandings and misapprehensions among colleagues about photographic copyright, and I would urge them to make sure of their facts before committing themselves on paper. Perhaps the most common mistake is for them to believe that the mere ownership of a negative confers the ownership of copyright on its possessor; whereas the owner of the negative generally has no rights of any kind. Another popular belief is that the owner of an old master owns the copyright in it, and that anyone publishing a photograph of it is infringing that copyright, a copyright which, of course, does not even exist.

If there is any particular aspect of the copyright law which my colleagues find lacking in this booklet, I should be grateful if they would inform me through the Secretary of the Museums Association, and I will try and supply the deficiency in the next edition.

I owe a particular debt of gratitude to Mr R. G. Walford, Head of Copyright at the B.B.C., who has kindly read the manuscript and made many valuable suggestions.

C. H. Gibbs-Smith  
March 1970

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### 1. Copyright law

Copyright law exists to protect the creators—or sometimes the commissioners—of literary, dramatic, musical and artistic works, including photographs, plays, films, broadcasts and television shows; and to prevent the unauthorised reproduction or publication of such works.

*Copyright is a right of property.*

*The best way to regard the copyright in any object is to think of it as a piece of incorporeal property, or an abstract entity, which is related to, but exists quite independently of, the physical object itself.*

It is important to remember that an author does not have to take any action to secure the copyright in any of his work; copyright is automatically conferred on every line as a writer puts pen to paper, or an artist puts brush to canvas.

The owner of the copyright in any work covered by the Act (see below) may sell, present, or bequeath his copyright in any way he pleases, independently of whoever owns the actual work itself.

The current law on copyright is contained in the Copyright Act of 1956 which covers the following kinds of work (all of them regardless of quality):

- (a) *Literary works*
- (b) *Dramatic works*
- (c) *Musical works*
- (d) *Paintings; sculptures; drawings; engravings*
- (e) *Photographs*
- (f) *Works of architecture, being either buildings (any structure) or models for such*
- (g) *Works of 'artistic craftsmanship' not falling within the above categories*

- (h) *Sound recordings*
- (i) *Cinematograph films*
- (j) *Television broadcasts*
- (k) *Sound broadcasts*

In this brief work, only the categories in italics are dealt with.

The offence of using a copyright item in an unauthorised manner is known as an 'infringement' of copyright.

The owner of a copyright may also be referred to as the copyright 'holder'.

### 2. The meaning of 'publication'

Publication, where copyright is concerned, must involve two 'processes', i.e.

- (i) the multiplication of copies
- (ii) the issue of such copies to the public.

Both such processes must be, or have been, in operation to constitute publication under the Act.

A work is not published,

- (a) If it is multiplied, but not issued to the public
- (b) If it exists in only one copy
- (c) If copies are made and only circulated privately to friends
- (d) If the distribution of copies of it is unauthorised
- (e) If it is exhibited in public
- (f) If it is lent to people
- (g) If it is shown on a screen during a lecture
- (h) If it is spoken (i.e. a written lecture) in public

But we must hasten to add that some of these actions, if applied to a work in copyright, would infringe that copyright; the reader will later find notes on what infringes, and what does not infringe, the copyright in various articles.

It is the multiplication of copies and issue to the public of photographs of any flat work of art, such as a painting, drawing, engraving, illustration, design, plan, etc., which constitutes publication.

But such multiplication of copies, and issue to the public, of photographs of any three-dimensional works of art or craft, such as sculpture, furniture, ceramics, silver, etc., does *not* constitute publication of such works of art or craft (see section 18).

### 3. The meaning of 'reproduction'

Where the Copyright Act is concerned, the word 'reproduction', when applied to an artistic work, means the making of any version of the original copyright work which reproduces all, or a substantial amount of, the features of shape—not the subject matter—of the original, in any size.

Furthermore, the *offending version need not be in the same medium, or even in the same number of dimensions*. For example, a carved wood-relief version of an oil painting would be a 'reproduction' of the painting. Also, in rare cases, a two-dimensional version of a three-

dimensional work might be a 'reproduction'; for example, a flat picture of the famous Michelin tyre-man would certainly infringe the copyright of the little figures of the tyre-man carried on the company's vans, if the latter were made first.

But, in general, it may be taken that there are very few cases where any two-dimensional object can infringe the copyright of a three- or four-dimensional work (see section 27).

#### 4. The meaning of 'commissioned'

In cases where the copyright of a work belongs to the person who commissions the work (i.e. in photographs, portraits, or engravings) the act of commissioning must involve the handing over of money or goods, or the promise of such.

But if, for example, Mr A has commissioned a portrait from Miss B (the artist); and Miss B has completed and handed over the portrait to Mr A; and if Mr A does not hand over money or goods in payment; then Miss B can lay no claim to the copyright. All she can do is to sue Mr A for payment.

#### 5. Fair dealing with copyright material for criticism, review, or the reporting of current events

*Any copyright material, whether visual or verbal, published or unpublished, may be published without permission, if it is for purposes of fair dealing in the way of criticism or review; or if it is used in the course of reporting on current events; always provided that proper acknowledgement of author and title is given. No infringement of copyright is involved.*

The criticism or review may be of any item—old, recent or current, and includes the right to publish other copyright material along with that in question. For example, if you are reviewing a book, or an artist's work, you may also publish quotations from another writer's copyright works, or another artist's pictures, for purposes of comparison.

The amount of text you may publish is discussed in section 10.

The fair dealing, or reporting, may be in any medium, i.e. printed text, broadcast, TV, or film.

#### 6. Making a copy for private study or research

*You may copy (i.e. draw, paint, or photograph) any copyright object or matter without permission, provided you only want it for private study or research. The Act says that 'no fair dealing with an artistic work . . . (or with a literary, dramatic or musical work for purposes of research or private study shall constitute an infringement of the copyright in the work.'*

Where written matter is concerned, it would appear to be quite permissible to copy whatever one likes. Says Copinger: "Private study", it is submitted, only covers the case of a student copying out a book for his own use, but not the circulation of copies among other students'. For the purposes of the Act, "student" means anyone wishing to pursue private studies of any kind.'

The right to copy, or photograph, for private study also extends to unpublished copyright material such as manuscripts, letters, etc.

#### 7. Copyright in unpublished and published written matter of all kinds

Virtually everything meaningful that is written down is automatically protected by the law of copyright, the moment it appears on paper; it is all copyright, and this copyright must belong to someone, or some body of persons. What is more, the meaningfulness of what is written down need not be meaningful in language. Thus a telegraph code, or any other kind of code, is copyright.

There must be some labour and some skill contributed by the author to create a copyright; but the skill need only be minimal—or less! And this skill and labour need not even be in creating words, but can exist in selecting words, as in a street directory, or other such reference book. Any compilation or written table is also copyright.

For some reason that has never been explained, there is no copyright in the title of a book, magazine, or story, despite the fact that much labour and considerable skill can go into such short groups of words. Nor can the stringing together of some commonplace sentences in an advertisement be copyright.

For legal purposes, everything written down which is copyright is classified as a 'literary' work, or works.

But it cannot be too strongly emphasised that *there is no copyright in ideas or facts; the copyright is in the form of words in which the ideas or facts are clothed.* There is no copyright in the content, or matter, or facts, and there is no infringement if you reveal the content in such matter, unless there is a question of your being legally restrained as a breach of trust or confidence. You also cannot copyright a plot; but there are one or two slight modifications of this rule (see section 9).

The copyright in any unpublished written matter is what is called 'perpetual'—no matter how many years it runs—until it is first published; then it still runs for 50 years from the end of the calendar year of the author's death, or for 50 years after the end of the calendar year in which it was published, whichever is the longer.

Where unpublished material is concerned, it is no infringement if you copy out anything you like—and make only one copy—if you only want it for purposes of private study or research; but you may not publish any of it; nor may you circulate your copy among other people.

Copinger believes that quotation from unpublished works for criticism or review would not be allowed; but there is nothing in the Act which implies this. It is a question in each case of what is fair and of taking into account the kind of literary circumstance which would render it vital to quote from unpublished works. We may take it, therefore, that quotation for criticism could be in order, as from published works. Short quotations (see section 10) are also allowed.

If, however, unpublished written material is owned by, or deposited in, a library, museum or other institution to which the public have access; and if

- (i) The author of the material has been dead for 50 years; and
- (ii) The material was written over 100 years ago;

then the material may be copied 'with a view to publication'; this means that it may be published after due notice has been announced of the *intent* to publish the material, and if the rightful owner of the copyright does not appear. The intent to publish must be announced twice in a national circulation daily, or Sunday, paper; once not less than three months before the date of the intended publication of the material, and once not less than two months before. If the alleged owner of the copyright appears, *they must be able to produce documentary proof* that they own the copyright.

The copyright in a published work runs for 50 years from the end of the calendar year in which the author dies; or for 50 years from the end of the calendar year in which the work is published, whichever is the longer. For definition of the word 'publication', see section 2.

*Where published work is concerned you may quote—without permission—as much as is necessary for purposes of criticism or review* (see section 10 for how much can be quoted.) You may also copy as much as you like for private study and research, but may only make one copy; and you may not circulate your copy for others to work on. You may also read or recite in public—but not broadcast—short extracts from *published* literary or dramatic works, without permission, provided you acknowledge the author and the work. For the purpose of judicial proceedings, any amount of published matter may be read, or quoted in documents, without infringing copyright.

But apart from the above, you must not reproduce or publish either an unpublished or a published work in any material form; nor a substantial part of it; you also may not perform the work in public by speaking it—except for the extracts allowed above—nor may you broadcast it, or even part of it; nor may you translate it; nor adapt it for a play or film; nor make a pictorial version of it in a series of pictures, etc.

## 8. Copyright in letters

*The copyright in any letter is owned by the author of the letter*, and it is an infringement of the author's copyright to publish it; even by the recipient. But if it is written to a newspaper, or similar organ, there is an implied licence to publish.

This means that a letter remains in perpetual copyright until it is published; and then on for another 50 years; or, if the author is alive when it is published, for 50 years after the end of the calendar year of his death.

But *there is no copyright in the contents of a letter as regards the matter in it*; and you may reveal these without infringing the Copyright Act. But, where modern letters are involved, you may risk being served with an injunction restraining you from revealing the contents, as a breach of trust or confidence.

In practice, it is extremely difficult to locate the present owners of the copyright of a letter whose author has long since died.

If, however,

- (i) The author of the letter has been dead for 50 years; and
- (ii) The letter was written over 100 years ago; and
- (iii) The letter is owned by, or deposited in, a library, museum or other institution to which the public have access;

then the letter may be copied 'with a view to publication'; this means that it may be published after due notice has been announced of the *intent* to publish the letter; and if the rightful owner of the copyright does not appear. The intent to publish must be announced twice in a national circulation daily, or Sunday, paper; once not less than three months before the date of the intended publication of the letter; and once not less than two months before. If the alleged owner of the copyright appears, *they must be able to produce documentary proof* that they own the copyright.

It cannot be too strongly emphasised that *ownership of a letter—whether or not the owner is the original recipient—conveys no right to publish it*. But the owner has every right to deny access to such a letter.

If a letter is taken down by a secretary or amanuensis, or typed by such a person, the copyright still, of course, remains with the original author.

## 9. No copyright in ideas or facts

There is no copyright protection for ideas or facts: *it is only the verbal or visual clothing of ideas or facts that is copyright*. Thus, if an author includes a murder scene in which the victim is stabbed with a dagger made of ice—which naturally melts away—he cannot protect the idea of such a murder; and it is only the literary form, the form of words, he gives to the incident, that is copyright. Nor can any information, as such, which an author provides be protected by copyright.

But an author of an unpublished novel might be able to obtain an injunction against a publisher (or publisher's reader) if the plot of his work was divulged outside the firm, as this would be a breach of faith. But such action would not be brought under the Copyright Act.

Under certain—but rare—circumstances, a fictional situation, or a series of incidents in combination, may also be protected where, for example, a novel is converted into a play.

The owners of non-fictional unpublished manuscripts—whether or not they are the owners of the copyright—should particularly note that if they do not want the contents of such manuscripts divulged, they must refuse access to them, which they have a perfect right to do; otherwise there is nothing to prevent someone who reads them from publishing the *content* of such manuscripts, provided he does not reproduce the actual language used.

## 10. How much copyright text may be quoted

Unless you are reviewing or criticising a book, or dealing with it in a research project (see below) it is generally agreed that it is safe to quote about 100 words from any

full-length work without requesting permission. Typical cases of such quoting would be when you wish to use another writer's description of a place or an object which you mention; or to back up an opinion which you are voicing. This would not apply to modern poetry, where only a line or two would be safe to quote without permission. Such quotations should always be placed within quotation marks, and the name of the author should be mentioned in connection with it. For longer passages, it is as well to request permission from the publishers.

But if you are reviewing a book, or dealing with it in a serious critical manner in a book of your own (i.e. what the Act calls 'fair dealing'), you may quote much more. The Publishers Association and the Society of Authors have suggested that it would not be 'un-fair' if *for purposes of criticism or review* a single extract of up to 400 words, or a series of extracts (of which none exceeded 300 words) to a total of 800 words were taken from prose copyright works, or extracts up to a total of 40 lines were taken from a poem, provided not more than one-quarter of the poem is used. This, however, is an *ex parte* statement which may be over-cautious.

If you are engaged in such serious criticism, you should *not* write to either the author or his publishers and ask permission to quote; for if they suspect you are going to criticise their book adversely, they may refuse—despite the fact that they have no legal right to refuse—and it will therefore be embarrassing for you to go ahead as you intended. But you must fully acknowledge the author and title.

Requesting permission to publish or reproduce, where you have the legal right to publish or reproduce, is one of the few occasions when courtesy is not only misplaced, but is potentially obstructive and dangerous.

### 11. Copyright in paintings of all kinds and in drawings (excluding portraits)

The copyright in any painting or drawing—*other than a portrait* (see section 12)—belongs to the artist, and continues (with his heirs and assigns) until 50 years after the end of the calendar year of his death.

*The owner of such a painting or drawing, even if he commissioned it, may not reproduce it in any form without the artist's permission.*

But the owner may do what he likes with the work, and may mutilate or destroy it if he wishes.

It is an infringement of copyright to copy the work in any way, or in any medium, even by making a three-dimensional version of it. It is also an infringement to publish, or issue to the public, any photographs or other reproductions of the work, except as noted below.

But it is *not* an infringement:

- (a) to photograph the work—or have it photographed—for private study or research, either by the owner or by anyone else, so long as it is 'fair dealing'
- (b) to publish a photograph of the work to accompany a criticism or review of it; or to publish it in direct connection with another work for the purposes of criticism or review, i.e. for comparison

(c) to exhibit the work in any way the owner, or anyone else, pleases

(d) to show slides of the work on the screen during a lecture, etc.

In view of the widespread belief that ownership of a work of art confers rights of reproduction on the owner, it cannot be overemphasised that such ownership only confers the right to deal as one likes with the work as an actual physical object, i.e. to give away, sell, or destroy it; but *not* to reproduce it.

If the owner (or commissioner) of the work wishes, he can try and persuade the artist to sell him the copyright of the work; but there must be an agreement in writing to this effect, and a considerable fee will probably be demanded.

### 12. Copyright in portraits (painted or drawn)

*The law is completely different when it comes to the copyright in painted or drawn portraits; for the copyright here belongs to whoever commissions the work* (for definition and conditions of 'commission', etc. see section 4); and the artist has no rights whatsoever in the portrait.

The copyright runs until 50 years after the end of the calendar year in which the artist dies.

Some historic quarrels have resulted from ignorance of the law on this subject; a famous foreign artist had once got half-way in his portrait of a famous personage, when he discovered that under English law he had no rights beyond his fee. Realising that the portrait would probably be reproduced in post-cards and other reproductions the world over—which is indeed just what happened—and that he would not get a penny beyond his fee for painting the portrait, he is said to have downed tools until he was guaranteed a cut of the profits: needless to say, he made a small fortune out of this deal!

For copyright in sculptured portraits, see section 14.

For a definition of 'engraving', see section 13.

It is an infringement of copyright to copy the work in any way, or in any medium, even by making a three-dimensional version of it. It is also an infringement to publish, or issue to the public, any photographs or other reproductions of the work, except as noted below.

But it is *not* an infringement:

- (a) to photograph the work—or have it photographed—for private study or research, either by the owner, or by anyone else, so long as it is 'fair dealing'
- (b) to publish a photograph of the work to accompany a criticism or review of it; or to publish it in direct connection with another work for the purposes of criticism or review, i.e. for comparison
- (c) to exhibit the work in any way the owner, or anyone else, pleases
- (d) to show slides of the work on the screen during a lecture, etc.

### 13. Copyright in engravings, etc.

The copyright in all engravings, etchings, lithographs, woodcuts, prints, lino-cuts, and any similar items, is

owned by *whoever commissions the work* for money or money's worth (see section 4), and is perpetual until it is first published; then for a further 50 years from the end of the calendar year in which publication occurs.

It is up to the commissioner as to how many copies from the engraved (etc.) plate are run off, but he should realise the implications of the word 'publication' (see section 2).

The ownership of the original plate or block is not indicated in the Copyright Act of 1956, and the courts have never ruled on the subject; but it would be advisable to take it that the artist owns the plate or block, as with the negative of a photograph, which stays with the photographer; but he must on no account run off unauthorised prints for publication or issue to the public.

It is an infringement of copyright to copy the work in any way, or in any medium, even by making a three-dimensional version of it. It is also an infringement to publish, or issue to the public, any photographs or other reproductions of the work, except as noted below.

But it is *not* an infringement:

- (a) to photograph the work—or have it photographed—for private study or research, either by the owner or by anyone else, so long as it is 'fair dealing'
- (b) to publish a photograph of the work to accompany a criticism or review of it; or to publish it in direct connection with another work for the purposes of criticism or review, i.e. for comparison
- (c) to exhibit the work in any way the owner, or anyone else, pleases
- (d) to show slides of the work on the screen during a lecture, etc.

#### 14. Copyright in sculpture

It is an infringement of the copyright in a piece of sculpture to make any copy of it, in any recognisable form, in any material, or in any size; for example, a relief version of a statue in the round would even be an infringement of the latter. But you may paint, draw, or photograph any work of sculpture, without permission, and publish the results of your work freely, provided it is permanently situated in a public place or in premises open to the public.

The copyright in a *sculptured portrait belongs to the artist*, not the commissioner or the work (as in a painted portrait).

#### 15. Copyright in works of architecture

The architect owns the copyright in all the designs, plans, elevations, etc. for his building, in preliminary models *for* a building, and in the building itself.

The copyright runs until the end of the calendar year in which the architect dies, and for 50 years thereafter.

Architecture—for the purpose of the Copyright Act—includes any and every type of built or erected structure, even a temporary scaffold or platform, as well as an exhibition set or building, whether indoors or in the open.

The protection given to the designs, plans, elevations, etc. is the same as that for paintings and drawings. But a model for a building, and the structure itself, are the

subjects of a very important exception to the protection afforded to the flat material noted above; for the model and the structure may be freely photographed and published, drawn, painted (etc.), and included on cinema films, and on TV; in fact no two-dimensional rendering of architecture is protected at all; and the reason for such exceptions are obvious when one considers the risk to which a citizen would be exposed who was photographing or sketching in any urban neighbourhood.

#### 16. Copyright in exhibitions

An architect or designer who has designed an exhibition owns the copyright in every stage of the production, from rough sketches to the finished structure. *But the finished structure—or a preparatory model for it—can be freely photographed, drawn, or painted, and published, and included in a cinema film or on TV, without permission*, as the copyright in the *structure* is specifically not protected against these uses.

You must, however, be careful, when having an exhibition photographed, that no close-up or exclusive photograph of any exhibit which is a copyright painting or drawing (etc.), is taken and published, as this would infringe its copyright.

But copyright is *not* infringed if such copyright items are merely included in general views of the exhibition, however prominent they may be, or however many of them there may be.

Some designers try to claim a copyright fee if their exhibitions are photographed and published, or shown in a film or on TV. They have no right to claim such a fee, as is clearly set out in the Copyright Act.

Such exhibitions come under works of architecture, as they are included in the Act as 'any structure'.

#### 17. Copyright in brass-rubbings

There can be no doubt that whenever a brass-rubbing is made, a copyright is created in the rubbing itself which belongs to the rubber, as a certain amount of skill is required to make a good rubbing.

There being, of course, no copyright in the brass itself—unless it is modern—the owner of the brass (or incumbent, if in a church) can only exercise his control over access. Some parsons refuse access altogether; and others charge a fee for their brasses to be rubbed, this being purely an access fee.

#### 18. Copyright in the applied and minor arts

All works of so-called artistic craftsmanship are copyright, except those items which are subject to the Registered Designs Act (see section 19); but they cause little trouble as regards publishing them in the form of photographs, etc. You can freely take photographs or make drawings or paintings, and publish them—without permission—of copyright objects in the following categories:

- Architecture and structures
- Designers' exhibitions
- Sculpture
- Furniture and woodwork

Pottery, porcelain and glass  
 Gold and silversmiths work  
 Jewellery  
 Iron and other metalwork  
 Textile fabrics  
 Bookbindings  
 Other minor arts and crafts

### 19. Copyright in industrial art objects

The term 'industrial art' is virtually impossible to define; but from the copyright point of view it means objects of utility which are manufactured in quantity, and in which the main concern of the creator has been to produce, or decorate, materials intended for practical use.

Such objects properly belong in the province of the Registered Designs Act of 1949. This act gives protection to such objects—for each of which application to register must be made—for up to 15 years (i.e. for an initial 5 years, with two renewals); the protection afforded is a kind of copyright, and *prohibits the actual making of similar objects*.

Photography, filming, TV, and the publishing of photographs, of such objects may be done freely without permission.

The Board of Trade has issued a list of items which are excluded from the Registered Designs Act, and whose protection therefore comes under the Copyright Act, and in which copyright is therefore automatic:

- (a) Works of sculpture, other than casts or models used or intended to be used as models, or patterns, to be multiplied by any industrial process
- (b) Wall plaques and medals
- (c) Printed matter primarily of a literary or artistic character, i.e.

Book-jackets	Maps
Calendars	Plans
Certificates	Postcards
Coupons	Stamps
Dress-making patterns	Trade Advertisements
Greetings cards	Trade forms
Leaflets	Transfers

### 20. Copyright in speeches, lectures, addresses, etc.

*There is only copyright in a speech, lecture, or address if it is a literary work:* and a literary work must exist in writing or print to carry copyright with it. This means that there would probably not be any copyright in an off-the-cuff speech, or any extempore utterance, just as there is no copyright in ordinary conversation. But Copinger suggests a half-way house, and believes that where there are notes from which the speaker gives his lecture, then anyone copying the speech or lecture will be infringing the copyright in the notes. If the speech or lecture exists in extended form, as a script, then any copying of the speech would definitely be an infringement of the script.

But a student—or anyone else—can safely take down a speech or lecture for his private study; but he must not publish it.

For the infringement of copyright by reciting other people's copyright work, see section 7.

### 21. Copyright in works of joint authorship

Under the Act of 1956 the copyright in a literary, dramatic or artistic work of joint authorship, runs for 50 years from the end of the calendar year in which the last surviving author dies.

Under the old Act (1911), the copyright in such a joint work only ran for 50 years after the death of the author who died *first*; or until the death of the author who died last, whichever period was the longer. But if the copyright of a work expired before June 1957, the term of copyright cannot be extended by virtue of the 1956 Act.

### 22. Copyright in anonymous or pseudonymous works

If a literary, dramatic or artistic work (other than a photograph) is published anonymously or pseudonymously, the term of copyright runs for 50 years from the end of the calendar year in which the work was first published

But if anyone who is ignorant of the true author discovers, by reasonable enquiry, the identity of the author before the expiry of the 50-year period, the work returns to the normal conditions of copyright.

### 23. Sculpture and works of artistic craft in public places

Provided that an artistic work is 'permanently situated' in, on, or outside a public place or building; or on premises open to the public; you may freely—without seeking permission—make and publish any painting, drawing, engraving or photograph of the said work, or include it in a film or TV show.

This applies to any kind of artistic work if a sculpture or work of artistic craftsmanship (i.e. sculpture, wall-painting, mosaic, decoration, etc.). But it is generally held that the work in question must be a fixture of the building, i.e. be a part of the regular structure or decoration of the building; and would not include the works on exhibition in a gallery or museum, despite the fact that many people would consider such objects as 'permanently situated' in a public place. The wording of the Act, here as elsewhere, leaves much to be desired.

### 24. The owners of works of art and their rights

It cannot be too strongly emphasised that *the owner of any work of art has no rights over the work in his capacity as owner*, except the right to deny access to the work.

Unless the copyright has been legally assigned to the owner, or unless the owner was the commissioner for money or money's worth (see section 4) of the work if a portrait or engraving, *the owner has no rights over the work*, and must not reproduce or publish it without the permission of the copyright owner.

Time and again I hear of otherwise responsible and experienced people claiming that if they own a work of art, the mere fact of their being the owner automatically grants them copyright, or rights to publish. Nothing could be farther from the truth.

Nor, of course, has the owner any rights whatsoever—except in preventing access—over an old out-of-copyright work of art. This point, too, is the subject of constant misunderstandings.

The photographer (or commissioner of the photograph) of a work which is out of copyright need never seek the permission of the owner of the work before publishing it, though he may well need the owner's permission to enter the premises in order to take his photograph.

Some years ago *The Listener* reproduced a Holbein with the words 'Copyright Radio Times Hulton Picture Library' placed under the block. The Holbein in question was at the time in a famous collection, and I was 'phoned for advice by the Curator, who angrily claimed that his collection owned the copyright. I found it hard to convince him that Holbein had been in the public domain—i.e. free of copyright—for centuries, and that no one held any copyright in his pictures! Furthermore, I pointed out that although the present owner had unfortunately not been acknowledged in the caption to the reproduction, the copyright claim which the Curator was so upset about referred *not* to the Holbein picture itself, but to the *photograph* of the Holbein, the copyright of which was indeed the property of the Radio Times Hulton Picture Library.

This brings us to the question of access. Any owner—say Lord X—of works of art, whether or not the works of art are in copyright, has a perfect right to refuse anyone access to his house, and thus to the works. But if, by chance, someone of whom Lord X disapproved managed to slip into the house and surreptitiously photograph the old masters hanging on its walls, then this interloper would have the perfect right to publish his photographs—of which he would own the copyright—and Lord X would be powerless to stop him.

## 25. The right to a nom-de-plume (pseudonym)

It has been ruled that if you are employed by a person (or firm) to whom the copyright of the work you do belongs as a condition of your employment; and if you use a nom-de-plume for that work whose copyright belongs to another person or firm, you are entitled to take with you that nom-de-plume if you leave such employment, and to use the same nom-de-plume either for your own individual copyright work, or for the work you may do for another employer.

## 26. Copyright in photographs as such

Every photograph which is ever taken is automatically copyright, and this copyright belongs to someone. *The copyright in any commissioned photograph belongs initially to whoever commissions the taking of the photograph.* 'Commissioning' means the handing over to the photographer of *money or goods in payment* for taking the photograph, or the promise of such. But the person who commissions the photograph *does not own the negative,*

unless he makes a special written agreement with the photographer to hand it over; or, of course, if he is himself the photographer (see below). If the copyright-owner wishes to acquire the negative, it generally involves a special fee being paid to the photographer.

*One of the most common mistakes made today is to believe that whoever owns the negative, automatically owns the copyright in the photograph. The possession of the negative, as such, has nothing to do with the ownership of the copyright in the photograph.*

If a photographer takes a photograph to please himself, or as a labour of love for someone else, and does not receive anything for it, the copyright in the resulting photograph is owned by the photographer, as is also the negative.

The photographer, in the ordinary way, by trade practice, retains the negative of whatever he takes, and can dispose of it as and how he wishes, which includes destroying it. But the photographer must not use this negative to publish the photograph, or to produce prints for issue to the public—i.e. to engage in the multiplication of copies—for anyone except the copyright owner; and on no account may he send a print to a newspaper, as this presupposes publication.

The copyright holder (i.e. the commissioner) must, therefore, purchase all the prints he requires from the photographer. But if, for example, the two men quarrel, the commissioner—because he owns the copyright—can always commission another photographer to make a new negative from one of the prints.

Museums and galleries, when commissioning photographers, should always insist on a clause by which the photographer hands over the ownership of the negatives, even if the latter agrees to store them temporarily for the museum.

But, although no one but the copyright owner may authorise the publication of photographs, it is not an infringement for either the photographer, or anyone else, to make a single copy of a photograph for his own private study or research. But he may not make copies for a number of friends, even if they want them for private study, as this involves the multiplication of copies and issue to the public.

It is also not an infringement to show anyone's copyright photograph in an exhibition, or to project it on to a screen in the course of a lecture; and no permission for such uses should be sought.

It is also not an infringement to reproduce a copyright photograph in a book or periodical, providing it is 'fair dealing' accompanying criticism or review of the photograph—not the subject of the photograph—or an exhibition in which the photograph is being shown. But care should be taken that the reproduction is genuinely included in the cause of criticism or review of the photograph *as a photograph.*

The duration of copyright in a photograph *taken before the 1st of June 1957* is 50 years from the end of the calendar year in which the photograph was taken, whether or not the photograph has been published meanwhile; it then enters the public domain, and may be published freely by anyone.

The duration of copyright in a photograph *taken after 1st June 1957, remains perpetual until it is first published*; then the copyright continues to run for a further period of 50 years from the end of the calendar year in which it is first published. For example, a photograph taken in 1958 may remain hidden and unpublished until, say, the year 1995, when it is published for the first time; it will therefore remain in copyright until the year 2045.

If you take a photograph of another photograph, and make what the trade calls a 'copy-negative', you will not be able to establish a new copyright in your copy-photograph. This question may seem to arise when a picture agency supplies a copy of an old or historic photograph for publication in the Press: but such a copy is only supplied on the understanding that the client pays a fee to reproduce it, since the agency has provided the facilities by which the photograph is lent to you.

Many people in public life wonder why, when they receive an honour, or a new appointment, they are often approached by some well-known firm of portrait photographers, and invited to sit for a portrait, free of charge. The reason is that the firm—if you agree to their invitation to sit—will own the copyright in the photographs they take of you, as these will be 'self-commissioned'; hence they will have the right to circulate your portrait freely, and to collect fees from newspapers or magazines who might wish to publish it.

Some firms of portrait photographers who *you* may commission to take a photograph of yourself, occasionally try and claim extra fees if you publish such a photograph i.e. on a book-jacket if you are an author, or in a magazine, etc. Unless you sign a form to this effect—and you should never do any such thing—*this practice is completely illegal*, and is a 'try on'; because it is you who own the copyright if you have paid for the photograph to be taken; and you may do whatever you like with the photographic prints.

In the event of your having commissioned a photographer, but finding you have not the money to pay him—or if you forget to pay him—*the copyright in the photograph you have commissioned still belongs to you*; all the photographer can do is to take legal action against you to recover his fee.

If a photograph is adjudged by the courts to be indecent, the copyright owner is not able to claim any copyright protection for it.

If photographs are taken of copyright paintings, drawings, or engravings, then the owner of the copyright in the photographs may run the risk of infringement of the copyright in the paintings, etc; but he still owns the copyright in such infringing photographs.

#### **27. If you wish to publish photographs of works of art or craft**

If you wish to reproduce in a book, or a periodical article, which you are writing, or as a postcard or other reproduction, a photograph of any contemporary or other modern work of art or artistic craftsmanship—i.e. a work still in copyright—you *may well have to cope with two separate copyrights, the copyright in the original work of art, and*

*the copyright in the photograph of it* which you propose to use in your book, article, or postcard, etc., if taken by an outside photographer.

Here are the main points to bear in mind when publishing photographs of works of art and craft:

(a) You must always be prepared to pay a reproduction fee to the photographer (or whoever else owns the copyright in the photograph) for every photograph you publish; unless the photograph you propose to use is out of copyright (see section 26).

(b) The next question is, will you be infringing copyright in the original work of art of which you are publishing a photograph? Apart from the question of the statutory exceptions, i.e. for criticism or review (see section 5), you need not worry about copyright in the original work, if it comes in any of the following categories:

Architecture and structures  
Designers' exhibitions  
Furniture and woodwork  
Pottery, porcelain and glass  
Gold and silversmiths work  
Jewellery  
Iron and other metalwork  
Textile fabrics  
Bookbindings  
Other minor arts and crafts  
You may freely photograph these objects, buy photographs, and publish them without requesting permission from the copyright-owners.

(c) But, if the photograph is of a

Painting  
Drawing or sketch  
Engraving, etching, etc.  
Book illustration  
Architectural design or plan  
Costume or textile design or  
Any other sketch or design in the flat  
*you must not publish it in a book or periodical without obtaining permission from the copyright owner of the original object photographed*, i.e. the painting or other objects listed above. Nor may you publish it as a postcard or other kind of reproduction. But there are occasions when you may publish such objects without seeking permission, such as for criticism and review (see section 5).

#### **28. Copyright held by a newspaper, magazine or other journal**

Where an item of artistic or literary composition is published in a newspaper, periodical, or any other journal, and *if the publishers own the rights, they are often not enforced after 50 years from publication*.

For rights held by newspapers (etc.) see the next section, on 'copyright in works done for an employer'.

#### **29. Copyright in works done for an employer**

If you are under a 'contract of service' to an employer to produce any sort of artistic or literary work for that

employer, *as part of your job*, the copyright of everything you produce in the course of that job belongs to your employer, or the firm who employs him. Your contract should be explicit about your duties. But unless the contract of employment provides otherwise, the copyright in what you write for a newspaper or periodical is split; the newspaper or periodical will own publication rights for itself, and also publication rights in syndicated form in another newspaper or periodical; but all other rights (such as book rights) will remain with you, as the journalist or artist.

But the copyright in any work you produce in your private time that is not covered by your contract, belongs to you.

For example, if you are an employee on the staff of a company, the copyright in any and every piece of writing you turn out in the course of your employment lies with that company; but if you write a short story in your private time, or a play, the copyright in them is owned by you.

If you have adopted a pseudonym when employed by a newspaper, or even if you have been given a pseudonym by the newspaper, you have the right to take that pseudonym to your next job (see section 25).

### 30. Crown copyright

The copyright of all material which is published by or under the direction or control of Her Majesty, or a government department, is vested in the Crown, which in turn is vested in the Controller of H.M. Stationery Office.

Government publications are classed as follows:

- (i) Bills and Acts of Parliament, Statutory Rules and Orders, and Statutory Instruments.
- (ii) Other Parliamentary papers, including reports of Select Committees of both Houses, and papers laid before Parliament by statute and by command.
- (iii) The official report of the House of Lords and House of Commons debates (Hansard).
- (iv) Non-Parliamentary publications, comprising all papers of Government Departments not contained in the first three classes.
- (v) Charts and Ordnance Maps.

Although all these classes of publication are Crown Copyright, *copyright in the first three is not enforced*—except in exceptional circumstances—because it is in the public interest to have the information therein disseminated as widely as possible.

Crown Copyright lasts for 50 years from the end of the calendar year in which the work is published.

If the work is unpublished, then its copyright is perpetual until published, and then 50 years beyond that. This also applies to any government photographs, or engravings (see definitions in section 13).

But the copyright of any paintings, drawings, sculpture or other artistic work, except those mentioned in the last paragraph, simply lasts for 50 years from the end of the calendar year in which the work was first published.

The rules for infringement, and the exceptions are the same as for the classes of material indicated elsewhere in this booklet.

### 31. Documents in the Public Record Office

A most peculiar section of the Copyright Act (Section 42) deals with documents in the Public Record Office, and states:

'Where any work in which copyright subsists, or a reproduction of any such work, is comprised in (a) any records belonging to Her Majesty which are under the charge and superintendence of the Master of the Rolls . . . and are open to public inspection in accordance with rules made under that Act (i.e. of 1838) . . . the copyright in the work is not infringed by the making, or the supplying to any person, of any reproduction of the work by or under the direction of any officer appointed under the said Act of 1838 . . .'

On the face of it, the phrase 'supplying to any person', without the addition of any condition of 'private study' would seem almost to constitute permission to publish such records at will. As the Public Record Office holds many thousands of unpublished letters which are still in copyright, it would appear that the fact of their being in the Public Record Office means that their copyright can be broken by this section of the Copyright Act. The authorities of the Public Record Office inform me that they do not, and would not, interpret the Act in this way; and that any letter among their official documents whose copyright is held by a private individual, or his heirs or assigns, would have its copyright respected. Such a letter, if it is now a Public Record, can be photo-copied for private study, but the client is warned that he should seek the permission of the copyright holder before publishing any part of it. There are, however, in the Public Record Office certain private collections received by way of gift or deposit: photo-copies of private letters in such collections are not supplied without prior permission from the copyright holder.

### 32. The public exhibition of copyright works, and screen projection in lectures

*There is no infringement of copyright of works of any kind by showing them* in an exhibition, or in any other place; and no permission should ever be requested from the copyright owner for such showing, except of course out of courtesy if the owner of the copyright is the owner of the work, and has made it available.

By the same token, projecting a lantern slide of any copyright work in a lecture is not an infringement of its copyright, and no permission should be requested for such use. The actual making of a slide would not necessarily be covered by the making of a copy for private study or research, or for criticism or review. But the selling of slides is a serious infringement, as it involves the multiplication of copies, and issue to the public.

### 33. Contributions to learned and other periodicals

A rather odd and specialised problem arises with learned, and other not so learned, periodicals or journals, some of which seek to persuade the authors of articles that appear in them to assign (i.e. to give or sell) their copyright to the periodical in question. This can very often be a totally unjustifiable practice. It is, of course, a somewhat different matter for a prolific free-lance journalist, who may often sell his articles outright, the fee paid to him including the copyright. But for serious academic and similar articles, it is quite a different matter. The two chief points against giving away or selling your copyright are: (1) that the new owner of the copyright can legally alter your article, and in these days of the equally odious practice of editing any and everything that comes their way, conceited sub-editors, or the editors themselves, can (and often do) change the sense of what you write, and even remove pieces of it, and all within their rights; and (2) you have to go on bended knee and beg permission to re-print your own article if you wish to use it, or large parts of it, in the future.

Unless the editor is able to exercise some subtle blackmail over you, or if there is some over-riding reason why you wish to appear—at all costs—in any given periodical, you should never agree to sell, hand over, give, or assign your copyright to anyone.

You should only grant (i.e. give or sell) what is known as 'first serial rights' in your article; this means that the periodical in question can have the first exclusive use of your article in this country and abroad, and of course, it may be circulated all over the world. 'First British serial rights' would confine the rights to this country. You may then grant other rights, for other countries, or for translations, etc.

It has been stated (see *The Author* LXXX (3) Autumn 1969) that there are the following advantages in assigning your copyright:

- (a) simpler copyright protection in the USA;
- (b) facilities for dealing with infringement of copyright, most of the world over;
- (c) facilities for re-use of material, if desired, in other countries and perhaps in other languages.'

I would cheerfully forego any of these advantages, and risk any of the disadvantages, in order to preserve control over my work. I would even rather have it pirated than owned by someone else.

There are various complicated forms of agreement available which some periodicals offer, in order to propitiate their authors; but most of them ultimately give the periodical the ownership of the copyright. My personal advice to academics and others is, in principle, to resist any move to buy copyright outright, unless some very good reason is given; and in cases of the least doubt, to consult the Society of Authors, which has much experience of this problem, and is therefore well qualified to advise on the subject.

### 34. Copyright in academic theses and other works

The writer of an academic thesis owns the copyright of such a thesis, not the college, university or other estab-

lishment under whose authority he wrote it, *unless he wrote it as part of his official duties laid down in his contract of service, or unless his contract of service specifically provides otherwise*. Normally the author of such a work will not be employed to write; and so long as it is not part of his official duties to write a thesis of the sort in question, then the copyright will be his.

Some academic organisations lay down rules about the fate of theses, and state conditions about their publication and so on; but unless these rules and conditions are expressly or impliedly made part of the terms of the contract of service, they would not serve to acquire the copyright for the organisation. Writing done in the course of study at a college or other academic institution by a student would of course always be the copyright of the student.

Journalists and artists on the staff of a newspaper or periodical (but *not* free-lances) are in a special category, in that unless the contract of employment otherwise provides, the copyright in what they write for the employer is split. The newspaper, magazine or similar periodical, will own publication rights for itself, and also publication rights in syndicated form in another newspaper, magazine, or similar periodical. But all other rights (such as book rights) will remain with the journalist or artist (see section 29).

### 35. Copyright fees, reproduction fees, and access fees

It is important to note that when charging, or being charged, fees for reproducing photographs, etc., the transaction should never be described as concerning 'copyright fees': much misunderstanding can easily result from such usage, and the term 'reproduction fees' should always be used.

Incidentally, if you wish to reproduce a copyright object, the copyright holder can charge you whatever he likes, and there is no redress. Many museum and gallery officials are faced with this problem, and it often results in their not being able to reproduce objects they wish to include in articles or books, owing to the copyright owner not being prepared to reduce his fees. What is more, there have been cases where they have been unable to reproduce works hanging in their own galleries!

Many bodies and individuals may seem to charge fees for the reproduction of objects—or photographs of objects—which they own, when they do not appear to own the copyright of such objects, especially, for example, when the objects are old and out of copyright. Such owners often talk about 'copyright fees', when the term is manifestly absurd.

What they are generally charging is an *access fee*, which they are quite justified in levying; unless they only permit the sale of their own copyright photographs.

If someone owns, say, the axe that beheaded Mary Queen of Scots, or a unique engraving of her execution, there is of course no copyright in either axe or engraving. But the owner, in order to make some money, is entitled to do any, or all, of the following:

- (a) Charge an admission fee to view the exhibits, and forbid photography
- (b) Sell photographic prints or postcards, or transparencies, of the exhibits—having taken the photographs for himself—with an extra fee payable if these

photographs are reproduced; the owner, of course, owns the copyright in photos

- (c) Charge an access fee, and allow the visitor to take his own photographs: if this is allowed, the copyright belongs to the photographer, and the latter can sell any of the resulting prints or transparencies in any way he likes, unless he signs a document agreeing not to do so.

### 36. Obtaining photo-copies (stats, etc.) from public libraries

Certain public and non-profit-making libraries may supply photo-copies (stats, etc.) of *any articles in periodicals*, provided the library in question is satisfied that the copies are only for private study. But *only one article may be copied from any one issue of a periodical*, and only one copy may be made; the articles may include any accompanying illustrations.

But, *in the case of published books, the same conditions do not apply*. Although you may copy a reasonable amount of copyright material for private study, it is not the same with photo-copies from material in libraries. You can only obtain photo-copies of a 'reasonable' proportion of a published work from a library, and then *only after you have obtained permission from the copyright owner*.

If it is an old book, and the library authorities do not know the copyright owner, you will be allowed to have photo-copies of the 'reasonable' proportion.

Provision is also made for one librarian to copy a work, or part of a work, for another librarian of a public or non-profit-making library, if he does not know the name and address of the copyright owner, and cannot by reasonable enquiry ascertain it.

For full details about photo-copying from libraries, reference should be made to Statutory Instrument No. 868 (1957), bearing the title *Copyright (Libraries) Regulations, 1957*. This sets out the form of declaration and undertaking to be signed by students and others who wish to take advantage of the facilities mentioned above.

### 37. When a public library wishes to provide another public library with a copy of a book

A library—public or non-profit-making—is not allowed to provide another library with a copy of a copyright published work if it is obvious as to who owns the copyright in the work in question. Only if the supplying library is not able easily to ascertain the copyright-owner, may it supply another library. The point here is that the supplying library—in the case of old or obscure books—need not go to undue lengths in trying to find the copyright-owner if this information is not readily available.

### 38. Obscene objects or writing

It is not generally realised that a person can be charged under *two* Acts where obscene publications are concerned:

- (1) The Obscene Publications Act (1959); (2) The Post Office Act (1953).

The definition of an obscene object is that its effect

tends 'to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.' This is, of course, an absurd definition, as every word and implication is an imponderable: that is why so many moral absurdities have resulted in obscenity cases over the years.

Where a literary work is concerned, the work must be adjudged to be obscene 'as a whole'; but where an art (or other) object is concerned, 'where the article comprises two or more distinct items, the effect of any one of its items' is what matters.

But the points which concern us here are (a) that any object which has been adjudged by a court to be libellous, immoral or obscene can claim no copyright protection whatever; its copyright—which, of course, it has automatically—will not be enforced. These types of publication therefore form the only class in which no copyright protection would be upheld. But it must be remembered that such deprivation of copyright protection only extends to the jurisdiction of whatever court delivers the judgement; (b) the word 'publication'—whether verbal, visual or aural—*has here a totally different meaning to when it is used in the Copyright Act*. Any obscene object is said to be published, not only if it is in any way distributed, circulated, sold, offered for sale, hired out or offered for hire, *but even if it is given or lent to another person*. No action can be taken if the object is merely shown to another person.

A person guilty of any of the above actions is liable to be prosecuted. In the case of literary items, this would of course involve the author, printer and publisher, as each and all of them would be guilty of one or more of the acts.

### 39. Can you sue someone for infringement of your copyright if you have just discovered it?

Yes, you can sue any time up to six years after the infringement was committed.

### 40. Presentation of books to the privileged libraries

If you are in charge of publications in your museum, you must ensure that you deliver, at your own expense, one copy of every new book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table—but subsequent editions only if added to, or substantially altered—to the British Museum Library. What is more, it must, if there are more than one quality of book, be one of the best copies.

There are also the following libraries which are equally privileged, except that you do not have to send them books unless, or until, they ask for them; they are, incidentally, only entitled to run-of-the-mill copies:

Bodleian Library, Oxford  
University Library, Cambridge  
National Library of Scotland, Edinburgh  
Library of Trinity College, Dublin  
National Library of Wales

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