COPYRIGHT ISSUES FOR LIBRARIES IN MAURITIUS

By P. Hauroo, President of the Library and Information Association. The author may be contacted by email at rhauroo@gmail.com.

Abstract:
This paper is written with a view to stimulate discussions on copyright issues related to libraries in Mauritius. The recent initiative of MASA to act as a licensing agency for reprographic reproduction of copyrighted materials and to levy a fee on all photocopies made in libraries is also commented. Besides reviewing the copyright legislations, both at local and international level, the article also discusses issues related to such licensing in the USA and UK. Your views, comments and criticisms are most welcome to enrich the debate on this subject.

International copyright protection for authored works against piracy or unauthorised copying is governed by two main conventions: the commonly known Berne Convention¹ and the Universal Copyright Convention². Mauritius is a signatory to both these conventions along with other World International Property Organization treaties or agreements (TRIPS Agreement, for example) which make it binding on the country to incorporate in its local legislations the international duties and obligations regarding copyright protection. The Copyright Act 1997 and a series of other legislations enacted by the Government of Mauritius (The Information Technology Act 1998, The Electronic Transaction Act 2000, The ICT Act 2001, The Computer Misuse and Cybercrime Act 2003, The Data Protection Act 2004, etc) are aimed at developing and maintaining the protection of the rights of authors in the literary and artistic works and addressing issues related to digital technology and electronic publishing.

1. Libraries and Copyright
Networks of libraries and information services are important channels of communication in society. They are gateways to the universe of knowledge accumulated over centuries and recorded until recently principally on print media. Libraries have been instrumental in all aspects of development in society by providing continual information back-up services to sustain economic growth of nations, emancipation of the masses and their education. Without the provision of library services and materials to support education, research and the supply of information for the improvement of trade, social and economic progress would not have been on such scale.

¹ The Berne Convention first adopted in 1886 and revised subsequently (Paris 1896; Berlin 1908; Berne 1914; Rome 1928; Brussels 1948; Stockholm 1967; and Paris 1971) is an international agreement for copyright protection and as at May 2006, 161 countries are signatories.
² The Universal Copyright Convention was adopted in 1952 in Geneva and revised in Paris in 1971.
As a transmission agency for communication of knowledge, ideas and information from creators to end users, libraries are definitely concerned with copyright legislations. They have been for years collecting and processing works of authors and making these available to the library patrons. Even in our electronic era, libraries are continuing to provide access to the mass of electronic materials published world-wide. However, rigid copyright legislations aiming exclusively to bring commercial benefits to copyright holders without considerations to other social issues are counter-productive. This requires some explanation. It is an undisputed fact that authors have to be rewarded for their works which are their intellectual properties. Others should not be permitted to derive commercial benefits illegally from the work of the creators. However, the same works need to be brought to the notice of users and made accessible to everyone - students, researchers and the public - without infringing on the rights of the creators of the works. **The copyright legislations protect the rights of the creators while access to the materials is provided by libraries under certain conditions.** The two imperative needs of safeguarding the rights of the creators and providing access to the work by the public are satisfied when copyright legislations ensure sufficiently the protection of owners’ rights and at the same time provide exception clauses for users and more particularly to libraries and archives. The doctrine of “**fair use**” in the USA which allows copying of copyrighted materials for educational and non-profit purposes is aligned on this progressive approach to copyright. It is important for society to allow users access to the ideas, knowledge and information contained in copyrighted materials. Just like the creators have access to other materials in creating their work, new researchers should equally have access to ensure progress and continuity in the pursuit of new knowledge and for the advancement of science. Scholarly research and communication are impaired if all copyrighted materials are inaccessible or are exclusively available through purchase of the rights for use. For developing countries, the case may be even more catastrophic as lack of funds dramatically limits their acquisition programmes.

It is for these reasons that the international copyright regime provides countries with some flexibility in creating exceptions and limitations to their national copyright laws for libraries and archives. However, under pressures from powerful groups, many countries have introduced regulations which have strengthened and extended owners’ rights while shrinking the limitation and exception clauses to copyright for libraries and archives. This has resulted in a dangerous imbalance which may hinder future research and scholarly activities. Libraries rely on these exception and limitation clauses of copyright acts to develop library services, expand
accessibility and support the research needs of users. What can librarians do to bring the balance between the private rights of creators and the general interest of library users?

2. USA: Library Copyright Alliance (LCA)

In the United States, a coalition of five major library associations have been formed “to work toward a unified voice and common strategy for the library community in responding to and developing proposals to amend national and international copyright law and policy for the digital environment. The LCA’s mission is to foster global access and fair use of information for creativity, research, and education.” The five library associations are: the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, and the Special Libraries Association. With a membership of 80,000 information professionals from all types of library services, the coalition lobbies in favour of copyright laws which “balance the interests of creators of intellectual works and the users’ rights to use protected works to further creative endeavour, learning and research.”

The following paragraphs taken from the Website of the CLA are clear as regards their concerns:

“Copyright and related intellectual property laws have important and substantial effects on the nature and extent of information services libraries provide to their users. Intellectual property laws are currently undergoing major changes in response to the growth in the use of digital formats for works. The LCA is principally concerned that these changes do not harm, but rather enhance, the ability of libraries and information professionals to serve the needs of people to access, use, and preserve digital information. Our concern is heightened because of emerging technology applied to copyrighted works that is intended to prohibit access, use and preservation of digital information.”

3. United Kingdom: the Libraries and Archives Copyright Alliance (LACA)

In the United Kingdom, the Chartered Institute of Library and Information Professionals (CILIP) supports the Libraries and Archives Copyright Alliance (LACA) which has similar objectives as the CLA of the USA. It groups “UK’s major professional organisations and experts representing librarians and archivists to advocate a fair and balanced copyright regime and to lobby about the copyright issues affecting the ability of library, archive and information services to deliver access to knowledge in the digital age.”
LACA lobbies in the UK and Europe about copyright and related rights on behalf of its member organisations and UK users of copyright works through library, archive and information services.

On European issues CILIP is active within EBLIDA: the European Bureau of Library, Information and Documentation Associations. Additionally CILIP/LACA collaborate closely with IFLA: the International Federation of Library Associations and Institutions, and provide substantial support for IFLA’s lobby at WIPO: the World Intellectual Property Organisation in Geneva, to encourage the development of international instruments which will promote access to knowledge.

4. Mauritius

Mauritius participates fully in the multilateral copyright protection as required in the international treaties. The Copyright Act 1997 and subsequent legislations sufficiently protect the interests of authors of their intellectual creations. Part IV of the Act deals with the “Limitations on Economic Rights” and under this part, Section 13 enumerates the conditions under which the private reproduction of a published work in a single copy is authorized. Section 15 of the Act enumerates the conditions under which reproduction for teaching is permitted while section 17 lists the conditions under which reproduction, broadcasting and other communication to the public for informative purposes are allowed without the authorization of the author of, or other owner of copyright of the work

4.1 Reprographic reproduction by libraries and archives.

The Act makes provision (Section 16) for libraries and Archives to make a single copy of a copyright work under certain conditions where:

(a) the work reproduced is a published article or other short extract of a writing, with or without illustrations, and where the purpose of the reproduction is to satisfy the request of a physical person, if –
   i. the library or archive is satisfied that the copy will be used solely for the purpose of study, scholarship or private research;
   ii. the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and
   iii. there is no license available, offered by a collective administration organisation in a way that the library or archive is aware or should be aware of the availability of the license, under which such copies can be made; or
(b) the making of such copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy or to replace, in the permanent
collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable, if –

i. it is impossible to obtain such a copy under reasonable conditions; and

ii. the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

The Copyright Act however does not define reprography as comprehensively as it is understood today as a process of duplicating a work through printing, photocopying, scanning, burning on CDs or DVDs and electronic storage for dissemination or distribution over networks.

4.2 License for reprographic reproduction of copyright materials

The Mauritius Association of Artists (MASA) prevailing itself of the Section 15 (b) (iii) and Section 16 (a) (iii) of the Copyright Act 1997 is pressing libraries and educational institutions to apply for a license for reprographic reproduction of copyrighted materials. MASA is also campaigning to raise awareness against illegal photocopies made out of copyrighted materials and claims that, copying of protected materials was permitted without the authorization of the author only

“where there [was] no license available, offered by a collective administration organization in a way that the [library or archive], educational institution is aware or should be aware of the availability of the license, under which such reproduction is made.”

MASA states that it has now adhered to the IFRRO – the International Federation of Reproduction Rights Organisations and all concerned institutions /organizations involved in reprographic activities need to apply for a license for reprographic reproduction of copyrighted materials.

4.2.1 What is IFRRO?

From the Website of the organization we learn that it “is an independent organisation established on the basis of the fundamental international copyright principles embodied in the Berne and Universal Copyright Conventions. Its purpose is to facilitate, on an international basis, the collective management of reproduction and other rights relevant to copyrighted works through the co-operation of national Reproduction Rights Organisations (RROs). Collective or centralised rights management is preferable where individual exercise of rights is impractical.” (http://www.ifrro.org).
As per MASA assertion, the grant of a license (from MASA) on payment of a fee for reprographic reproduction of copyrighted materials will ensure remuneration for authors, which will in turn encourage creativity and provide incentives to invest in new products and services. Some libraries and educational institutions have already been visited by MASA representatives to impress upon their Heads of Departments to apply for such a license. LIA has received queries from its members and various questions related to the license need to be addressed before the Association can take a stand on the issue.

a) To photocopy or not to photocopy?

It is understood that libraries are allowed to make photocopies or make reprographic reproduction of any copyrighted materials if the legal conditions authorizing these are respected. By so doing, libraries are not infringing the rights of owners or breaching the Copyright Act 1997. However, as per MASA representative, libraries need to obtain a license to do this now.

b) Quantum of payment

From correspondences received in a few organisations, it is not clear about the quantum to be paid for the license. Many libraries do make photocopies of library materials at the requests of their users but within the parameters defined by law. Colleagues in the library fields have reported to have understood from MASA representatives that a percentage of fees collected out of photocopies made by libraries should be remitted to MASA as license fee. This is perceived in the profession as a sort of levy for each page of photocopy. Moreover, the mass of photocopies made include both copyrighted materials and materials free of copyright (public domain books). How to make the distinction and calculate the “levy” to be paid to MASA?

It is good to emphasize that libraries offer a photocopy service just to assist users (provide a service) without any intention to make a profit. Very often such service is offered on a cost-recovery basis and is never run on a commercial line. In view of the problematic operationalisation of the collection of this “levy”, should libraries discontinue with the practice of making photocopies and deprive users of such facilities?

c) Exclusively copyrighted materials
It is equally understood that MASA’s license will cover only copyrighted materials. Should this apply to only Mauritian authors or to foreign authors also? Statistical data for photocopies done in libraries show that a very low percentage of books by local authors are photocopied and in many cases the photocopied materials are free of copyright. In such cases is it worth to pay for a license to MASA or to simply stop offering the service to users?

d) Digital photography of documents

Besides photocopies, some libraries also offer a scanning service. Users are allowed to use digital cameras to take shots of pages from books. In such cases how are they going to be charged? What if libraries do not allow scanning or other means of reprography such as use of digital camera? Is this a viable solution for libraries? So many questions need to be answered. Ultimately, by complying with the new measure, are libraries encouraging the use of library materials by charging extra cents for our services?

5. Copyright Licensing Agency in UK

It is appropriate here to mention the case of the Copyright Licensing Agency (CLA) in the UK which licenses organisations to photocopy and scan from magazines, books, journals and digital publications on behalf of authors, publishers and visual creators. CLA is also a member of IFRRO to perform collective licensing on behalf of the Authors’ Licensing and Collecting Society Ltd (ALCS) and the Publishers’ Licensing Society Ltd (PLS) “to provide a fair and effective way of collecting fees due to authors and publishers for the reproduction of their work”. (http://www.cla.co.uk/about_whoweare.php). From the Website of CLA, one can see the types of organisations which require licenses and “the publications that the licences cover include books, most trade and consumer magazines, law reports and journals, and digital and online publications published in the UK and in most major territories overseas”. However, there is also a list of excluded categories and works which are not covered by CLA’s licenses. These are:

- Works published outside the United Kingdom and the International Territories.
- Works published by US publishers that are listed on the ‘Excluded US Publishers List’
- Maps, charts or books of tables
- Printed music (inc the words)
- Works specifically excluded by a special notice mentioning CLA, either on the work itself or by inclusion on the list below
• Tests or public examination papers whether published individually or in a collection
• All newspapers
• Privately owned documents issued for tuition purposes and limited to clientele who pay fees (except those published by the Open University or the National Extension College)
• Workbooks, workcards, or assignment sheets
• Industrial house journals

This model is much more explicit and MASA may be inspired to emulate CLA as far as its operations are concerned. It is true that copyright law has changed in the UK. The European Union Copyright Directive was implemented with effect from 31 October 2003 and one of the most important changes as far as library users are concerned, is that any copying for commercial purposes is no longer allowed under the ‘fair dealing’ or ‘library privileges’ exceptions which formerly applied.

Conclusion

Library will continue to make photocopies of copyrighted materials for personal and educational purposes. This is not denied by MASA. The issue is that MASA wants to be paid for photocopies made for any reprographic reproduction of copyrighted materials. I believe this is the real issue. Should libraries pay for such license to MASA or not is a policy matter to be addressed by the authorities. Right now many questions remain unanswered and unless all confusions are cleared, libraries should not enter into any agreement which would devalue library services. The interest of users should be our main concern, without overlooking the rights of authors. As an end note, it would be good to reflect on the Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives of the Committee on Copyright and Legal Matters of IFLA (CLM):

“...The library community asserts that exceptions and limitations maintaining the longstanding function of copyright law in society should be viewed as public rights balancing the private rights to information also granted in copyright laws. They should be seen as integral to the proper function of copyright as a means of supporting innovation, creativity and economic growth in all parts of the world...”

References:


