



Authors & Copyright

✉ Eleanor Norford talks to Gillian Davies about the law and what writers need to know

Copyright expert Gillian Davies on why she wrote a book on copyright for authors

Few people manage to make a living from the two things they love best. But copyright expert Gillian Davies has done just that. After gaining a literature and fine art degree, she went on to study law – discovering her love for intellectual property rights.

Now with nearly twenty years' experience she has become an authority on the subject and has written two books, *Copyright Law for Writers, Editors and Publishers* and *Copyright Law for Artists, Photographers and Designers*.

Here Gillian recalls her journey and offers authors essential advice.

HOW DID YOU FIRST BECOME INTERESTED IN COPYRIGHT?

It has always been my pet subject. When I first studied law I was a bit startled by the intricacies such as tax, finance and conveyancing, but got on well with juris-prudence and intellectual

property, so I read all the copyright cases I could.

Despite achieving a first class degree in arts, I only scraped a pass in law because that's not how you study it. With law it doesn't do to specialise, as with medicine – you need to know a little about everything.

WHAT INSPIRED YOU TO WRITE *COPYRIGHT LAW FOR WRITERS, EDITORS AND PUBLISHERS*?

I pitched *Copyright Law for Artists, Designers and Photographers* to A&C Black (now Bloomsbury). The editor then invited me to do one for writers as a follow-up. My idea with both was to try not to write a law book – instead aim it at someone like me – an artist, jobbing writer and editor. Its focus was: what do I need to know about the practical side of things, as far as I can understand it from the law?

In the UK, copyright law is a shambles. It has evolved over a century and bits keep getting

bolted on. It is hard even for the best lawyers to see clearly the legal position. Plus we don't have many cases on copyright here, as opposed the US.

The leading UK (lawyers) textbook is *Copinger & Skone James on Copyright* and costs in excess of £100. There was a gap in the market because there weren't any books that could be read by non-lawyers. In contrast my books have pictures and are £13 at the moment.

WAS IT A DIFFICULT TO SECURE A BOOK DEAL?

It was difficult because I didn't go to specialist law publishers. Instead I went randomly to the London Book Fair. Like most freelancers I have a very 'portfolio' career and was interested in securing editing or illustration work. In the end I stumbled across a book on a shelf of A&C Black. It was on business and law for artists, so I thought, yes, I could write up my pet subject/secret PhD for them and



For more on Gillian visit her editorial blog
<http://lawandarts.blogspot.co.uk> or art blog <http://carouselmonkey.blogspot.co.uk>

see if they will do it.

I had previously been in talks with an academic body to do a book, but they didn't have the budget to publish any pictures. To me it was crucial that I get a publisher who could do full colour pictures – particularly in a book for artists – albeit on a very low budget. Images were essential to explain why picture A breached the copyright in picture B.

THE MOST DIFFICULT PART OF THE PROCESS WAS?

Clearing the rights for the pictures for the art copyright book.

Although this was vexatious and expensive, it was a good part of the research. Then there was the psychological (and by then emotional) trauma of the publisher who signed me up retiring midway.

My manuscript sat for over a year not being read and I didn't get any feedback about whether it was going to be published or not. Then, finally, it was copy-edited.

Having always been the copy-editor I didn't realise how annoying it is. With law you have to be very careful about the words you choose and how you express things, so some changes were not acceptable and I had to revert.

AND THE MOST INTERESTING?

A case study on clearing rights to



use some lyrics. I quoted one line from a Pink song and then had to wait most of that year, which was spent going back and forth for permission to use it, then pay the correct sum of money to the correct people. Note more than one. Lyrics are very expensive as the music industry is a well-oiled machine in terms of knowing to

ask for payment for rights and permissions. There were a lot of agents involved and I was amazed at what a quagmire it all was. I had to speak to about four or five people and negotiate quite hard. All this for a single line, twelve word lyric.

DID THIS IMPACT ON YOUR WORK, IF SO HOW?

The bad thing is that I could have learned the wrong lesson. If you try to do the right thing and get copyright permission, it can cause lots of headaches. Whereas those who don't ask and lift some text from somewhere may get away

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Gillian's books – *Copyright Law for Writers, Editors and Publisher* plus *Copyright Law for Artists, Photographers and Designers* – are both published by Bloomsbury and available at most retail outlets including Amazon

with it if no one notices. But it is a big risk. Copyright infringement can attract both civil and criminal penalties potentially – so if you upset the wrong person you could really be in very deep water.

A case involving the design of a fabric – it happens to be the leading UK case on copyright – nearly put the party losing the case (found to have unlawfully copied a design) out of business. I interviewed the company representative on the losing side. The woman nearly broke down after three years. Her case went to the highest court in the land – the House of Lords, as it was named then – and her company very nearly went bust. The defendants paid up £10K in court damages, but she told me the actual cost to her was £980,000. Of course this is her side of the story, but is something to think about.

HAVE COPYRIGHT LAWS CHANGED WITH THE EVOLUTION OF NEW TECHNOLOGY?

It would be an understatement to say that the copyright legislation has not kept up with technological developments. The EU has introduced a law to say that unlocking something that has been locked (decrypting something that has been encrypted) – or 'anti-circumvention measures' can now be copyright infringing acts (EU following US lead there). But that hardly touches the surface. A major problem is that copyright laws are different in each country. That means if you publish in the US, or Germany, or Japan, your copyright situation could be different. Therefore you or your

publisher will need to assert and negotiate rights – in each and every territory, and for every possible use – print, digital rights, serial rights, translated copies.

Of course, the internet undermines that. That has not been resolved and I don't see it being resolved. On the other hand, other people think that there are so many gaps in the law – due to so few cases and no precedent on so many things – that that actually could be a good thing. Potentially, a lawyer could put together arguments defending your actions, or in trying to seek redress for someone else's actions, in a multitude of ways within what is a highly-developed, albeit chaotic body of law.

Using the law is not really an option – it is too expensive and too unwieldy, certainly for individuals. Plus digital publishing does not entitle you to a share of collective royalties as yet.

DO YOU WORK WITH AGENCIES SUCH AS THE ALCS AND THE SOCIETY OF AUTHORS?

I interviewed Authors' Licensing and Collecting Society (ALCS) lawyer Richard Combes for the book. He was unusually forthcoming and helpful. The Society of Authors kindly granted me a small bursary to write *Copyright for Writers, Editors and Authors*.

In addition I also get royalties

from ALCS and Public Lending Right (PLR) from their collective rights pools. A small annual payment, but again it is good to know about if you have published a printed hard copy book. Self-published authors can register their books with ALCS. If used they receive remuneration. They can also apply for PLR royalties providing their books have an ISBN.

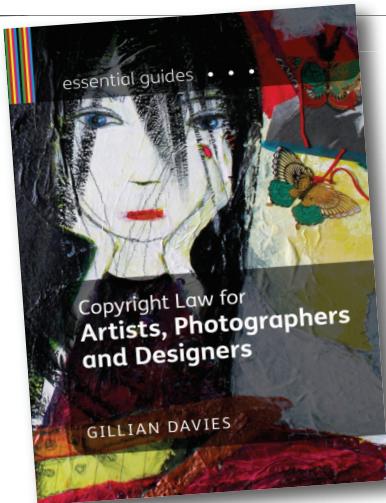
HOW IMPORTANT ARE ORGANISATIONS SUCH AS THESE?

I think the ALCS and PLR do a great job. For example, in music the idea is that the writer gets a lump sum fee from their music publisher, say EMI. Then they receive different kinds of royalties paid for secondary uses.

That small revenue comes to a musician each year from the money that the MCPS-PRS Alliance collect from shops and institutions who pay to be able to play music in public places such as shops, the gym, etc. Likewise PLR collects for each author. Around £0.03 goes to an author every time a member of the public borrows a book from a public library.

The Society of Authors has really useful standard publishing contracts and information about copyright and contact for copyright queries for members. Great news, as using a lawyer is simply not an option for most small timers. However, a new

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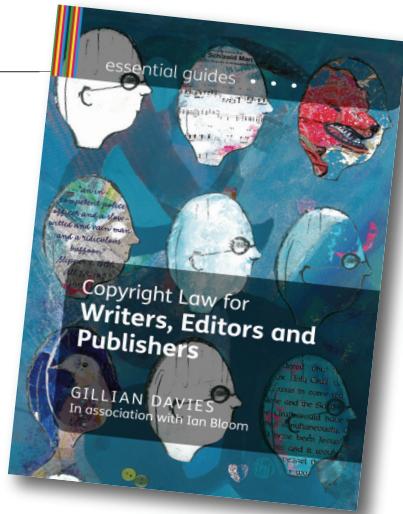


small claims procedure recently introduced is a big help – allowing courts to hear claims worth £5K plus. A significant improvement on the previous regime whereby cases had to be heard before the High Court, which only considered cases worth over £50K.

WHAT SHOULD EVERY AUTHOR KNOW ABOUT COPYRIGHT?

If someone asks you to 'assign' copyright – don't. Assignment is not reversible. You lose all your rights forever. If someone asks for a licence, then it could be OK to say yes, but find out what that licence covers. World rights known as a 'rights grab' by some may not be acceptable.

Writers should look at those they will concede. There are hundreds of such 'rights' capable of being packaged up. The general rule of thumb is to try to keep as many rights for yourself and only concede to a publisher whatever limited scope of rights you can. This is all about negotiation and that depends on bargaining power. If you are publishing for the first time, you will be the weaker party so may need to cede to what the publisher wants.



IF A WRITER FEELS COPYRIGHT HAS BEEN BREACHED...?

Let the party know immediately how you feel. Keep a record of all communications. Approach the Society of Authors or a specialist media copyright law firm.

First-step legal advice might be available from organisations such as the Society of Authors, the Writers' Guild, the National Union of Journalists (NUJ), the Society for Editors and Proofreaders (SfEP) or your local BusinessLink.

Alternatively try an intellectual property specialist adviser like Own-It or Artquest, which deals with the visual arts, but carries advice applicable to writers too.

If the problem involves an internet service provider (ISP) let them know. The law states that if an ISP is on notice that it is carrying unlawful content, it must act to enquire/remove. Lawyers can issue 'notice and take down' orders on your behalf.

TELL US ABOUT YOUR MOST INTERESTING COPYRIGHT CASE STUDY.

Dickens. I studied his literature and it is interesting to me that this

Victorian celebrity author was also a pioneer copyright campaigner.

The most interesting case is one involving Dickens's will, and an unpublished manuscript. It is the story behind the story of how intellectual property works. How copyright, as a subset of IP, works. In law, you have real property – tangibles. Then you have intellectual property – intangibles. So, Dickens could leave a pile of paper (unpublished) to his daughter, but/and also leave the copyright in the story to someone else. Magic. Actually, under the present system, he could leave parts of the copyright to many people. For example to Anna for rights in America; to Felix for rights in Jamaica, to Cecil for rights in audio visual remakes in Holland; to Parker-Jones for film rights across the world except Japan... the list goes on.

Copyright is infinitely divisible as to territory and usages, though this may change one day as publishers are now considering new approaches to rights and copyright. This would be less about the carve up of such complex matrixes of individual rights, and more about a '360 degree' approach.

What the law does is start by saying everything belongs to the author, then bit by bit erodes that by allowing exceptions, defences, and subdividing parts of the right. Unlike our American counterparts we have fair dealing in the UK. This means that while it is not OK to do private copying in the UK, it might be deemed acceptable in the States.