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Copyright questions asked by libraries

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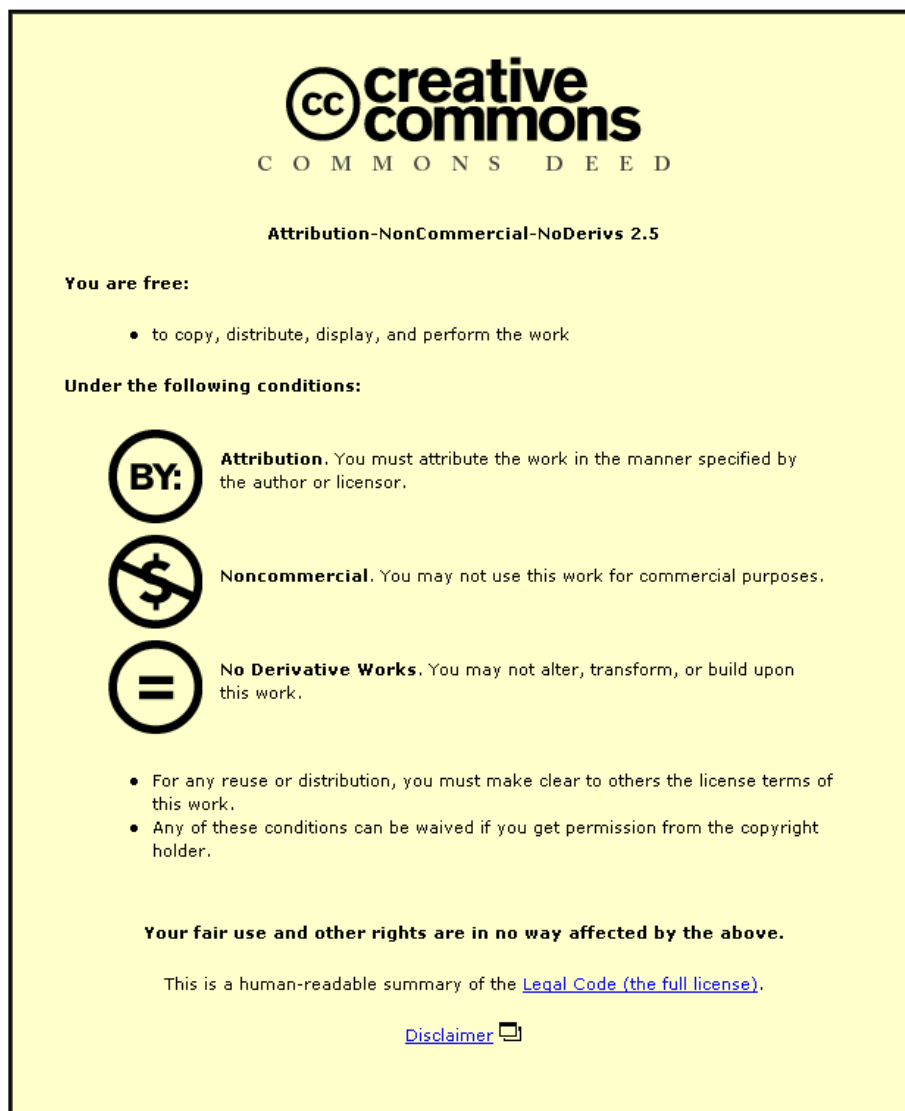
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Copyright questions asked by libraries

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Abstract

Describes the history, purpose and membership of the Lis- Copyseek e-mail discussion list. Reports on an analysis of the year 2000 Lis-Copyseek archives that was performed to gain an understanding of the copyright questions faced by libraries. Concludes that traffic on the list has increased considerably since the list's inception. The majority of concerns relate to copyright in the print environment, in particular the regulations concerning short loan collections and course packs. Provides examples of questions and topics libraries are discussing on the list. Recommends that further copyright assistance be provided to libraries trying to work within current regulations.

Electronic access

The research register for this journal is available at

http://www.mcbup.com/research_registers

The current issue and full text archive of this journal is available at

<http://www.emerald-library.com/ft>

1 Background

The 2000 Elsevier/LIRG Research Award supported an investigation into copyright clearance activities in UK libraries called "Clearing the Way" (Gadd, 2001a). One of the aims of this research was to "gain a better understanding of the main areas of confusion surrounding copyright law and library services". A questionnaire survey and series of case-study interviews (Gadd, 2001b, and c) hoped to achieve this aim, amongst many others. However the feedback on this one area was not as detailed as had been expected. It was decided that the best indication of the topics confusing libraries might be found in the archives of the e-mail discussion list, "Lis-Copyseek".

1.1 Lis-Copyseek

Lis-Copyseek, a list hosted by the Higher Education Funding Councils' Joint Information Systems Committee's "JISCmail" service, was established in 1997 by Elizabeth Gadd and Andrew Brown. Its purpose was to provide a forum for the discussion of issues and copyright holder contact/policy information relating to copyright clearance. The list was designated a "closed" or "private" list and rights holders and their representatives were excluded from membership. The list owners assessed every membership request to ensure this policy was upheld. The reasons for excluding rights holders were twofold. First, commercially sensitive information such as publishers' copyright policies and charges might be discussed on the list. Second, and more pertinently, many librarians are excessively conscientious - even fearful - regarding their copyright responsibilities, and would be extremely unlikely to discuss the matter in the hearing of rights holders. The closed list would provide a safe environment for copyright issues to be discussed and for a consensus to be reached.

1.2 List membership

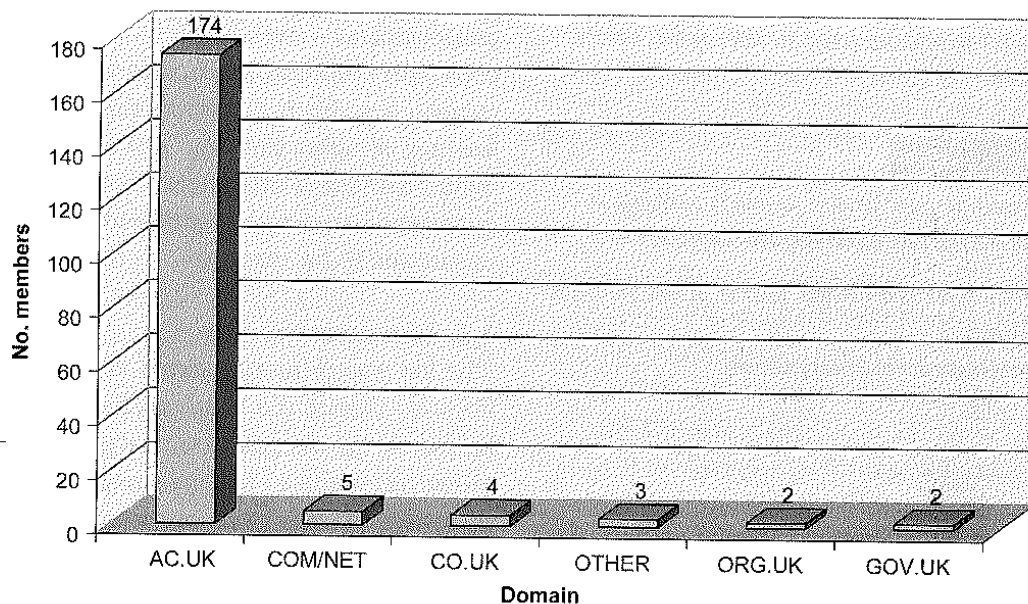
The list was primarily aimed at UK HE libraries (hence the "Lis" prefix) who were known to be struggling with rights clearance. However, while 174 of its current 190 members (92 per cent) are from the UK academic domain (".ac.uk"), not all of them are based in libraries. Only 55 per cent of respondents to the "Clearing the Way" research project questionnaire said that their copyright clearance operations were based in the library; 45 per cent were based in other parts of the institution such as academic departments, computing services, and media services. The remaining 8 per cent of list members are from a range of other "domains" including "org.uk", "gov.uk", "co.uk", and "com" (see Figure 1).

2 Methodology

The Lis-Copyseek archives provided by JISCmail were used to perform the analysis. As the research was undertaken in January 2001, the calendar year 2000 was chosen as a recent and yet manageable time period to assess. Each message and distinct "thread" (a series of messages on a particular topic) was counted, read (headers were not relied upon to provide an accurate description of the e-mail content) and classified. Obviously many messages covered a number of topics; however, each one was assigned to only one category, according to its main theme. While this provided ease of analysis, it did not provide the comprehensiveness of analysis that a multi-category classification exercise would have produced. It was decided therefore to perform full-text keyword searches on frequently occurring topics for a more thorough estimate of the topic's prevalence. In some cases the difference

Figure 1 Membership of Lis-Copyseek by domain

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between a full-text search on a topic and a message-by-message analysis on a topic was negligible. Where it was significant, it has been reported.

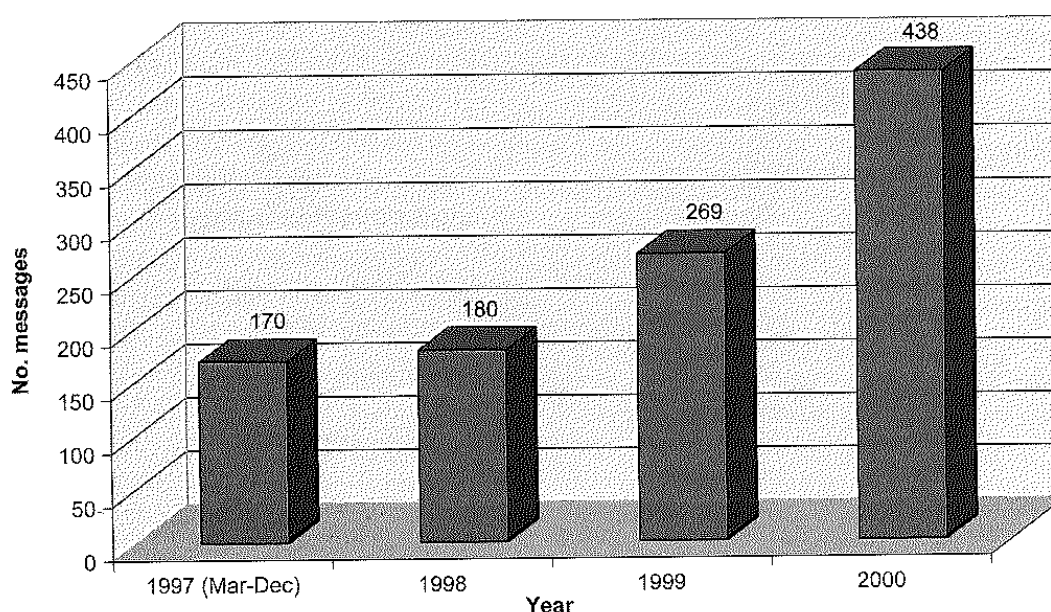
3. Lis-Copyseek traffic

Figure 2 illustrates the number of messages sent to Lis-Copyseek since it was established in March 1997. It can be seen that since opening for discussion in 1997 the number of messages posted to the list has increased by 250 per cent. Of course the number of list members has also increased (it is currently at its highest level), although no historical records have been maintained of membership levels.

In 2000, 438 messages were sent to Lis-Copyseek. This is an average of 2.3 messages per member, although of course, not every member posted to the list. It became clear from the case study interviews that although Lis-Copyseek is a closed list, many members were still reluctant to ask questions. This was mainly because they did not want to appear "ignorant" in a public forum. Many interviewees had a list of other contacts - colleagues, fellow practitioners, and copyright experts - that they would approach with their query before trying the list. It has to be assumed therefore that these 438 messages represent only a fraction of the total copyright communication that goes on each year in higher education.

Figure 2: Lis-Copyseek traffic 1997-2000

Figure 2 Lis-Copyseek traffic 1997-2000



Of course, not all of the 438 messages were queries. Excluding list administration messages, there were 181 distinct threads. Just under one-third of these (55) were messages without an "on-list" response. Due to the sensitive nature of copyright it may have been that members responded off-list. However, these figures must also provide an indication of just how many copyright questions the community does not have an answer to. Indeed, just because an enquiry got a response, does not mean it received a definitive answer. Unless one of the copyright expert's resident on the list had an answer, an enquirer may have received a number of suggestions or examples of practice elsewhere. This was not completely unhelpful. The fact that no-one else had an answer to your query- or that you were not alone in approaching an issue in a certain way - often provided valuable reassurance.

4. Message content

At the broadest level the messages could be divided into four main categories: general intellectual property management, copyright in the print environment, copyright in other media, and miscellaneous (list administration, conferences, organisations, research reports etc.). Figure 3 illustrates how many messages fell into each category. It can be seen that the biggest problem area still relates to copyright in the print environment (223 messages). Just over 100 messages related to other media including video, sound recordings, photographs, artistic works, software, slides, electronic journals, and databases. General IP management issues generated 53 messages, while miscellaneous matters generated 59.

4.1. Copyright in printed materials

Twenty-seven of the messages relating to copyright in printed materials were of a general nature, however, the remaining 196 related to photocopying. A wide variety of photocopying-related topics were covered, but only eight topics received ten or more messages. Figure 4 illustrates the distribution of messages relating to printed media.

Messages in the "general" category (27) related to issues such as copyright in unpublished manuscripts, copyright in facsimiles (is a facsimile of a copyright-free image copyright?), and the effect of the forthcoming EU copyright directive (Commission of the European Communities, 2001). Although the EU directive was not a category in itself, a full-text search on EU or European Union returned 30 hits.

4.1.1. Short loan collections

Of the messages relating to photocopying, the largest group (44) on a single topic related to short loan collections. Most of these were concerned with where to get hold of legitimate copies to put in the collection. Twenty-four (54 per cent) of these were concerned with the use of British Library (BL) copyright-cleared photocopies as specified by the CLA Higher Education

Figure 3 Overview of messages

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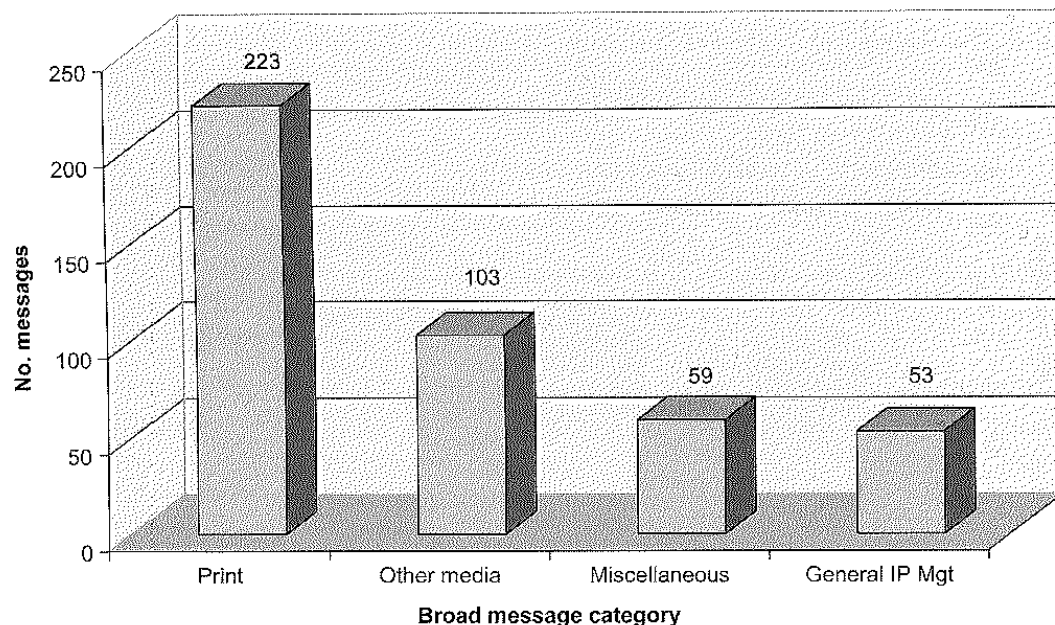
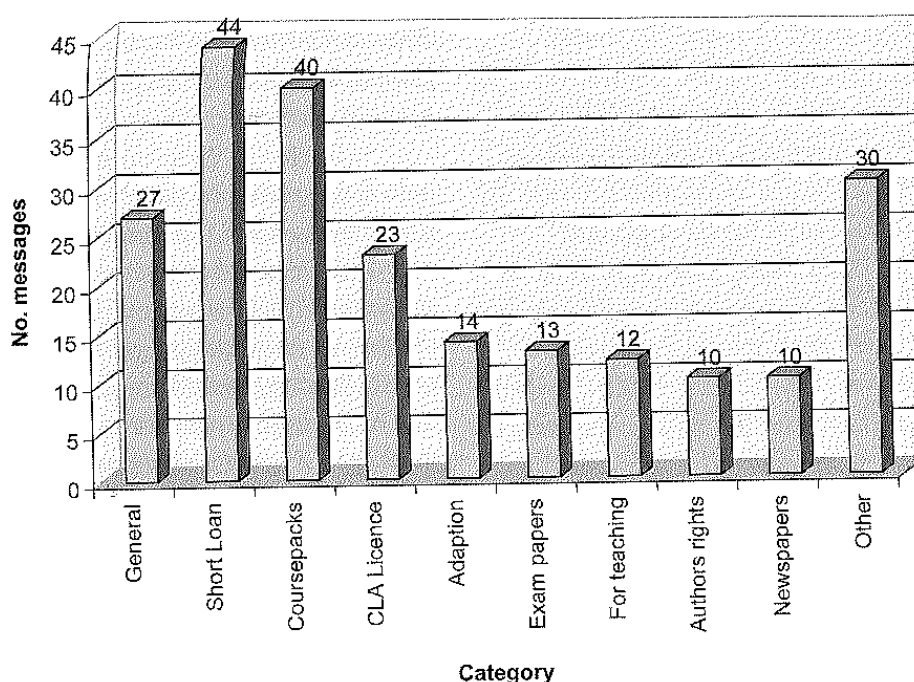


Figure 4 Messages concerning paper-to-paper copying

Figure 4 Messages concerning paper-to-paper copying



Copying Accord (HECA) (Copyright Licensing Agency, 2001). What happens when the BL cannot supply a cleared copy? Does the CLA clear for short loan collections? Can copies made under Section 41 of the 1988 Copyright Act be added to a short loan collection that allows on-copying? (Section 41 copies can only be copied under fair dealing, and short loan collections are for high-demand materials), (Copyright, Designs and Patents Act 1988, 1989). If five copies of a BL copy are required for short loan, can you order one and photocopy it? If so, does the same apply for short loan collections across a number of sites? (British Library, 2001). The issues are numerous and not all found satisfactory answers.

Fifteen messages enquired about the status of other sorts of copy. Can a lecturer's fair dealing copy go in a short loan collection? What about offprints? What about pre-prints? What about copies that were in short loan prior to the introduction of the HECA, which, depending on your interpretation, seemed to set new guidelines as to what was a legitimate short loan copy? Other messages asked why short loan permission request letters sent direct to publishers seemed to be forwarded to the CIA, who returned them to the sender with a reprimand. Also what was the status of end-user copying from various types of short loan copy?

4.1.2. Course packs

The second largest group of messages (40) on a single photocopying topic related to the course pack guidelines supplied by the CIA, and clearance procedures through CIARCS - the CLA Rapid Clearance Service (Copyright Licensing Agency, 2001). A recurring theme was where the boundary line lay between "ad hoc" or "fair dealing" copying and course pack copying. What is the situation if a lecturer re-types

material (the CLA licence covers reprographic and "duplicated" copies)? What if a lecturer wants to give one small group of students one set of readings (less than a course pack's worth) and another group another and so on? Would the total number of copies made be seen as a course pack? Another thread considered CIARCS billing procedures and the difficulties of centralised billing, with UN totalled lists for each departmental user.

4.1.3. CLA HE Licence

Twenty-three messages were directly concerned with the CIA HE licence, although a full-text search on CIA Licence returned 66 hits. Interestingly, a full-text search on (CLA or "Copyright Licensing Agency") returned 139 hits. In other words 32 per cent of the postings to Lis-Copyseek in 2000 made reference to the CIA. Most of the messages categorised under the CLA licence (17) queried the feedback provided by the CIA on their annual surveys of higher education and their provision for "Fair Dealing" copying in those surveys. Other messages were concerned with the cost of the CLA licence -in particular whether a reduced licence fee would accompany the decline in student photocopying currently experienced by universities. The artistic works protocol introduced by the CIA in 2000 was also a subject under discussion.

4.1.4. Adaption

Four threads looked at the law governing the adaption of published works, figures and diagrams for copying and distribution. By how much must a diagram be modified before it constitutes a new copyright work? How easy is it to obtain permission to adapt a work?

4.1.5. Exam papers

Three threads and 13 messages discussed exam papers. However, a full-text search on (exam or exams or examination or examinations) produced 27 hits. The first of the three threads related to the retention of exam papers in libraries (in print or electronically) that may have contained copyright material. (The use of copyright material is legitimate for examination purposes, but what about subsequent use of those exam papers?). A long exchange (seven messages) discussed the provision of copies of music for examiners of musical performance. The final thread debated whether the exception in the Copyright Act allowing copies to be made for exams extended to electronic copies for online exams.

4.1.6. Copying for teaching

Making overhead transparencies (OHTs) or PowerPoint copies for teaching was the subject of 12 messages. Discussion focussed on the number of copies it was possible to make, and what could be safely copied.

4.1.7. Authors rights

A ten-message thread was sparked off by a query as to what a lecturer should do when asked to provide three copies of his own article for the research assessment exercise (RAE), when he has assigned the copyright to his publisher. Of course, many came to the well-rehearsed conclusion that authors should not be assigning copyright to their publishers (see: AAU Task Force on Intellectual Property Rights in an Electronic Environment, 2000; Patel, 2000). However, no legal provision was to be found for the lecturer, who was advised to approach the publisher.

4.1.8. Newspapers

Ten messages related to photocopying of newspapers. Six of these concerned the interpretation of the Newspaper Licensing Agency Licence [!]. What if you want to photocopy images from newspapers? Or distribute news cuttings electronically over an intranet? Other questions concerned the copyright status of newspaper headlines and whether a copyright existed in the microform of out-of-copyright newspapers.

4.1.9. Other messages

The 30 messages in the "other" category related to eight other themes. These are given in Table I.

Table 1: The 30 messages in the "other" category relating to the eight other categories

Topic	No. of messages
Copyright and theses	7
Blanket permission from publishers to copy for educational purposes	6
Binding photocopies of copyright-cleared items	5
Fair dealing vs. library privilege copies (volume allowable)	4
Law governing copying multi-part items in single journal volume	3
Translation to other languages	3
Crown copyright waivers	2

4.2. Copyright in other media

Messages regarding other media were divided into eight main categories illustrated in Figure 5.

4.2.1. Video

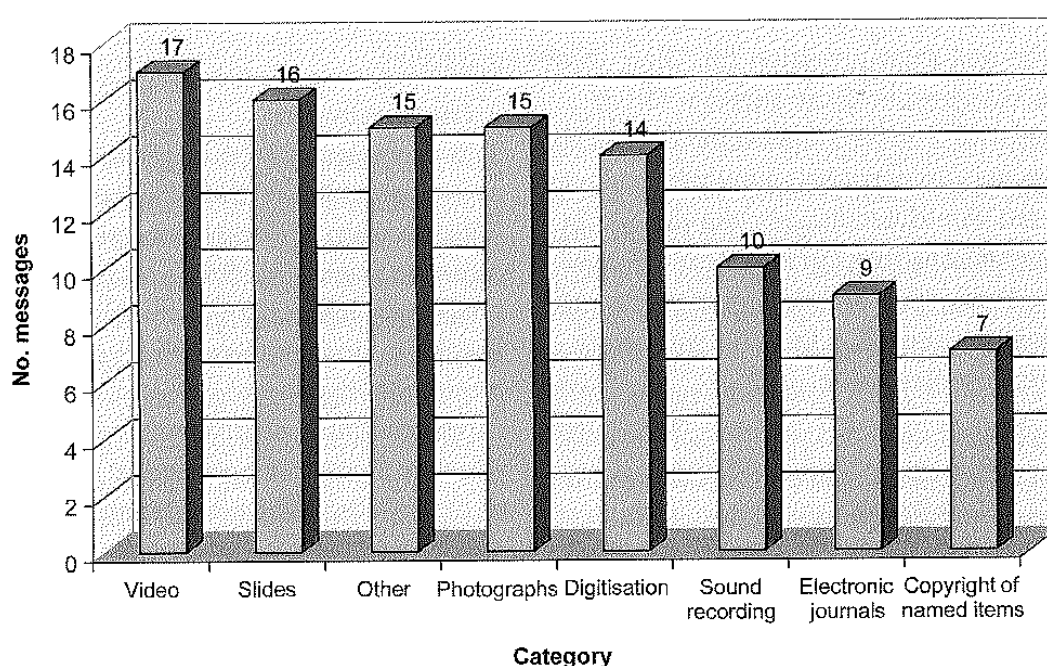
Four threads and 17 messages discussed copyright issues relating to video, although a full-text truncated search on video produced 24 hits. One discussed the legality of copying video for conversion between different formats. Another asked whether a single copied still from a video for a student project would constitute an infringing copy. A third looked at the purchase or donation of second-hand open-university videos for library use. Two messages related to the EU Directive's effect on video recording.

4.2.2. Slides

Sixteen messages all related to the creation of slides under the DACS licence [2]. In particular, licence administration issues and coverage of the licence across individuals' collections (especially visiting lecturers), and retrospective indemnity were causing confusion.

Figure 5 Messages concerning copying of other media

Figure 5 Messages concerning copying of other media



4.2.3 Photographs

The ownership of rights in photographs was the major concern for users. Sixteen messages fell into this category; however, a truncated full-text search on photograph returned 38 hits. Queries related to unpublished photographs, photographic portraits (does the subject have any rights), and photographs of artistic works (can

they be taken without the permission of the rights holder in the artistic work? If so who owns the rights?).

4.2.4. Digitisation

Eight threads (14 messages) discussed copyright relating to digitisation. Twenty messages were returned through a full-text truncated search on (digitis or digitiz). Three of the eight threads were concerned with the digitisation of teaching materials for mounting on the Web. Two discussed the CLA digitisation licence and two the HERON (Higher Education Resources ON- demand) service [3]. One asked whether the digitisation of a public domain painting became a copyright work in itself.

4.2.5. Sound recordings

There were three main themes relating to sound recordings. The main one related to the legality of making back-up copies of sound recordings. One asked whether it was permissible to make multiple copies of short extracts from CDs for teaching, and another taped copies of readings for dyslexic students.

4.2.6. Electronic journals

The topics relating to e-journals were more concerned with the individual licences governing the use of the e-journals than with copyright law. How to communicate those licence terms to users was one issue. Document delivery possibilities were also debated: is it possible to forward an e-journal article to a distance learner? Similarly with BLDSC requested articles? And where does the boundary lie between reasonable and systematic copying of e-journal articles?

4.2.7. Copyright of named items

A small number of messages related to the copyright status and ownership of specific named items. In this case, the Lord Kitchener "Your country needs you" image; costume designs based on the Tenniel "Alice in Wonderland" illustrations; and Amazon.com book abstracts.

4.2.8. Other messages

Fifteen messages did not fit into the broad categories listed above. Table II specifies the other topics in this category.

4.3. General intellectual property management issues

Twelve per cent (53) of the total messages sent to the list in 2000 fell into a "general IP management" category. Interestingly, 22 of these messages concerned the services that could be provided to external, distance learning, franchised or corporate users under copyright or electronic resource licences. Twenty messages related to trademarks: are trademarks also copyright protected? Can they be used for illustration in teaching? And

Table II: The IS messages in the "other" category not relating to any of other categories

Topic	No. of messages
DVD – Us/UK versions and “chipping” players	3
Electronic signatures	2
LEXIS-NEXIS database licence	2
Imitating the style of a sculptor	2
Using Medline/WoS to compile a mailing list	2
Off-air recording from satellite TV – contract/licence agreement	1
Implications of loaning software to student teachers	1
Loan of	1
	1

If so, how should they be acknowledged? Eleven other messages related to intellectual property ownership of staff, students, and universities as employers.

4.4. Miscellaneous

The miscellaneous category included 21 list administration messages and 37 messages reporting current conferences/meetings, discussion lists related organisations and recent research.

5. Conclusions

The increasing volume of traffic, and large number of members, on Lis-Copyseek indicates that copyright is an area of increasing concern to HE in general and libraries in particular. This is notwithstanding the suggestion of the Clearing the Way research that Lis-Copyseek traffic was just a tiny proportion of the total volume of copyright correspondence that goes on each year in HE.

The overall nature of the messages posted to Lis-Copyseek indicates that libraries (indeed all list members) are exceedingly conscientious about their copyright duties. In many cases the questions posed were about copying acts that would almost certainly have been permitted under the "three-step test" provided by Article 9 (2)

of the Berne Convention (Berne Convention for the Protection of Literary and Artistic Works, 1979):

It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author.

These included queries such as the use of newspaper headlines on a teaching OHT; the binding of photocopies that the librarian had already received written permission for; and the copying of a video for conversion to a different format. The greatest area of copyright confusion related to paper-to-paper copying. There were over twice as many messages in this area compared to all other media put together. This may have been due to a library bias in list membership, or the fact that there are other lists dealing with other media. (The Liblicence list[4] deals with licences governing electronic resources for example, and the SCLS list deals with the DACS Slide Collection Licence.)

Within paper-to-paper copying, it was the rules governing short loan collections and course packs that proved to be the major source of uncertainty. This is almost certainly due in large part to the introduction of the Higher Education Copying Accord just two years earlier in 1998. It is sad, however, that two years on questions were still being asked, and often remained unanswered. Indeed, the analysis revealed that there were many copyright questions to which the HE community had no definitive answer.

It can be concluded that there is a significant need for assistance in this area. One of the recommendations of the "Clearing the Way" research project was that:

.. A central HE-wide body is established to act as an authority on the interpretation of copyright law and licences as they pertain to Higher Education. Such a body should provide advice (and indemnify HEIs taking that advice) on common areas of confusion about what is and is not permissible under the law or licences. This is a role that could be taken on by the new JISC Legal Information Service [5] (Gadd, 2000).

This analysis confirms how beneficial such a body might be. We wait and hope that such a service might be provided in the near future.

Notes

- 1 www.nla.co.uk/welcome/index.htm
- 2 www.dacs.co.uk/
- 3 www.heron.ac.uk/
- 4 www.library.yale.edu/-licencelindex.shtml
- 5 www.jisc.ac.uk/legal/

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