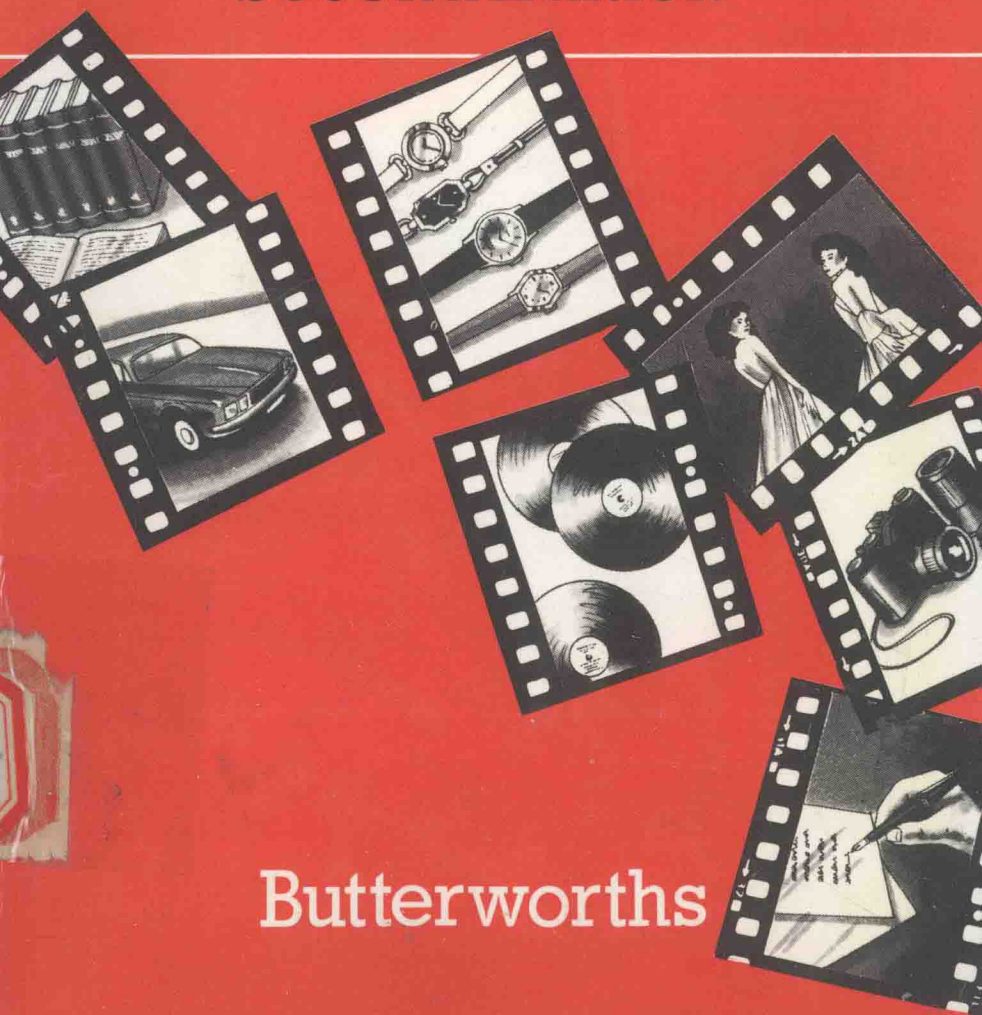


Michael F. Flint

A USER'S GUIDE TO COPYRIGHT

Second Edition



Butterworths

A User's Guide to Copyright

Second edition

Michael F. Flint *Solicitor*

Butterworths
London
1985

England	Butterworth & Co (Publishers) Ltd, 88 Kingsway, LONDON WC2B 6AB
Australia	Butterworths Pty Ltd, SYDNEY, MELBOURNE, BRISBANE, ADELAIDE, PERTH, CANBERRA and HOBART
Canada	Butterworth & Co (Canada) Ltd, TORONTO and VANCOUVER
New Zealand	Butterworths of New Zealand Ltd, WELLINGTON and AUCKLAND
Singapore	Butterworth & Co (Asia) Pte Ltd, SINGAPORE
South Africa	Butterworth Publishers (Pty) Ltd, DURBAN and PRETORIA
USA	Butterworth Legal Publishers, ST PAUL, Minnesota, SEATTLE, Washington, BOSTON, Massachusetts, and AUSTIN, Texas D and S Publishers, CLEARWATER, Florida,
	First edition..... 1979 Reprinted..... 1980

© Butterworths & Co (Publishers) Ltd 1979, 1985

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

This book is sold subject to the Standard Conditions of Sale of Net Books and may not be re-sold in the UK below the net price fixed by Butterworths for the book in our current catalogue.

British Library Cataloguing in Publication Data

Flint, Michael F.

A user's guide to copyright.—2nd ed.

1. Copyright—Great Britain

I. Title

344.1064'82 KD1289

ISBN 0 406 20074 2

Printed in Great Britain by Thomson Litho Ltd, East Kilbride, Scotland

A User's Guide to Copyright

Preface to the second edition

Since the publication of the first edition in 1979, there has been a considerable increase in public and professional interest in copyright. This is largely due to the fact that the new technologies — video-grams, satellite and cable broadcasting, teletext, electronic publishing, micro-computers, video games, etc — which have evolved over the last five years, make considerable use of copyright material. It has become increasingly evident that the law of copyright in the United Kingdom is outdated and needs substantial revisions to deal with the new technologies.

During the last five years the number of reported copyright cases has increased over the number reported in the previous five years by a factor of ten. The Government has published a Green Paper with its proposals for the revision of copyright law — although there is, as yet, no indication when legislation will be introduced to implement the Green Paper. The Cable and Broadcasting Act 1984 made a large number of changes to the Copyright Act 1956, although they were limited to those necessitated by the introduction of cable television and direct broadcast by satellite.

The enormous increase in copyright piracy resulted in the passing of the Copyright Act 1956 (Amendment) Act 1982 and the Copyright (Amendment) Act 1983 which increased criminal penalties for breach of copyright.

As a result of these and many other changes, this second edition includes new chapters on Cable television (chapter 25), Satellite television (chapter 26), Video games, teletext and electronic publishing (chapter 30) and Piracy and counterfeiting (chapter 33).

There are substantial changes throughout the new edition to take account of recent cases, the changes made by the Cable and Broadcasting Act 1984, to take note of the Green Paper, the EEC Green Paper 'Television Without Frontiers' and in trade and industry practices which affect the user of copyright. In particular, chapter 31 — Computer software — has been considerably revised.

I am grateful to Jack Black, who first drew my attention to the existence of the Copyright Licensing Agency and then corrected — indeed re-wrote — paragraph 19.11.

I would also like to thank Peter Prescott for the precedent for a clause to include in authors' agreements to cope with the emergent problem of electronic publishing — paragraph 30.11.

Michael F. Flint

London

November 1984

Preface to the first edition

Copyright is encountered in a great many walks of life ranging from the executives at radio and television stations through architects and artists to industrial designers. This book is designed to assist those people whose work involves them in day-to-day dealings with copyright. It is only a guide which necessarily means that in a number of areas there are deliberate omissions or simplifications. It is not intended to take the place of a lawyer where problems of any complexity arise.

Both laymen and lawyers tend to regard copyright as a difficult subject which is best left to the specialist. Perhaps this view has arisen because copyright legislation is structured in a way that does not make an understanding of the law easy. The purpose of this book, therefore, is to enable people whose jobs, businesses — or even hobbies — cover any copyright field, to acquire a general understanding of copyright. It can also be used as a reference work for dealing with the more straightforward problems that may be encountered.

Because this book is intended as a guide and a reference work rather than an exhaustive study of the subject, use is made of tables which, it is hoped, will enable readers to obtain the information they need quickly, whilst reducing the need for repetition and cross referencing. However, anyone whose work involves him or her in considerable dealings with copyright, is advised not to attempt to use the tables without first having read Part 1 — or at least chapter 1.

I should like to thank Sheena Canham, Messrs Denton Hall & Burgin's Librarian, for her comments on chapter 17 — Libraries; Michael Freegard, Managing Director of The Performing Right

Society Limited and Robert Montgomery, Managing Director of The Mechanical-Copyright Protection Society Limited, for their comments on chapter 20 — Music, and on chapter 23 — Public Performance; David Rees, Administrator of the London Festival Ballet for his comments on chapter 21 — Drama, ballet and opera production; Sir John Terry, until recently Managing Director of the National Finance Corporation, for his comments on chapter 22 — Cinematograph film and television film production; Aiden Day, Programme Controller of Capital Radio, for his comments on chapter 24 — Television and radio stations; Evelyn Freeth for his comments on chapter 26 — Architects and architecture; Martin Brody and John Harris of Marcol Computer Services Limited, for their comments on chapter 28 — Computers.

I would also like to express my appreciation to the staff of Butterworths for their encouragement and assistance with the preparation of this guide.

Michael F. Flint

London

May 1979

Table of incidents of copyright

I. Type of work/ subject matter	Governing section of Act	II. Term of copyright	III. Restricted acts	IV. General exceptions	V. First owner
1 <i>Literary</i> (Books, newspapers, magazines, catalogues, letters, etc)	2	A. Life of author plus 50 years; or B. If not published, performed, sold or broadcast in author's lifetime: then 50 years from end of calendar year when first so done.	A. Reproducing the work in any material form. B. Publishing the work. C. Performing the work in public. D. Broadcasting the work. E. Including the work in a cable programme. F. Making an adaptation. G. Doing, in relation to an adaptation, any of A. to E.	A. Fair dealing; (i) for research or private study; (ii) for criticism or review with an acknowledgment; (iii) for reporting current events; (a) in a newspaper magazine or similar periodical with an acknowledgment; (b) by broadcasting or film. B. Reproducing for judicial proceedings or reports thereof. C. Reading or recitation in public (not broadcast) by one person of a reasonable extract, with an acknowledgment. D. Including a short passage in schools' collections (see chapter 18). E. Broadcast 'ephemeral right' (see chapter 24). F. Recording a musical work under the compulsory licence provisions (see chapter 20).	A. Author; or B. If made in course of employment under a contract of service with newspaper, magazine, periodical when employer will be first owner of newspaper, magazine, etc rights and author will be first owner of copyright for all other media; or C. If made in course of employment under
<i>Dramatic</i> (Plays, operas, screenplays, mimes, pantomimes, choreographic works, etc)					
<i>Musical</i> (Classical and popular music and songs (<i>not</i> including sound recordings))					

contract of service (other than newspaper, etc); employer will own all copyright.

- 2 A. *Paintings*
 B. *Sculptures*
 C. *Drawings*
 D. *Works of artistic craftsmanship not covered by A., B. or C.*
 (excluding photographs, engravings and architecture)

Life of author plus 50 years.

- A. Reproducing the work in any material form.
 B. Publishing the work.
 C. Including the work in a television broadcast.
 D. Including the work in a cable programme.

- A. Fair dealing: (i) for research or private study; (ii) for criticism or review with an acknowledgment.
 B. Making copies of sculptures and works of artistic craftsmanship only, while in any public place or premises open to public.

- C. Including by way of background in TV programme or film.
 D. Reproducing for judicial proceedings or reports thereof.
 E. Making three-dimensional version which would not appear to non-experts to be a reproduction of the work.
 F. Author reproducing part of his own earlier work, not repeating or imitating the main design of earlier work.

- A. As 1 A; or
 B. As 1 B; or
 C. As 1 C; or
 D. Person who commissions painting or drawing of a portrait for money or money's worth.

I. Type of work/ subject matter	Governing section of Act	II. Term of copyright	III. Restricted acts	IV. General exceptions	V. First owner
3 <i>Photographs</i> (Artistic works)	3	50 years from the end of the calendar year in which the photograph is first published except as regards photographs taken before 1 June 1957 in which the term is 50 years from the end of the year in which the photograph was taken.	A. Reproducing the work in any material form. B. Publishing the work. C. Including the work in a television broadcast. D. Including the work in a cable programme.	As 2	A. Owner of the material on which photograph was taken at the time when it was taken; or B. As 1 B.; or C. As 1 C.; or D. Person who commissioned taking of the photograph for money or money's worth.
4 <i>Engravings</i> (Artistic works)	3	As 1	As 2	As 2	A. As 1 B. Person who commissioned the making of the engraving for money or money's worth.
5 <i>Architecture</i> (N.B. Buildings and Models)	3	As 2	As 2	A. As 2 B. Making paintings, drawings, etc of works of architecture or including same in TV broadcast or in a film.	As 1

C. Reconstructing a building without reference to original plans.

6 <i>Sound recordings</i>	12	As 3 except as regards sound recordings made before 1 June 1957 in which the term is 50 years from the end of the calendar year in which the recording was made.	A. Making a record embodying the recording. B. Causing the recording to be heard in public. C. Broadcasting the recording. D. Including the recording in a cable programme.	A. Records previously published in UK by licence of owner but not bearing date of first recording. B. Causing recording to be heard in public; (i) at premises where people reside as part of amenities of premises; (ii) as part of charitable or similar non-profit making body provided no charge is made. C. Compulsory licence provisions (see chapter 20).	A. The maker — being the person who owns the record when the recording is made; or B. The person who commissions the making of the sound recording and pays or agrees to pay for it in money or money's worth.
---------------------------	----	--	---	---	--

7 <i>Cinematograph films</i>	13	A. Until registration under Part II of the Films Act 1960 and thereafter 50 years from end of the calendar year in which it was registered. B. If not so registered, 50 years from end of calendar year of first publication. C. As regards films made before 1 June 1957 see chapter 7.	A. Making a copy of the film. B. Causing the film, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public. C. Broadcasting the film. D. Including the film in a cable programme.	A. 1 B. above. B. In the case of newsreels, causing the film to be seen or heard more than 50 years after principal events occurred. C. No infringement of literary, dramatic, musical or artistic work in film by causing it to be seen or heard after copyright in film itself has expired.	The maker — being the person by whom the arrangements necessary for the making of the film are undertaken.
------------------------------	----	---	--	--	---

I. Type of work/ subject matter	Governing section of Act	II. Term of copyright	III. Restricted acts	IV. General exceptions	V. First owner
8 <i>Television broadcasts (including UK DBS broadcasts)</i>	14	50 years from end of calendar year in which broadcast was made.	A. Making, otherwise than for private purposes, a cinematograph film of it or copy of such film. B. Making, otherwise than for private purposes, a sound recording of it or a record embodying such recording. C. Causing it to be seen or heard in public by a paying audience. D. Re-broadcasting it.	A. As 1 B. above. B. People who are residents or inmates of premises are not a paying audience. C. Members of club where television viewing facilities are incidental to main purpose of club and not to a paying audience.	The BBC or the IBA, as the case may be, or the originating broadcasting organisation in the case of foreign broadcasts from countries to which the Act extends.
9 <i>Sound broadcasts</i>	14	As 8.	As 8, except C.	As 8.	As 8.

10	<i>Cable programmes</i>	14A (added by the Cable and Broadcasting Act 1984)	50 years from the end of the calendar year in which the cable programme was included in a cable programme service.	A. Making, otherwise than for private purposes, a cinematograph film or copy of such film. B. Making, otherwise than for private purposes, a sound recording of it, or a record embodying such recording. C. Causing it to be seen or heard in public by a paying audience. D. Broadcasting it or including it in a cable programme service.	As 8.	The person providing the cable programme service in which the cable programme is included.
11	<i>Published editions of works</i>	15	25 years from end of calendar year in which edition was first published.	The making by any photographic or similar process of a reproduction of the typographical arrangement of the edition.	The making by or on behalf of a librarian of a reproduction of a typographical arrangement of the edition (see chapter 17).	The publisher of the edition.

Note: *Government publications*:

- (a) Term is 50 years from date of publication.
 (b) Crown is owner of all works or subject matters (except TV and sound broadcasts) made by or under the direction and control of the Government.

Contents

Preface to the second edition	v
Preface to the first edition	vii
Table of incidents of copyright	xi

Part 1 Copyright law generally 1

Chapter 1	The nature of copyright	3
Chapter 2	Copyright works and subject matters	11
Chapter 3	Originality	18
Chapter 4	Qualified persons and material form	21
Chapter 5	Passing off and breach of confidence	28
Chapter 6	Publication	34
Chapter 7	Term of copyright	36
Chapter 8	The restricted acts and acts of secondary infringement	40
Chapter 9	Infringement of copyright	44
Chapter 10	Exceptions and defences to copyright actions	51
Chapter 11	The ownership, transmission and licensing of copyright	55
Chapter 12	International copyright	65
Chapter 13	Performing rights, performers, mechanical rights and moral rights	68
Chapter 14	Industrial designs	73

Part 2 Copyright in use 77

Chapter 15	Publishers and printers	79
Chapter 16	Newspapers, magazines and periodicals	88
Chapter 17	Libraries	93

Chapter 18	Schools, universities and other educational establishments	101
Chapter 19	Reprography	108
Chapter 20	The music industry: publishers and composers and the record business	114
	Part I Publishers and composers	117
	Part II The record business	125
	How the copyright in music and records reaches the user	134
Chapter 21	Drama, ballet and opera production	135
Chapter 22	Cinematograph film and television film production	146
Chapter 23	Public performance — discotheques, concert halls, cinemas, theatres, clubs, hotels etc	162
Chapter 24	Television and radio stations	174
Chapter 25	Cable television	186
Chapter 26	Satellite television	202
Chapter 27	Artists, photographers, art galleries, art dealers and museums	215
Chapter 28	Architects and architecture	226
Chapter 29	Advertising agencies	234
Chapter 30	Video games, videotext and electronic publishing	238
Chapter 31	Computer software	248
Chapter 32	Character merchandising	257
Chapter 33	Piracy and counterfeiting — copyright, passing off and breach of confidence	264
Appendix 1	Relevant organisations	271
Appendix 2	Conventions and international agreements to which the UK is a party	273
Appendix 3	Countries which have adhered to the Berne Convention and/or Universal Copyright Convention	274
Index		277