

Copyright

During the last 12 months it emerged that there was a great interest in the subject of Copyright; as such the Ordnance Survey was invited to a Design Group meeting aimed primarily at the issue in March 97. Unfortunately due to prior commitments, (and to be fair, short notice) the Ordnance Survey was unable to attend. However the advice given to the Design Group by way of extracts from the OS regulations was helpful, but it also prompted more questions than answers! At a Council meeting later in the month, it was agreed that the first priority was to establish meaningful dialogue with the Ordnance Survey in order to air the concerns of members in an open and constructive way, and an informal meeting was arranged for 30th April.

Ben Hill (President of the BCS) along with Roger Anson and Andrew Tatham met with Robin Knights (Intellectual Property Manager), Gerry Brazier (Publishing Licensing Manager) and John Rollin (acting variously as BCS Council member/ OS Rep/ meeting facilitator.)

Ben started the meeting by describing the unprecedented high level of concern within the BCS over Ordnance Survey's approach to copyright and copyright enforcement. There were several examples where members had felt that the OS had acted inappropriately and unfairly, and there seemed to be an intimidating atmosphere developing. The phrase "guilty until proven innocent" was used to describe the widely held feeling that OS appeared to assume that if the map was of any part of Britain, then it must have originated from OS material. On the other hand he emphasised that the BCS are not questioning the Ordnance Survey's right to protect and exploit its intellectual property right (IPR), and said that BCS also recognised that Ordnance Survey's more commercial approach was a reflection of government funding policy.

The problems related to how OS appeared to be going about it; the perception is that OS has taken an overzealous approach. Robin Knights acknowledged the depth of the current anxiety and welcomed the BCS approach to help resolve this. In order to clear the air he set out the principles under which copyright licensing and enforcement activity is organised: OS operates licensing mechanisms which seek to simultaneously protect and commercially exploit its IPROS and has always strongly defended its IPR on behalf of itself and its licensees, and continues to do so - pursuing every suspected infringement case as necessary OS operates open and consistent licensing systems - by publishing rules and royalty rates, and embracing fair business practice.

OS respects commercial confidentiality by use of strict internal rules and so-called "Chinese walls". Robin Knights strongly refuted the suggestion that OS assumes that OS copyright has been infringed unless the publisher can prove innocence. Most of their copyright work is normal licensing activity under the appropriate mechanisms, which depend upon trust. Only where there is strong suspicion - for instance by a lack of response to letters from OS, or via a tip-off- will a possible infringement investigation be started. OS admitted that there is an increase in the number of such cases, probably because of the generally harder commercial climate, and because computer technology now enables such temptation. Specific complaints were discussed without reference to the individuals concerned, and these highlighted two things. Firstly, that Ordnance Survey staff had not in every case been following the guidelines as strictly as they should; Robin Knights agreed to remind OS staff of their responsibilities. Secondly, that there is some confusion and misunderstanding amongst BCS members about OS copyright rules.

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Communication is the key to improving the situation, so a series of joint actions was agreed to start the process. Whilst we are under no illusion that these will in themselves completely resolve the issues, they should enable everyone to tackle those problems in an informed and honest way. OS will promote the existence of the 4 published leaflets dealing with various aspects of Copyright:

Copyright 1 - Copying for Business use

Copyright 2 - Publishing

Copyright 3 - Digital Map Data

Copyright 4 - Commercial Publishing. All are available free of charge from Ordnance Survey.

Following this meeting the Ordnance Survey met with the Design Group on 11th July, where ordinary members were able to ask their questions directly to Robin Knights and John Rollin.

There were quite a number of questions raised about the copyright procedure of the British Ordnance Survey and other commercial companies. We tackled as many as we could in the hour or so available. Many are aimed at the OS but some are more general and discussion featured other map publishers. Representatives of other British mapping companies and organisations spoke as they wished and voiced a wide range of opinions.

What may be legally and morally claimed as copyright?

Most questions were posed under this heading.

DG. Can a map publisher claim copyright over geographical names on their maps, their placement or their spelling? Is there any basis for this in copyright law or judgement?

OS. Yes! A compilation is a copyright work and as the placement of names on a map represents the individual effort of a company, then this also represents a part of their intellectual copyright.

- This position was hotly disputed by many present. a. How can anyone copyright something which is common knowledge? i.e. in the public domain? This would only apply if the names were unique in some way, i.e. derived from original research and not available from any other source b. Copyright is based on the whole or substantial part of the work in its information and graphic arrangement. Individual parts cannot be copyrighted separately.
- OS did not concede either of these points and insisted that anyone who took road or feature names from an OS map without permission or payment had infringed their intellectual copyright.

DG. Why does deriving a map from an air photograph involve cartographic copyright issues?

OS. Any owner of copyright may put whatever restrictions they wish on the use of their work, even if they were paid for the work by another body. Therefore any air survey company can restrict the use of its products for any particular purpose e.g.. mapping.

- This was thought to be true but was in fact not a copyright issue. If photographs were sold then they can be used for derived mapping because there is no artistic or creative merit in them to copyright, and most survey companies would not impose such restrictions.

DG. May any publisher claim copyright over UK administrative boundary information?

OS. Yes, we create the boundaries. We mere them on the ground. These boundaries represent our efforts and therefore our copyright even though we were paid for the work by the Boundary Commission.

- Many of the Design Group disagreed with this position. It was stated that as the Boundary Commission paid for the work they were the copyright owner. A letter will be sent to BC to clarify the situation.
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DG. Can a publisher claim copyright over a map drawn from memory and without direct reference to any particular source? May a cartographic company claim rights to common knowledge, e.g. the names of the countries in the UK or the major street names in central London, the coastline of Britain, motorways etc. (May it be argued that cartographers are recorders of the landscape, not the owners of it).

OS. Memory in some circumstances can be a copy. Someone may see a musical score or hear a tune and then produce a new song with the same tune. In this case copyright has been infringed.

- However this position was disputed in that music is a creative art in the true sense of the copyright act, in a way that plotting items of fact were not. It was felt that in order to prove an infringement a publisher would have to justify the fact that his publication had been used and no other. Copyright infringements from the preparation of sketch maps from memory were felt to be an extreme view of the copyright act and could not be substantiated in law. A distinction comes, of course, when it is obvious that the planimetric accuracy belies sketching from memory.
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DG. Is there a scale below which any maps are copyright free?

OS. No! But OS waives its rights as directed by European Law to maps which are published below 1:1million, even if this work was compiled at larger scales, eg 1:625.000.

- However copyright would pertain if a map compiled at less than 1:1m were published at scales greater than 1:1m.
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DG. The 1988 copyright act refers to infringements of copyright pertaining to the whole or a substantial part of a work. Part 1 Para. 16. How do publishers regard a substantial part?

OS. This question hangs on the quantitative or qualitative meaning of the word substantial in the 1988 act. The making of a facsimile copy of even an 2cm square is regarded as substantial by the Ordnance survey.

- There was some sympathy for this position from other publishers. The OS were just as vigorous where derived mapping was concerned. Some publishers agreed whereas others were less prescriptive. However it was thought by some that the word substantial was beginning to lose its definition if it were taken as meaning even the tiniest scrap of information. This too has never been tested in law.

DG. The 1988 Act says that copyright is not infringed where the work is for the purpose of “pursuance of a statutory duty” Part 1 Para. 46/47. Is this a correct interpretation and what is the OS opinion?

OS. Statutory work is exempt from copyright but this definition must be strictly applied. Many authorities exceed their legal requirement. If the statute says copies publicly displayed then any copies given away for information incur copyright royalties.

- This position is at variance with the act which states that: Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement was imposed (1988 copyright act 47/2). Statutory bodies should be made aware of this provision in the act.

General Points Made Under This Heading

- Whilst accepting that facsimile copies of a cartographic product infringed the copyright of any publisher, many of the group questioned the extreme interpretation of copyright law by the Ordnance Survey, especially as most of their assertions had not been tested in law, nor were they likely to be because of the cost.
- The copyright act is very vague over matters of intellectual property in regard to maps as graphic products. An artistic work may have derivations based upon it eg. (After Stanley) An author may read many works and then create a new work of his own as long as it does not reproduce a substantial part of any one source. But where the Ordnance Survey are concerned not a single word, line or building may be derived from their work without infringement.
- The National Grid is copyright free.
- You may take any OS map (or other source) which is out of copyright and use anything from it.
- Crown copyright is 50 years from the end of the year in which the map or edition was published.
- Copyright on all other maps is 70 years.

Questions about the pricing structure and availability of Ordnance Survey maps

DG. Does the Ordnance Survey have the right to withhold elements of the national mapping database in its own commercial interest. Even where information is made available why does the OS withhold the national database from those who do not have a commercial publishers licence. Why does this cost £200

(Copyright 4 para. 10) WE WILL ONLY CONSIDER GIVING PERMISSION TO PRODUCE SHEET MAPS AND ROAD MAPS AT SCALES OF 1:25 000 OR SMALLER IF YOU HAVE A COMMERCIAL PUBLISHERS LICENCE. IF WE GIVE PERMISSION TO PRODUCE A MAP IN THIS SCALE RANGE, YOU CAN ONLY INCLUDE THE MAIN ROAD NETWORKS OF LARGER TOWNS AND CITIES AND SHOW LITTLE DETAIL OF THE LANDSCAPE. Is this a restrictive practice?

OS. This restriction is not totally to do with our commercial interest but more to do with our commitment to produce maps of uniform scale for the whole country, even those areas which are not commercially viable. If we allowed others to cherry pick the honeypot areas this would affect our capability to give overall coverage.

- This does not alter the fact that parts of the national archive are withheld from other cartographic agencies purely in the commercial interests of the Ordnance Survey. (This is without doubt to prevent any competitive publications, which would be illegal behaviour on

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the part of a private sector publisher). We believe this to be a restrictive practice at variance with the OS's own policy in other areas. The OS does licence publishers to compete with them but does not allow a level playing field. The national database cannot be seen as the preserve of the organisation which was given the task of originating it. The database was created for the public good, paid for from the public purse, and all of it (even if under licence) should be made available. As long as the OS remains a public body it cannot act as a free range commercial company, and if it does, it should not act illegally.



DG. The OS copyright fee for basing an A4 map on OS data is 2.45p per copy printed. Does any matter of degree come into the OS pricing structure. Does a cartographer pay the same price whether he derives just one short section of motorway or the whole map?

- Because of time restrictions this question was left to another session.

Questions about the lack of clarity in the Ordnance Survey's guidelines

DG. In the OS copyright note 2 para. 5 it says you will not have to pay if a map is drawn from OS 1:1,000,000 or smaller, but does not mention that if you scan the map in order to draw it you must pay a £1200 data transfer fee (presumably if you trace it and scribe it the data transfer is free. Why?), or that you must also have a commercial publishers licence, copyright 3 para. 3 (£200 minimum). Or that you will also need an Ordnance survey digital copyright licence also, copyright 3 para. 7 (£200?) Will the OS introduce, or provide to the BCS for reference, a much clearer guideline as to what is covered by OS copyright and a full explanation of its charges?

OS. Whilst we have made every effort to make our guidelines as clear as possible, we would welcome recommendations from the BCS as to how they might be improved.

DG. Many companies carry out service work for LA's who are bound by OS Service Level Agreements. How can a company ensure it is not infringing OS copyright when it cannot see the agreement under which it is working?

- It was agreed that a cartographic company working for a body with a Service level agreement with OS, should have access to extracts of the agreement so that the cartographer does not inadvertently infringe copyright.

Questions concerning copyright in other sources of cartographic data

DG. Because of the high cost of using British national data many cartographers are looking at sources outside the UK. Do map publishers in this country have any copyright claims over mapping produced by other national mapping agencies or cartographic companies? E.g. Russian mapping, USGS digital map of the world, Michelin, Kümmerley-Frey etc.? We know that the OS has given a view about the Red Army mapping of the UK. Can this be made more widely available?

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OS. Whatever the position between OS and other mapping agencies, cartographers must always ensure that they comply with copyright regulations of their sources. However there are a number of potential sources which base much of their work on the Ordnance Survey. In this country they include Estate Publications, A to Z, Goad Plans etc. But also some overseas agencies base their work on OS maps. Many people have use Michelin maps as a source but this is in fact an OS source. ONC mapping of UK is also an OS source. As regards the Red Army maps these have not yet been fully investigated by the OS. We will make our decision known at the earliest opportunity.

- We thank you for these clarifications. In the case of Michelin we have a number of cartographers who have use this source in the past, being assured by Michelin themselves that their mapping was free of any copyright considerations other than their own. Subsequently these cartographers have been challenged. BCS recommends that such cases be noted but that the OS extracts no financial penalty for this inadvertent infringement. From initial investigations it appears that the Red army maps do not owe a debt to the OS. This judgement is based on the recording of errors in the Russian mapping in that they exhibit mistakes which one would expect in remote sensed sources. (road classifications, tunnels, underpasses, etc. and the contour information is different to that found on OS maps. It was also pointed out that the USSR were not signatories to the Berne Convention on copyright and cannot therefore exhort copyright claims outside their own borders.
- BCS will study the situation and report back to members.

Ordnance Survey working practices

DG. There is a common conception that the OS are not just vigorous in their pursuit of alleged copyright infringements but in some cases are proactive.

Documentary evidence exists of the OS alleging copyright infringements before they have investigated the map concerned. (E.g.. We have received a copy of map x. As it is unlikely that this map has been draughted without reference to OS information.....The cartographer or publisher is then asked to prove innocence of guilt rather than being innocent until proved guilty. This approach is unacceptable and contrary to British justice. Would the OS kindly give an assurance that current working practices have corrected this matter and that there are clear and demonstrable grounds for allegations before they are made?

OS. Our policy is never proactive and that some degree of concrete evidence always precedes an investigation into copyright infringement. If instances have occurred in the past where this was not the case, this is regrettable and will not happen in future.

DG. How far back may the OS or any other cartographic publisher go back in pursuance of a claim for infringement, 5 years, 6 years, 7 years, 49 years? Does reprinting a work affect this pursuance?. E.g. a map produced 40 years ago is reprinted.

- Because if time constraints this question was left to another occasion.

Due to continued interest in the subject the BCS set aside the first technical session of the 1997 Symposium to copyright. The first speaker was Laila Aslesen (Legal Advisor for the Norwegian Mapping

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Authority) entitled 'Intellectual property and GIS', this was followed by Robin A. Orr (Cartographic Publishing Consultant) 'Copyright - The Basic Principles'. To follow are the abstracts from the above.



Intellectual Property and GIS

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Abstract

Geographical Information Systems (GIS) are moving from electronic versions of traditional mapping and charting products into multi-media systems. A number of legal aspects arise, including intellectual property. Mapping is also an internationally orientated business which raises challenges to those working on legal issues. One of these issues, a very important one, is deciding what is actually protected under different types of property law and against what. Other problems are liability, especially for navigation systems, and protection of privacy. Increasing use of the Internet raises new problems. Government policy on public information and information produced by public agencies is another factor for consideration by those trying to create GIS. Protection is necessary, but so is availability.

Copyright - The Basic Principles

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Abstract

Concern over the effect on copyright of the rapidly changing technology in recent years is resulting in an increasing complication of the rules to the extent that there is a risk of undermining the basic principles of copyright protection. None can dispute that technological changes are more rapid these days with ever more ingenious means of duplicating, but can Xerography, OCR, raster scanning, CD-Rom or CIS really claim to have had the same impact as the advent of the printing press?

Of course there should be adequate protection for original work, but copyright was not enacted to be restrictive nor is the primary aim to make money for the 'author'. It is important that future generations should be able to build on present work otherwise developments will be delayed, markets will stagnate and our position in world markets will be adversely affected.

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The point of reference is the review of the 1956 Copyright Act under the chairmanship of Lord Justice Whitford for which the Map Group of the Publishers Association prepared both written and oral evidence during the 1970s and which led on to the Copyright, Designs and Patents Act, 1988.



The third lecture was given by Robin Knights (Intellectual Property Manager for the Ordnance Survey) and the following handouts were available [see next page].

(BCS Annual Symposium 1997 (cont))

The role of copyright in Ordnance Survey: Robin Knights, Intellectual Property Manager

Ordnance Survey's mission is:

- *'to be the customers' first choice for mapping today and tomorrow'.*

As by its very nature our business is based on the intellectual property (IP) we create in our mapping databases and products, intellectual property rights (IPR) (or copyright) are bound to play an integral part in carrying through this mission. It is the copyright in our maps and data which creates the realisable asset from which our business flows and which has enabled Government to set the current financial guidelines under which we operate.

What is copyright?

- Copyright is a property right provided for through the Copyright, Designs and Patents Act 1988 (UK) and various international conventions and European Directives. It offers copyright owners legal protection against the unauthorised reproduction of their 'copyright works'. Stemming from this right, they may grant or withhold permission for others to reproduce their material. If they decide on the former they may set a royalty charge for such use. In the case of the latter they may take action against anyone who copies their work without permission. Hence copyright can be used in an enabling or restricting right in accordance with the perceived interests of the owner. Once an owner has permitted use of their material on a commercial basis they may well become subject to various other forms of legislation, mostly in the area of 'fair trading'.

What is Ordnance Survey's attitude to copyright?

- For its part, Ordnance Survey greatly encourages the licensed use of its map data and the copying of its mapping under licence. Indeed our business depends on this. We publish 'plain English' licensing terms and conditions in four leaflets (Copyright 1, 2, 3 and 4: see Annex for full titles).
- Our copyright licensing policies are intended to provide 'level playing fields' by way of conditions and charges and fall under two broad headings.

1. Business use

- We realise that customers using our mapping in the course of their business may need to make copies for their internal use or for conveying map-related information to others involved in the course of their business. Our Copyright 1 and 3 leaflets cover the licensing requirements of these situations. We are happy to enter into service level agreements, based on these terms, with major customers or customer groupings as these can simplify negotiation and produce more effective arrangements both from the Ordnance Survey and customer standpoints.

2. Publishing and other Value Added Resellers

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- Separate terms apply to customers wishing to use Ordnance Survey-based mapping in publications, whether for sale or for free distribution (Copyright 2 or 4 leaflets for commercial publishers). In addition we encourage others to use our products under licence in a variety of Value Added Reselling situations, increasingly in computer-based systems. here, essentially, the only restrictions imposed are intended to prevent the reproduction of 'clone' Ordnance Survey products, especially where this would result in 'cherry picking' of product lines where we are required to produce national cover, irrespective of commercial viability. The terms offered are intended to represent a reasonable return for Ordnance Survey while at the same time providing a 'value for money' solution for third parties.
- We are constantly reviewing our copyright policies so that we continue to meet customer needs: evidence of this is the new licensing provisions in Copyright 4. By ensuring such needs can be met with the very minimum of bureaucracy both we and the customer stand to benefit.

What is Ordnance Survey's attitude to infringement?

- Like any other IP-based organisation which is required substantially to recover its costs from the revenues it can generate, Ordnance Survey must seek to protect its copyright from those that would infringe. The extent to which we are now having to confront alleged infringers is, perhaps, a sign of the times. It must, however, be stressed that our increased activity in this field reflects only the reality of an increasing threat rather than any change of policy on our part.
- Our many loyal and honest customers have nothing whatsoever to fear. Indeed our actions have their best interests at heart. Were we to allow infringement to go unchecked, our very future as a quality product and service provider could be under serious threat. There is also of course a cost to infringement in the form of lost sales and royalty revenues. Inevitably, as always, it is the honest customer who has to bear this cost as others seek to take unfair advantage. In addition many of the actions we have mounted have themselves been in full support of loyal licensees who have found their own Ordnance Survey-based products infringed.

Summary

- We are very anxious to ensure that we can, as far as is practicable, meet customer requirements with regard to copyright licensing. Existing customers will, no doubt, already have their Ordnance Survey Sales contacts, who are always ready to discuss any issues. However, if you would like more information please phone us on 023 8079 2913 or fax us on 023 8079 2535. Alternatively you can write to us at:
Copyright Licensing
Ordnance Survey
Romsey Road
SOUTHAMPTON
SO16 4GU

20 August 1997

Annex

The following copyright leaflets are available from the address above:

- Copyright 1 Copying for business use
- Copyright 2 Publishing
- Copyright 3 Digital map data
- Copyright 4 Commercial publishing