

COPYRIGHT IN THE TYPOGRAPHICAL ARRANGEMENT OF PUBLISHED EDITIONS

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1. Introduction

When is the arrangement of printed text protected by copyright under UK law? This guidance considers the relevance of this protection for digitisation projects involving books and articles from newspapers and magazines.

2. In Practice

There is *no copyright* in the typographical arrangement of any edition published for the first time before 1 June 1957. It was first introduced under the 1956 Copyright Act and continued in The *Copyright Designs and Patents Act* 1988 (the CDPA). The CDPA defines a published edition as ‘a published edition of the whole or any part of one or more literary, dramatic or musical works’: artistic works are not protected. The duration of the typographical right is 25 years from the end of the calendar year in which the work was first published.

What does this mean within the context of the Edwin Morgan project and other digitisation initiatives? As Morgan’s final Scrapbook was made in 1966, the copyright protection for any printed text would have expired in 1991 at the very latest. As such, we needn’t worry about having to deal with copyright in any typographical arrangement.

However, when dealing with a clipping from material published within the last 25 years, copying the article would have to amount to copying *a substantial part* of the published edition to constitute infringement.

Put another way, when thinking about typographical copyright, given the decision in *Newspaper Licensing Agency* (2003), making a copy of an individual article from a newspaper or magazine typically can be regarded as non-infringing or, at the very least, a very low-risk activity. Only when reproducing entire pages (or more) from a newspaper or magazine might infringement of copyright in the typographical arrangement pose more of an issue.

Of course, aside from typography, one should always bear in mind that a separate copyright is likely to exist in the article itself (as a literary work), as well as any accompanying photographs or images.

3. Legislative Context

The protection of typographical arrangement was first introduced by the *Copyright Act* 1956 which came into force on 1 June 1957. There is *no copyright* in the typographical arrangement of any edition published for the first time before this date.

The *Copyright Designs and Patents Act* 1988 (the CDPA) provides the same scope of protection for typographical arrangement as the 1956 Act; as such the following commentary applies to all works created on or after the 1 June 1957.

Section 1(1)(c) of the CDPA states that copyright subsists in the typographical arrangement of published editions. Section 8(1) defines a published edition to mean 'a published edition of the whole or any part of one or more literary, dramatic or musical works'. Note that the protection provided extends to *literary, dramatic and musical works only*: that is, artistic works are not protected in this way.

The duration of the typographical right is limited to 25 years from the end of the calendar year in which the relevant work was first published (s.15). This is considerably shorter than the protection afforded to other types of copyright-protected work. Imagine, for example, an edition of a book is first published in 2010. The text of the book (as a literary work) will be protected for the life of the author plus 70 years after his or her death (s.12), whereas the typographical arrangement of the published edition will only be protected until 31 December 2035 (25 years from the end of the year of first publication).

The CDPA also states that copyright does not subsist in the typographical arrangement of a published edition 'if, or to the extent that, it reproduces the typographical arrangement of a previous edition' (s.8(2)).

Consider our example from before, the book first published in 2010. Should the publisher simply reprint the book in 2015 using the same typesetting as the first edition, the copyright in that typographical arrangement will still expire in 2035; the 2015 edition does not attract a new copyright in the typographical arrangement. If, however, the publisher issued a new edition in 2015, with entirely new typesetting, then a new copyright would arise (expiring 31 December 2040).

4. Relevant Cases

In *Newspaper Licensing Agency v. Marks and Spencer* (2003) the defendants (M&S) subscribed to a press-cutting service which provided the company with photocopies of items of interest to the company from national and daily newspapers.

M&S made further photocopies of these clippings for distribution within the company. The Newspaper Licensing Agency (the NLA) claimed that by making these further photocopies for internal distribution, M&S were infringing the typographical arrangement in the newspaper clippings.

M&S argued that typographical arrangement existed in the newspaper in its entirety, rather than in the individual articles that had been clipped.

In the House of Lords, Lord Hoffman observed that 'the frame of reference for the term "published edition" is the language of the publishing trade. The edition is the product, generally between the covers, which the publisher offers to the public'. That is, while each individual article may have enjoyed copyright in the text as a literary work, this did not mean that each article was a 'published edition' that qualified for typographical protection in its own right.

Put another way, with respect to newspapers and other similar publications, the typographical arrangement protected under the CDPA concerns the overall design of the newspaper and not the typography relating to each individual article. Lord Hoffman explained this in the following way:

It is not the choice of a particular typeface, the precise number or width of the columns, the breadth of margins and the relationship of headlines and strap lines to the other text, the number of articles on a page and the distribution of photographs and advertisements but the combination of all of these into pages which give the newspaper as a whole its distinctive appearance. In some cases that appearance will depend upon the relationship between the pages; for example, having headlines rather than small advertisements on the front page. Usually, however, it will depend upon the appearance of any given page. But I find it difficult to think of the skill and labour which has gone into the typographical arrangement of a newspaper being expressed in anything less than a full page.

So, copyright will not subsist in the typographical arrangement of an individual article from a newspaper or magazine *per se*. But, copying an article might infringe the typographical arrangement of the newspaper or magazine if the article represents a substantial part of that newspaper or magazine.

In *Newspaper Licensing Agency* the House of Lords held that the photocopies of the clippings concerned did not constitute a substantial part of the newspapers from which they were taken.

5. Legal References

Copyright Designs and Patents Act 1988 c.48 (www.legislation.gov.uk/ukpga/1988/48/)

Copyright Act 1956 c.74 (www.legislation.gov.uk/ukpga/1956/74/contents/enacted)

Newspaper Licensing Agency v. Marks and Spencer [2003] 1 AC 551

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