These notes have given an outline of the factors involved and as such, it is hoped, have provided a firm basis on which those in the indexing business may build.

References

Where is the wisdom we have lost in knowledge?
Where is the knowledge we have lost in information?

—from The rock by T. S. Eliot

Copyright for indexers
Tamara Eisenschitz

Copyright protection applies to written, musical and artistic works and protects the form of the creative work as opposed to the ideas or information within it. For this article, only literary works need be considered. The applicable UK law is the Copyright Act of 1956. The owner of copyright is normally the creator of a work; it can then be assigned or licensed to any other person or organization, such as the publisher of the work.

UK Copyright Law
Copyright protection is a negative protection. It forbids anyone to reproduce the work as it stands, or to make a translation or adaptation without permission of the copyright owner. Reproduction, etc., of a substantial part of a work is also forbidden, but there is no definition of 'substantial'; it depends on context.

The work has to be an original one, but the level of originality required is minimal. Compilations and lists are included as they do require mental effort in their creation. Two cases decided by the courts concerned football fixtures for the Pools, and broadcasting schedules for the Radio Times and TV Times. Therefore one can conclude that an index would count as a copyright work.

The one question that remains is, does an index attract an independent copyright, or is it a derivative work? There is no case law on indexes to refer to, but in general the existence of an independent copyright implies enough intellectual input to create a separate work. Thus a simple computer-generated KWIC or KWOC index would probably not count as separate, but human-created indexes would be separate. Translations normally have their own copyrights, as do many musical arrangements such as a transposition from full orchestra to keyboard.

In practice an indexer should determine the copyright position by contract before starting work.

Copyright law forbids certain actions by unauthorized people, with a few exceptions for library copying and fair-dealing copying. If infringement is suspected it must be dealt with by a civil action in the High Court. If successful, available penalties include delivery up of all stock to the owner, or payment of the value of all copies made, or special damages for flagrant illegal behaviour, or an injunction not to copy any more material.

International protection
The protection of the UK Copyright Act exists in the UK only, but membership of two international conventions, the Berne and Universal Copyright Conventions, spreads this protection to nearly all the world. Essentially, each country protects the works of foreign convention members to the same extent as it protects the works of its nationals.

Neither in the UK nor under the Berne convention are any formalities required. Copyright protection exists automatically from the moment a work is created. The familiar © together with the name of the copyright owner and date of first publication are required for coverage under the Universal Convention whose adherents accept this as sufficient from foreigners, irrespective of what formalities they may require from their own nationals. The USA in particular is a member of the
Universal Copyright Convention and not the Berne.

Copyright ownership can be subdivided by country or continent, and also in time. In Britain the lifetime of a literary copyright is life of the author + 50 years. It is possible for a publisher to be assigned the entire copyright, or to have it only for one edition, or perhaps for the first ten years, rights then to revert to the original owner.

Computerized indexing

Many indexers now use computers in their work. Two separate questions arise:

1) does protection of an index mounted on a computer differ from that for a printed index?

2) how are the computer's programs protected?

Indexes on computer

This is relatively easy. The index is still held in permanent form on either tape or disc and thus retains protection against being reproduced as a whole or in substantial part. There is some doubt as to the copyright position of output of parts of an index after computer manipulation.6 Searchers input their own intellectual efforts, so there could possibly be dual copyright ownership by the searcher and by the owner of the complete index. Normally control of output is determined by contract when a user buys or leases the index.

Protection for computer programs

This is a very grey and uncertain area. Computer programs are not specifically protected under the 1956 Copyright Act. While waiting for reformation of the entire Copyright system, a Private Member's Bill is going through Parliament to include computer programs specifically as literary works with different versions of a program as adaptations.6 Different versions can embrace different 'high-level' languages in which the programmers work and which a trained person can read easily. It can also mean the basic 'code' embodied in the computer circuitry to which each high-level language must be reduced in order to run on that computer. There is far more controversy as to whether this code should be called a language or a mechanism. It consists of sequences of switches which are on or off, hence 'binary code'. However rudimentary, it is a language because each sequence translates unambiguously into a symbol of a higher language.

Although this seems to be the obvious way to treat programs, the 1956 Act was drafted by enumerating possible means of reproduction rather than by an all-embracing definition which would fit new technologies as they develop. It is for this reason that the UK law is uncertain and no one is willing to risk a test case. New Copyright Acts in other countries tend to involve very general definitions in order not to be outdated by technical change too soon.

In the USA and Canada the courts have ruled that all forms of language are covered, there is no problem.7 In Australia it was felt that computer programs need a separate category of copyright all to themselves, and a separate law was passed.8 This gives a definition of a computer program which is so all-embracing that even its supporters have become concerned at the extent of protection given. One must not fetter routine developments or the industry will grind to a halt. The relevant text reads as follows:

'Computer program' means an expression . . . of a set of instructions . . . intended . . . to cause a device having digital information processing capabilities to perform a particular function.

The protection proposed for the UK does not contain a definition of computer program at all. In this way it is hoped to avoid obsolescence from new technology without preempting decisions on what should be included.

Examining the above approaches, two methods of progress seem to be possible for the UK: special legislation or incorporation into the present law. What would be far more desirable is a reformed new all-embracing Act covering unfair copying of all types and removing the many anomalies of the present Act.9 However, entrenched interests seem to have created such paralysis that progress towards true reform is unlikely for some time to come.

References

1. Copyright Act 1956, 4 + 5 Eliz II Ch 74

Tamara Eisenschitz is Lecturer in Information Science, Department of Information Science, The City University, London.