

## **Guidance Note D11: Copyright and Licensing**

### **Copyright**

1. The general principle is that published information may be used by the public at large, but, broadly, that it may not be copied.

1.1 The Ministry of Defence is a Crown body. The information we produce is Crown Copyright and is administered by the Department's Directorate of Intellectual Property Rights (D/IPR), under delegated authority from the Controller of Her Majesty's Stationery Office (HMSO), who is head of the Office for Public Sector Information.

**1.2 Supply of information under the Freedom of Information Act does not give the recipient (whether a person or organisation), the automatic right to copy documents in a way which will infringe copyright - for example, by publishing documents or issuing copies to the public.**

1.3 Where a person/organisation intends to commercially exploit the material they will require a licence and a fee will usually be charged. Where the information is going to be re-used but is not going to be commercially exploited - for instance the intention is to publish it on a website - a licence would still be needed before it is reproduced (and MOD might still charge a licence fee).

1.4 Some categories of Crown copyright material can be reproduced without a formal licence. Details of categories of Crown copyright material where this applies, including examples of information where the copyright has been asserted but waived, can be found at the Office of Public Sector Information website. Examples of the types of material are;

- government press notices,
- legislation,
- ministerial speeches,
- consultation documents,
- documents featured on official websites (except where expressly indicated otherwise),
- headline statistics,
- and unpublished public records.

1.5 The permission to reproduce Crown protected material does not extend to any material which is identified as being the copyright of a third party. Authorisation to reproduce such material must be obtained from the copyright holders concerned.

### **Freedom of information**

2. Public authorities copying documents for the purposes of complying with their statutory duty under s.1 and s.11 of the FOI Act to release information to an applicant are not breaching the Copyright, Designs and Patents Act 1988 (CDP Act). However, although the information supplied might be a copy of an original work, it may not be further reproduced by the applicant without the permission of the copyright owner.

2.1 Any copying of the material by the recipient that does not fall under paragraphs 1.4 above, or 4 below, will require a copyright licence. Licences are issued in accordance with the HM Treasury guidelines for the re-use of government information through D/IPR.

### **Copyright warning**

3. A recent 'Audit of Policy and Guidance On The Use Of Copyright Material And The Implementation Of The EU Directive On The Re-use of Public Sector Information' recommended

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that standard wording should be included in the reply to FOI requests where there is the possibility that third party copyright information is contained in the reply. This wording is:

“The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other reuse, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by the Ministry of Defence will have been produced by government officials and will be Crown Copyright. You can find details on the arrangements for re-using MOD Crown Copyright at:

<http://www.mod.uk/DefenceInternet/Copyright/>

Information you receive which is not subject to Crown Copyright continues to be protected by the copyright of the person, or organisation, from which the information originated. You must ensure that you gain their permission before reproducing any third party (non Crown Copyright) information.”

3.1 Where appropriate (i.e. where the materials disclosed are still protected by copyright), you should include the paragraphs above in response to requests for information. Particular care should be taken when disclosing copies of the following material:

- technical material, photographs, illustrations and other graphic works,
- documents which (divorced from any covering letter) are not obviously of MOD origin,
- and documents generated by third parties

All Crown Copyright material should be marked with the legend “© Crown Copyright [year of creation]”. It might also be appropriate to mark the material with the year of in which it was first published if this is known e.g. “First published (year). The year of first publication can be important in determining the duration of the copyright protection.

In the case of works in which the copyright owner is not the MOD, “© [copyright owner] [year of creation] should be inserted.

3.2 Copyright markings that appear on documents, such as “© Crown Copyright 2000”, and copyright markings of third parties, should be perpetuated in copies of those documents supplied under the FOI Act.

3.3 D/IPR should be consulted prior to the release of third party generated maps, plans or drawings, in order to ensure compliance with the Copyright (Material Open to Public Inspection) Orders of 1989.

3.4 Where the applicant is sent information that either contains DASA data or refers to published DASA data the following warnings should be included where applicable:

- Where the applicant is sent actual data: “Source: Defence Analytical Services Agency © Crown Copyright 2006”
- In all cases where data are sent or referred to (for example on the web site): “The data in or referred to in this reply are covered by Crown Copyright. If you intend to reproduce them, then you should acknowledge this and you may need a licence.”

**3.5 Copies of correspondence, memoranda and similar official records do not ordinarily need to be marked with a copyright warning.**

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**Fair dealing provisions**

4 Chapter III of the CDP Act describes circumstances when copyright material can be reproduced without infringing copyright. These are generally referred to as the fair dealing provisions. Under fair dealing, written copyright material can be reproduced for the purposes of:

- Research for non-commercial purposes and private study; and
- For criticism, review and news reporting.

Only brief extracts may be reproduced under the fair dealing provisions. It should also be noted that the fair dealing provisions relating to news reporting do not apply to photographs.

**Further information on fair dealing and other exceptions to the general copyright procedures can be found on The Patent Office website at: <http://www.ipo.gov.uk/copy.htm>**

**For additional information on copyright see also the MOD intranet site below:**

<http://defenceintranet.diiweb.r.mil.uk/DefenceIntranet/PolicyAndProcesses/InfoManagement/ElectronicLibrary/Content/ResGuides/CopyrightRegulations.htm>

**And the Office of Public Sector Information at: <http://www.opsi.gov.uk/about/faqs-crown-copyright.htm>**