

Information provision in the electronic age: advantages and disadvantages of copyright protection, by Sandy Norman, Library Association

The Copyright Balance

Copyright is part of the family of intellectual property rights. It provides legal protection to creators of works so they can control the way their works may be exploited, and rewards those who invest in these creations. It is a tradable commodity and can be a major contributor to wealth. For the more developed nations, it is big business, especially now in the information revolution. However, copyright was designed to encourage the creation of ideas, and such creative works should contribute to the culture of a nation. This is the copyright balance.

Advantages - Technology

Technology and telecommunications make it possible to search library catalogues and remote databases, request documents and have them delivered direct to one's personal computer to read. Opening of the digital networks has revolutionised information availability, just as canals and roads opened up transport in the industrial revolution. Digital technology makes it easier to copy works without loss of quality.

These can be manipulated, adapted, and transmitted around the world - wonderful for information supply - but almost certainly infringing copyright. Technology allows wider access, but the copyright barrier must be overcome before we can fulfil this potential.

Disadvantages - Copyright

The definition of infringement of copyright, in the Copyright, Designs and Patents Act 1988, is "an act restricted by the copyright in every description of copyright work". It includes: "reproducing the work in any material form; storing the work in any medium by electronic means;" and "the making of copies which are transient or are incidental to some other use of the work". Electrocopying is infringement, thus using digital works is not straightforward.

Libraries are worried about infringing. Rights owners are worried about misuse of their work, and obtaining a fair return on it. Once stored in a computer, works can be transferred unseen, and republished in some other format and rights owners will lose sales. There is also fear that uploading and downloading from the Internet will become the norm. The facilities for electro-copying are available, reasonably cheap and convenient, and some fear that because they exist, there are no barriers to their use. Authors also feel that their moral right of integrity could be violated by manipulating and adapting works in digital form.

Possible solutions: technical, contractual and legal (statutory)

Unfortunately, there is no simple solution. Digital copying is not specifically excluded from fair dealing or the library regulations in the Copyright, Designs and Patents Act 1988, but in practice it is very risky to use them as defences. With commercially produced digital works, downloading or forwarding is usually under contract. In UK law, contracts override statute law. So, any downloading is permitted only under the licence from the database owner.

Whether one could rely on using fair dealing as a defence for digitising print-based works in order to offer them as part of the library service, would be difficult to say. Project ACORN (a Higher Education eLib project) has been set up to explore the implications of digitisation and use of an electronic reserve collection for students, and copying is strictly controlled.

From the librarian's point of view, lack of a clear path to copy and use is an unsatisfactory situation. We are concerned with the free flow of information, but the only risk free way to copy and use it is to ask permission each time. This is burdensome and costly in time spent. It is essential that we have access without jumping through too many hoops.

Technical solutions

Much research is going into solutions - e.g. Electronic Copyright Management Systems (ECMS) - such as encryption, tagging, and digital fingerprinting, to track movement of digital works. They will probably be applied only to large multimedia products due to their high expense. If most digital print information is controlled, users may be forced to pay for all access, leading to avoidance and disrespect.

Achieving a balance between control and access should be the aim. ECMS need to be able to be relaxed or removed for certain legitimate purposes, such as when a work falls into the public domain, or to copy under a statutory exception. This also impacts on civil liberties and privacy if all hits are tracked and controlled. IMPRIMATUR (Intellectual Multimedia Property Rights Model And Terminology for Universal Reference) funded by the EC under the ESPRIT programme, aims to build a consensus on copyright among various interests. It is looking at software that will stamp digital works with invisible watermarks.

Contractual solutions

In many cases, the difficulties are resolved by licensing. Unfortunately, there is no one body that can license electronic use. The Copyright Licensing Agency, which licenses certain printed works, has no mandate from authors or publishers to do this for works in digital form. Judging by the cost of the present CLA licence, any such scheme would probably be extremely expensive. Copyright clearing systems are also a solution, but there is no comprehensive system available to clear rights on an individual basis. Such schemes are also likely to be expensive.

Alternatively, we could contract with publishers, but this denies us any statutory right to copy electronically, and we do not want the expense of a contract with every publisher or author. We may not be able to trust rightholders to give us enough access for all our future needs with minimum payment. The Managers of Project ACORN

reported it took six months to clear rights to copy circa 200 articles, and the cost of copying varied between 25c to \$25 per page!

Individual agreements are already in place with publishers. The Pilot Site Licensing Initiative for education allows UK universities to have free access to all the electronic versions of publications if they subscribe to the print versions. At present this is subsidised, and may not continue if the subsidy is withdrawn.

Fear of total control

Librarians fear that without a statutory right to extract ideas and information, access will be packaged and chargeable with even simple facts tied up. This extends copyright too far, as it was not intended to protect ideas, only their expression. If all ideas are protected by controls and accessible only to those who can pay for them, this is what will happen. This is the crux of the 'haves' versus the 'have-nots' argument.

Statutory solutions - exceptions

All acts of consumption or reception were not intended to fall under copyright law. It is in the public's interest to have access to information in all formats. This leads to a better informed and educated society, leading to creation of more intellectual property. Without fair dealing, growth of new information products will be stifled because there will be no financial incentive to create them, as potential authors need to carry out research. If there are financial barriers to access, the costs of producing new works will be higher, acting as a disincentive to create. In theory, fair dealing can be applied to digital information. However, it is extremely difficult to establish if the practice is fair as digital works can easily be copied, manipulated and disseminated anywhere on the networks.

The EU dimension

The new Copyright and Rights in Databases Regulations 1997 implements the provisions of a European Council directive No. 96/6/EC on legal protection of databases. The Directive introduces a new form of property protection for certain databases to prevent unfair extraction and use of their contents.

Although the Act includes protection for databases, the word 'database' was never mentioned or defined. It was covered by the term 'compilation'. The legislation now includes protection for databases in their own right as part of a literary work. So now there are databases which are protected as compilations as well as plain databases. The former will have full copyright protection for 70 years, the latter will have protection for their contents for 15 years. It makes no difference whether these databases are in printed or electronic form. (A summary of the main provisions affecting libraries is available from Sandy Norman at LAHQ.)

The Future

Ideally, for technology and copyright to co-exist, there should be a legal framework making it easy to comply with copyright, and which does not frustrate the needs of

education and society. Rights clearance mechanisms should be simple and not impose a burden on libraries.

Technical controls should be used with copyright laws, and not be used to override statutory access. It is in the interests of all parties to reach a viable solution. If the balance is not right, information provision in libraries may be severely curtailed, creativity may be stifled and /or copyright may be abused by the public.

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