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Some current copyright issues

Article for Incite

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Recent years have seen tremendous changes in copyright law, most notably the amendments required by the Australia-US Free Trade Agreement and the wide-ranging changes introduced in 2006 by the Copyright Amendment Act. But apart from these changes to the Copyright Act there are a number of issues and debates still going. I'll briefly outline a few in this article.

If you want to keep up with the latest developments in copyright, you can subscribe to the Copyright Council's free news alert service. Go to our website at <http://www.copyright.org.au/> and click on the "subscribe to newlist" button.

Legal deposit

The Copyright Act states that anyone who publishes a "book, periodical, newspaper, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table" in Australia must supply a copy to the National Library within one month of publication. The purpose is to maintain a comprehensive collection of material published in Australia. State legislation imposes similar obligations to supply copies to state libraries.

To date the Copyright Act does not require legal deposit of other material, such as audiovisual recordings or material in digital form, such as websites with the National Library. (Some state legislation does cover this kind of material.)

In 2004, the Government made an election promise to examine whether audiovisual and electronic material should also be included in the national legal deposit scheme. The inquiry is currently under way, and the Government recently released a discussion paper. Submissions to the inquiry are due by 11 January 2008.

The discussion paper is available at: http://www.dcita.gov.au/home/intellectual_property.

Orphan works

You're making a local history display and you come upon some postcards that would be perfect blown up as a backdrop. There is no copyright notice on them, nor anything else that would give you a clue who can give permission. There are also some photographs with the name of the photography studio stamped on them, but the business has closed down. What do you do?

If the copyright owner cannot be identified or cannot be located, the items are "orphan works". Currently, using orphan works may infringe copyright. (In some cases, copyright will have expired, but you may not be able to work this out if you don't know who the creator is.)

If you want to use an orphan work, you will have to make what we call a "risk assessment". That is, you make a guess about whether the copyright owner, if she or he finds out about your use of the images, is likely to object, and if so, how you would be able to resolve the issue (for example, how much you would have to pay as a licence fee). You then decide either to take the risk and use the images, or not use them.

The Commonwealth government is currently conducting an inquiry into orphan works. Basically, the policy options are:

- create an exception to infringement for use of orphan works provided the user can show, if challenged, that he or she has taken adequate steps to identify the copyright owner;
- establish a procedure by which someone wanting to use an orphan work must apply to an independent body which can grant permission if appropriate steps have been taken; or
- leave the situation as is.

The first two options might include provision for payment – either to the copyright owner if they show up, or to an appropriate collecting society, to be held for the copyright owner.

Creative Commons licences: how can and should libraries rely on them?

There are a number of standardised free licences around for use of copyright material, of which Creative Commons is the best known. (Others include the AShareNet licensing system, used in the educational sector, and “copyleft” schemes such as the GNU General Public Licence, mainly used with computer software).

If you want to put material that’s been made available under a CC or similar licence into your collection, the same principles apply as for any other licence:

- read the licence carefully (in the case of CC, read the “Legal Code”, not the “human readable summary”);
- make sure you comply with the terms and conditions. This includes, for example, attributing the creator or copyright owner, and, where the material will be held in the library’s collection, making sure that library users are alerted to the terms of the licence.

The Google Library controversy

Over the past few years, Google has made agreements with a number of libraries to scan their entire collections, without reference to the copyright owners. The idea that in a single action you can search within the text of hundreds of thousands of books seems like an answer to prayer for many students, researchers and librarians. But many publishers and authors whose books are being scanned without permission by Google have not been impressed, particularly as the digitised versions are being used on a large scale by a commercial organisation in ways they can’t control.

Google has negotiated agreements with some publishers under which the full text can be searched online, and all or most of the book can be viewed alongside links to sites where you can buy the book.

In 2005, however, the US Authors Guild filed a class action against Google in relation to the Library project. Five major US publishers also began legal action in relation to the scanning of their books. These cases are still in the preliminary stages in the US courts.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;

- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.

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