Copyright changes and challenges

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By early 2003, there will be changes to our current laws on copyright. The EU Directive on the Harmonisation of Copyright and Related Rights in the Information Society is due to be implemented into legislation in all Member States by 22 December 2002, 18 months after official adoption. This article explains relevant changes affecting information provision following from this Directive and discusses the issues surrounding them. Brief advice on staying on the right side of the law is also given at the end.

Background: WIPO and EU

In 1996, the World Intellectual Property Organisation (WIPO) adopted two new copyright treaties to bring international copyright law into the digital age. The so-called 'Internet treaties' gave new rights to authors and performers so that they have greater control over their digital works. One of the new rights is called the 'Communication to the Public Right'. This means, in effect for users, that authorisation is needed before a work may be included on a network and made available to the public at a time and a place convenient to them. In addition, rights' holders were given protection against circumvention of technical devices or rights' management software which is designed to supplement legal protection.

The EU, being a signatory to the WIPO treaties, has to implement these new rights into the laws of its Member States before it can ratify the treaties. Since 1988, the EU has been following a policy of harmonisation of intellectual property laws across Member States in line with the Single Market initiative. The European Commission decided that it would tackle harmonisation of the 'Reproduction Right' and the exceptions and limitations to copyright at the same time. The result was the European Council Directive on the Harmonisation of Copyright and Related Rights in the Information Society.

The Copyright Directive

The first draft proposal was published in December 1997 and, after a lengthy and extremely controversial consultation, was finally adopted in June 2001. Member States had 18 months from that date to implement, i.e. to December 2002. The UK Government maintains that they are on target to revise the existing legislation, the Copyright, Designs and Patents Act 1988, by the required date. The consultation process began in August 2002 for 3 months till the end of October 2002 <http://www.patent.gov.uk/about/consultations/eccopyright/index.htm>.

However, the response to this consultation exercise has been overwhelming. The Patent Office is concerned to assess all this feedback thoroughly so the implementation of the necessary changes in UK copyright law has been delayed until at least 31 March 2003 <http://www.patent.gov.uk/copy/notices/report.htm>.

It has to be said that the UK law is reasonably technology neutral and does not need too many major changes. However, there are a few relevant minor changes which have to be made which will have a major impact on information provision. I propose to examine what some of these changes mean in practice.

Reproduction Right – what is meant by copying?

There is no difference between copying using a photocopier, a scanner or down-loading from a CD-ROM or the Internet. These are all reproductions in the eyes of the law. Even a reproduction which is temporary, transient or incidental, such as a cache copy, is covered by the 'Reproduction Right' although, if such a reproduction has no economic value, such copies are permitted. You are unlikely, therefore, to be accused of infringement for holding temporary copies on a server if they are temporary and are only there in order to facilitate a lawful use. This is in contrast to copies held permanently on the server to be called up at any time. Such storage is likely to be unlawful.

What is more worrying is that there will be changes made to the fair-dealing exception which allows copying for research or private study from a literary, dramatic, musical or artistic work. Originally, under the Copyright, Designs and Patents Act 1988, the fair-dealing exception did not specify the purpose of research. When the changes are implemented, fair dealing will be limited to research for a non-commercial purpose or private study. The work will also have to be acknowledged unless this proves impracticable. The research limitation is also reflected in the library and archive regulations, so librarians will no longer be able to supply a requested copy under these regulations to someone who requires the copy for research for a commercial purpose.

Where is the commercial purpose line drawn?

Who can tell? If a case ever succeeds in getting to court, we might be a lot clearer, but the chances of this happening are very slim. Those making fair-dealing copies will have to make up their own minds and librarians receiving requests will continue to rely on the signed declaration form. Electronic signatures are now acceptable as long as they can be authenticated. See the advice given at <http://www.cilip.org.uk/committees/laca/e_sigs.html>. Representatives of

the Government have reassured librarians that the test of what is research for a commercial purpose will depend on the purpose at the time of copying rather than on a future purpose or even the nature of the employment. Thus, a person employed by a commercial organisation, such as a private health practice, should not necessarily be prevented from making or requesting fair-dealing copies if the purpose of the research at the time of copying was non-commercial. Library and information professionals will, no doubt, have fun and games with this, especially when faced with the views of some rights' holders who are saying that all copying in an organisation run for profit is automatically going to be commercial!

Communication to the Public Right – broadcasting or including a work on a network

In the draft legislation, it is proposed that the 'Communication to the Public Right' should be defined as covering two restricted acts: (i) including the whole or a substantial part of a work in a conventional broadcast transmission (i.e. where the times of transmission are fixed); and (ii) including the whole or a substantial part of a work in an on-demand, interactive service (e.g. the Web, where one can call up a work whenever and wherever one chooses). Both of these acts have to be authorised. However, CILIP has always maintained that putting any copyright-protected work on the Web should always be authorised, so there is really no change here. The changes are mainly in the area of definition to make it easier for rights' holders to take infringement action.

Technical protection measures

There will be a new section, following the Directive changes, on protection against unlawful circumvention of technical protection measures and rights' management information. So if a Web site prevents unauthorised access to the contents by some technical means, then it will be unlawful to interfere in order to circumvent such protection to gain access. Normally, authorisation to access such contents (e.g. an e-journal) is by subscription contract anyway. If, however, access is open to anyone and you wish to make a copy covered by a statutory permission, what happens if a technical measure blocks any copying? It may not be circumvented as that is unlawful so what happens to such exceptions?

Prompted by the library community, this was discussed at length in the Member States' deliberations prior to the adoption of the Directive. It can never be resolved satisfactorily. Either rights' holders or users will be disadvantaged. In the Directive discussions, a compromise was reached whereby safeguards may be included in national legislation to enable a beneficiary of an exception to benefit. The proposals in the UK are interesting, to put it politely! A person (defined also as including a corporate body) may complain to the Secretary of State for Trade and Industry who can direct the rights' holder to provide an unprotected copy to the person provided that: (i) the right procedures are followed; (ii) there is no voluntary agreement in place between users and rights holders; and (iii) the work is not made available by an on-demand service. At the time of writing, clarification is being sought as to the definition of 'on-demand service' as it could mean video on-demand (as was intended) as well as any electronic publication on the Internet! If the definition is interpreted widely to include anything on the Internet, these safeguards are meaningless. Also, the library and information profession is unhappy about the possible refusal by a rights' holder, the time taken for the procedures to be followed, and the potential costs.

A few electronic copyright pointers

I will conclude by providing a few words of advice regarding the copying and use of works in electronic form.

- Web sites and their contents are protected by copyright law. There are many who still think that anything on the Internet is copyright free and so fair game and may be copied freely. This is not so. Works on the Internet are protected in the same way as print-based material, so the same rules apply. Web sites may also be protected by database right which protects unfair extraction and re-utilisation of the contents of the database for 15 years. You may download if you have permission or licence, or if it is a statutory permitted act (e.g. fair dealing). Many content providers on the network may have explicitly or implicitly waived copyright on their material for certain purposes. The copyright notices on Web sites should always be checked to see what copying is allowed. Some rights' holders may be quite generous subject to certain conditions.
- Unless explicitly authorised, copyrighted protected works, whether digitised under statute or licence or born digital, should never be included on an electronic network which is available to the public. It is important this is understood, as such copies are visible, it will be easier for the author to take action, and it could be judged a criminal offence. The meaning of 'public' is likely to be anything outside the domestic circle, so very broad. Intranets are seen as public networks too. Always obtain permission or licence.
- It has always been good practice to ask permission to include links to other Web sites. The link should preferably be to the home page of the other Web site. Deep linking (where you make a link directly to a page or resource inside a site and bypass the home page) to a copyright item on another Web site may be seen as including it on your Web site and so, whereas it was always advisable, it may now be essential to ask permission. Alerting others to an item on a Web site by e-mail is acceptable.
- Framing (where a site uses frames and includes the content from another site within these frames) is also tantamount to including the work on your Web site, so would definitely need permission.

Sources of further information

Information on copyright law and advice may be found on the Government intellectual property portal <http://www.intellectual-property.gov.uk>.

Further advice for the library and information profession on coping with the changes will appear on the CILIP Web site in due course <http://www.cilip.org.uk/laca.htm>.

Copyright tips

Deep linking – Give your users permission

Sandy Norman's article in this issue on the copyright law changes notes that deep linking breaks copyright law and cannot be done without permission. This is very worrying as the whole purpose of the WWW is the ability to link directly to the piece of information you want. Search engines, gateways, newsletters and many other mechanisms used to keep people informed and up-to-date depend on this facility. It is simply not practicable to ask every organisation for permission to deep link to their site. If an organisation is concerned about people bypassing ownership, copyright or disclaimer statements then these can easily be placed on every individual page in the site. If they have material aimed at a restricted audience than this can be password controlled, or not put up on the Web at all. If they want you to plough through their advertisements then...!

One way around this is for not-for-profit organisations to explicitly put a statement on their site giving people permission to deep link. The Guidelines for UK Government Web sites <http://www.e-envoy.gov.uk/oee/oee.nsf/sections/webguidelines-handbook-top/$file/handbookindex.htm> suggests appropriate wording for this:

'1.10.8.4 Hyperlinking policy – specimen paragraphs

Hyperlinking to us at the [department/agency name]. You do not have to ask permission to link directly to pages hosted on this site. We do not object to you linking directly to the information that is hosted on our site. However, we do not permit our pages to be loaded into frames on your site. The [department/agency name] pages must load into the user's entire window.'

This will benefit users, who can be pointed directly to the information they want; and benefit the sites, which will maintain their level of usage. As users generally only spend a few seconds at a site trying to find a piece of information, then only pointing them to the home page is likely to lose their 'business'.

Sue Childs, Editor

Copyright for blind and partially sighted people

<http://www.rnib.org.uk/campaign/copyright_bill.htm>

The Copyright (Visually Impaired Persons) Act 2002 has now received Royal assent. It means that people with visual problems will now have better, faster access to information and literature. Alternative formats of copyright material, such as large print, Braille and audio, can now be provided without the need to ask the permission of the copyright holder.

Re-launch!

Patient UK re-launched <http://www.patient.co.uk>

Patient UK is a gateway to information for health consumers, with an emphasis on UK resources.

Patient UK was first launched in 1997 by PiP (Patient Information Publications) – a partnership between two GPs in Tyne and Wear, England. It was re-launched in December 2002 as a joint venture between PiP and EMIS (Egton Medical Information Systems). For the re-launch, Patient UK has been extensively revised and considerably more content has been added.

The site contains:

- Patient information leaflets (most UK GPs have these same leaflets on their practice computer to print out for patients and carers)
- Directory of self-help groups, patient support groups and similar organisations (providing contact details, a brief description and a link to the organisation's Web site)
- Directory of UK health information Web sites
- List of recommended books on health and disease
- Service enabling a patient to book appointments with their GP over the Internet (for participating GPs only)
- Services enabling health consumers to consult a GP by e-mail (for a small fee) or by phone, for general medical advice (these services are not intended to replace patients contacting their own GP when they become ill)
- Details of private medical insurance policies (and other financial products)

The new site is simply designed and very accessible. The information is clearly and logically organised and easy to find.