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From Illuminated Manuscript to iPod — Copyright Problems in the Digital Age

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The history of copyright law reflects the development of technology. In ancient times the written word was committed to clay tablets, papyrus and vellum. Each copy was painstakingly done by hand and was the work of many months, if not years. The idea of copying as 'piracy' was almost laughable. To copy a text was seen as a form of flattery.

It was many centuries before the printing press revolutionised book production and led to the necessity for regulation.

The law that is acknowledged as the first Copyright Act was the Statute of Anne, 1709. This was An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned It is worth noting that the 'times therein mentioned' amounted to fourteen years.

The first copyright law in the US, the Copyright Act of 1790, also had a term of fourteen years. The comparison with current law is striking — the term of copyright has expanded to 70 years.

It is obvious from these early laws that the purpose of copyright law was to strike a balance between the legitimate interests of the copyright owner and the encouragement of creative works through the use of copyright material.

The law remained essentially unchanged until the beginning of the twentieth century. The Copyright Acts of 1909 in the US and 1911 in the UK were the first 'modern' copyright laws. The 1911 UK Act was adopted into Australian law and remained almost unchanged (it was amended only four times) until 1968, when the *Australian Copyright Act 1968* became law. This Act introduced the concept of 'fair dealing' and the 'library exceptions' and was a response to the widespread use of the photocopier. Even after 1968, the pace of change was measured until the mid nineties. It is interesting to compare the sizes of the Acts of the last 100 years and the growth in the term of copyright:

1911 Imperial Copyright Act	23 pages	death + 25 yrs
Copyright Act 1968 - original version	104 pages	death + 50 yrs
Copyright Act 1968 — 1995 reprint	233 pages	death + 70 yrs
Copyright Act 1968 — 2007 reprint	651 pages	death + 70 yrs
Copyright Act 1968 — 2017 reprint	? pages	death + 90 yrs? (endless?)

The duration of copyright has stretched from 25 to 50 to 70 years after the death of the creator and the penalties for copyright infringement have become harsher. What has happened to cause this flurry of legislative activity? There are two main causes.

First, the growth of the large multimedia companies such as Disney, EMI, and Time Warner has changed our perception of the value of copyright. Copyright is now big business and these companies are determined to exercise their rights.

(The US Copyright Term Extension Act of 1998 which extended copyright to death +70 years is known as the 'Mickey Mouse Protection Act' because it was introduced as Mickey Mouse was coming out of copyright). In Australia the term was increased as a direct result of the Australia – US Free Trade Agreement. This has been widely criticised.¹

Second, the new digital technologies have made the opportunities for copyright infringement easier, but at the same time made detection more likely. Technology has developed so quickly that legislators have been unable to keep the Act current. We have had three major amending Acts since 2000 and each of them has been made partly redundant by the technology before the print on the Act was dry.

Some technologies that have changed our methods of acquiring, copying and delivering information and entertainment include:

- scanners
- electronic journals and books
- · memory sticks
- internet
- · mp3 players
- email.

Copyright owners have been unwilling to stand by and watch their material being 'pirated' and have taken steps to thwart illegal copying. Unfortunately, the methods used have also cut across the legitimate use of material as permitted by 'fair dealing'.

Digital Rights Management (DRM) or Technological Protection Measures (TPM), is the generic name given to a group of technologies that can be applied to digital content to restrict access and use.

At its simplest, DRM can be a password, protecting access to an online electronic journal.

It can be a piece of computer code embedded in material which prevents that material being copied. It can prevent a DVD purchased in the UK from being played on a DVD player in Australia. It stops an mp3 file downloaded from iTunes from being played on any player save an iPod. It protects subscription TV from being viewed by non-subscribers. In short, it protects the rights of copyright owners.

On the one hand this can be seen as a legitimate use of technology to support rights of copyright owners and uphold the law for example, in the prevention of illegal downloading and copying. On the other it can severely restrict the legitimate rights of copyright users to make use of copyright materials as permitted by that same law.

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The recent (2006) changes to the Copyright Act went some way to recognising this problem and libraries are permitted to circumvent DRM in order to make use of the copyright material for administrative purposes — for example, to make an acquisitions decision.² However, circumventing DRM is not a simple matter — it may require some computer expertise — and the Act prohibits anyone from providing a circumvention service.³ So unless the library has an inhouse expert, they may be unable to make use of this part of the Act.

DRM can also prevent access to material which could be used because the copyright term has expired. For instance, an electronic journal archive protected by DRM may contain historical material which is now in the public domain. There are many other examples from music, radio and film.⁴

But DRM has a positive side for librarians — it can assist them in controlling the use of copyright material as:

- it makes it difficult, if not impossible, to print or copy e-books
- librarians can lend audio books on iPods, safe in the knowledge that they cannot be transferred
- books on e-reserve can be limited to single concurrent user.

The latest 2006 amendments to the Copyright Act have been a mixed blessing for librarians. We have had the introduction of the 'flexible dealing' exceptions (section 200AB), the clarification of the status of corporate libraries and the limited provisions for circumventing DRM. However, we must fight to maintain what we have gained and make sure that the term of copyright is not extended even further.

Notes

- 1. Gittins, Ross, 'Just what are we giving away?' The Age, (Melbourne), Aug 11, 2004, p.17
- 2. Copyright Act 1968, s.116AN(8)
- 3. Copyright Act 1968, s.116AP
- Thompson, Bill. (22/9/2006). 'When Private Locks Shackle Public Works' In BBC/Technology. http://news.bbc.co.uk/1/hi/technology/5371182.stm, viewed 1/9/2007.

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