

Some Current Copyright Issues

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.

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 of Australia (NLA) 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 NLA. (Some state legislation does cover this kind of material.)

In 2004, the Australian 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 submissions are due by 11 January 2008. The Government recently released a discussion paper, which is available at http://www.dcita.gov.au/home/intellectual_property.

Orphan works

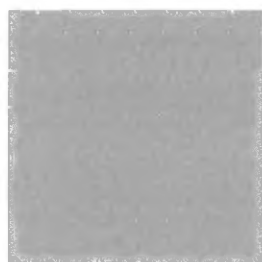
You're making a local history display and you come upon some postcards that would be perfect blown up as a backdrop. There is no copyright notice on them, nor anything else that would give you a clue

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.

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Non-exclusive Licences

One of the more persistent myths about copyright is that the creator of the work owns the copyright. This is only true in a limited sense. If the work is made in the course of employment then in most cases your employer owns the copyright, unless your employment contract stipulates otherwise. If your employer is a government department then the government owns copyright. There are other complications.

Suppose you've written something which has been published in a journal or given a paper at a conference. Some people are surprised to know that they cannot then use that item in other ways, for example to put on their website, to send to a friend or to lodge in an e-print repository. This is because they have signed an **exclusive** licence or contract with the journal publisher or conference organiser. This contract transfers copyright to the publisher.

If possible, try to ensure that you or your organisation makes it a practice to sign **non-exclusive** licences with publishers. This type of licence gives permission to the publisher to use the material in their publication, but also retains your right to use it in other

ways. Some non-exclusive licences may be limited in some ways, for example, an exclusive licence may be granted for a fixed term after which it becomes non-exclusive. Some licences may specify what other uses are permitted, for example, lodging in e-print archives.

Of course, if you've written a hot new potential bestseller, then your publisher is unlikely to agree to a non-exclusive licence for obvious reasons, but for most scholarly publishing a non-exclusive licence is appropriate. ALIA uses such a licence for its publications and a copy can be found at <http://www.alia.org.au/publishing/license.pdf>.

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The Australian 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 (CC) 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 Google 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.

Keeping up with developments

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.

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