

One of the key issues that news and publishing organisations have to deal with in the digital age is copyright. That is particularly the case for information professionals and managers, because the effective management of information can reduce the risks of copyright infringements and create more efficient working practices.

This is a critical time in the development of copyright law, with the UK government recently concluding a first consultation exercise to ensure the nation's copyright laws are fit for the digital age. The

campaign around the concept of copyright in the digital world. Its campaign 'Digital is not different' insists that a balance must be maintained in copyright law and warns that balance is being undermined in the digital age.

"Striking the right balance on IP in the digital age is essential to support an innovative knowledge economy. Let's not wake up in five years' time and realise we have unwittingly lost a fundamental building block for innovation, research and heritage in the UK," says Dame Lynne Brindley, chief executive of The British Library.



**News publishing**

# *Is digital different?*

consultation period ended in April, and now the government is analysing the responses before launching a consultation period later in the year on the back of proposals over how it will legislate.

Why is this process necessary? Because the Gowers Review of Intellectual Property, which reported in December 2006, concluded that aspects of the intellectual property system could be reformed, notably by the modification of rules to improve access to, and use of, copyright material for private individuals, students and libraries.

This has implications, too, for the news industry, because access to copyright material for private individuals also includes journalists needing to get access to facts or background information to expose any wrong-doing.

The UK now has a Minister for Intellectual Property, Lord Triesman, who launched the consultation with the view of "exploring where the boundaries lie between strong protection for right holders and appropriate levels of access for users. A system valued by right holders and respected by users is critical to the success of UK creativity," he said.

Protecting copyright is one of the key drivers for organisations such as the publishing group Pearson, which not only produces the *Financial Times*, but also an array of publications to meet the syllabus requirements of a number of Ivy League universities and management schools in the US. (see panel on page 9)

Another organisation is the British Library, which has launched a strong

The system of copyright which allows authors and publishers to be rewarded for their work, balanced with 'exceptions' to allow creators, including researchers, to create and innovate "has worked well in the analogue world for decades," says the Library. But, it warns, "All is not working well in the digital world."

The Library says that exceptions that allow researchers to access material are being eroded in the digital age in incremental steps, undermining the balance in copyright devised and protected by Parliament in the public interest. It says this is damaging for researchers and for the UK economy.

It says a series of key issues has to be addressed by the government, covering the status of copyright and contract law; the concept of fair dealing ~ the right to make a single copy from an in-copyright work, without permission, for the purposes of non-commercial research, private study, criticism, review and news reporting. This is usually interpreted to allow a user to copy a chapter, article or up to five per cent of a publication.

The status of the different types of law is important because, in the UK, contract law overrides copyright law. This means that any public interest exceptions agreed by Parliament to foster education, learning and creativity are, according to the British Library, being routinely undermined by the contracts or licences that come with electronic content. The solution, it suggests, is that contracts or licences must not undermine statutory exceptions in copyright law.

**Continuing the media theme of The Big Debate, David Bicknell moves on to investigate how the ever-growing reach of the World Wide Web is affecting traditional views on issues such as copyright and intellectual property rights**

*.. exceptions and fair dealing should be better catered for in the digital age*

Another key area is Digital Rights Management (DRM), with the Library warning that DRM systems pose significant problems to preserving, archiving and accessing digital content. The Library says that so-called ‘technical protection measures’ (TPM) are given “close to total legal protection in the UK”, with no practical process for legal circumvention where the TPMs prevent access in line with statutory exceptions such as archiving, access by the visually impaired, and ‘fair dealing’.

The British Library wants libraries to be allowed to circumvent technical protection measures where they interfere with statutory exceptions in copyright law. It cites the example of the archive of a celebrated photographer, Fay Godwin (1931 ~ 2005) the Library recently acquired. The collection includes Adobe Photoshop images, accessible only through Adobe Photoshop and Windows XP.

Both the software and the operating



able to make copies of information for certain specific purposes. And, he adds, ‘right of fair use’ has an historic context, which people ignore.

“The ‘right of fair use’ was created when, if you wanted to make a copy of something, then you had to take pen and ink and write it down. The right expected the copier to have to expend real energy rather than the (trivial) copy and paste of an entire work that the computer allows.

“Roll forwards to today,” says Mathews, “and the boundaries of ‘fair use’ may have been extended. If you ‘publish’ something, then anyone on the Internet appears to take the view that they have the ‘right’ to harvest your expertise and make whatever use they care to of it. The British Library aver that a large number of researchers needs to have access to, and the ability to copy, any and all published material for the purposes of private study.

#### Questions the IT director needs to consider

If we are publishing information to the public Internet:

- is it information where we want to exert a right, like copyright or trademark?
- do we want paying for the information?
- do we want to be sure our name/brand is associated with it?
- are we bothered if the information is used/misused by others?
- what is it worth doing to make us happier?

If we are distributing digital information using Internet:

- how are we going to limit use to those we want to authorise?
- can we identify the source of a leak if the information becomes publicly available?
- what sanctions can we take if recipients don’t abide by the rules?
- can we make it hard work for someone to create an uncontrolled copy?

system have DRM systems that activate the products by connecting with live internet activation servers. The Library says that with Microsoft planning to stop selling Windows XP later this year, no-one knows what will happen beyond the three or four years for which the servers are kept running.

The Library’s view that exceptions and fair dealing should be better catered for in the digital age is understood by specialists in DRM such as Steve Mathews, general manager of content protection specialist LockLizard. Mathews, a leading member of the London Computer Law Group, agrees that the British Library, as guardian of our cultural history, should have unique access to, and use of, ancient documents that document our cultural heritage.

However, he argues that much of the copyright debate today centres around the concept of ‘fair use’ as a ‘right’ to be

*.. authors are frightened by the Internet and the world of digital publishing*

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# Pearson: facing the copyright challenge

The publishing and content specialist Pearson has a long and storied history, from the publication of the first *Longman English Dictionary* of 1725, through the first Penguin paperbacks in the 1930s to today's high-quality information and content originating from the *Financial Times* and its family of on-line and off-line publications.

Throughout that history, Pearson has had to tackle copyright issues. Today, those issues range from the protection of textbooks for academic courses to safeguarding that high-quality 'must have' *Financial Times* content. To that end, Pearson has to consider a range of solutions to prevent copyright infringement, including tracking the use of its content on the Web and the use of Digital Rights Management (DRM) solutions.

There is, however, no 'one-size-fits-all' strategy. Pearson has numerous publications to protect but, given the nature of its publishing business, it cannot take the same steps towards copyright protection as, for example, Hollywood movie studios, which must attempt to protect their limited number of blockbuster movies produced each year.

Aravind Pochiraju, a technology architecture specialist at Pearson Corporate in the United States, says a subset of products that it has to protect include high-quality content for higher education, technical manuals and certification courseware by many



companies like Cisco or Sun, or high-quality syllabus content produced by professors at Ivy League universities such as Harvard and Cornell. Most music and movie studio publishers are very cautious on selecting an approach for securing their IP, where audience and their usability experience of content/media become the key deciding factors. Every content owner has similar IP usage issues after such content has been delivered to an audience.

Often, professors post excerpts of texts on the Web without permission, costing the publishing industry millions of dollars each year. Cornell University in New York State has already agreed to regulate the work its faculty puts on the Web in response to a threatened lawsuit from the Association of American Publishers, which claimed professors were making their material available free rather than requiring students to buy \$100 textbooks. Publishers say they must protect their \$3.35 billion revenues in annual US college textbook sales, but that means competing against a generation of students who regard the Internet as a

licence to acquire 'free content.'

So, to protect that content, Pearson adopts proactive measures like DRM where necessary, and reactive measures by using content monitoring services to track where their content may have been copied and reproduced on the Web. Pochiraju cited the growth of companies such as BayTSP ([www.baytsp.com](http://www.baytsp.com)), which offers publishing protection services to ensure clients' assets are tracked, secured and protected from Internet piracy including 24-hour global surveillance of web sites, FTP sites, P2P networks, and IRC sites. He also mentioned other solution providers like Attributor, which provides content-monitoring on the Web user-generated content portals and social networks to secure links, create new revenue opportunities and so forth.

Pochiraju says managers of information systems must be content-aware and demonstrate an interest in copyright issues throughout the organisation. That means having 'rock-solid' content management systems that can, where necessary, be supplemented by the use of appropriate DRM solutions.

Another pre-requisite is to ensure that the organisation has 'tight' policies and procedures because, in most companies that produce digital content or software, just as in computer security, it is usually the rogue insiders who have access to key content and can cause the most damage to the company's business.

Does that right also include studying novels or is fiction different from non-fiction?

"But copyright is the granting of an economic right for a work created through the 'sweat of the brow' of one or more individuals. In the British Library's view, public interest seems to be above that of the author. Such an argument is curious because, if the author does not achieve paramount rights, why would the author bother to perform? The same applies to news reporters. If you are not credited with the scoop, then why would you bother to work hard to get it, to second-source it, and ensure your facts are right? It is safer to be a bottom-sucker feeding off the authorised press

statements, but that only undermines the role of investigative journalism."

Mathews says a number of intellectual property creators are ready to invest heavily to protect their information, because that will in turn then prevent potential competitors from readily stealing it and then entering their market very cheaply. They do not want to publish it in the same way as an author or an artist, but only have the same tools for digital distribution as everyone else.

"Authors are frightened by the Internet and the world of digital publishing because they cannot see how they can prevent their intellectual property rights from being stolen by everyone. For the same reason, enterprises are unwilling to

provide electronic copies of critical information," he says.

The reality is that copyright and IPR are going to be ongoing issues for organisations and, to some extent, the internet genie is already out of the bottle. The sheer immediacy ~ and mindset ~ of 'cut and paste' means that, to a large extent, 'Digital is different'. The UK Intellectual Property Office's consultation, when it is published, will make interesting reading.

#### Some useful copyright sites

- [www.locklizard.com](http://www.locklizard.com)
- [www.pearson.com](http://www.pearson.com)
- [www.bl.uk/ip](http://www.bl.uk/ip)
- [www.hm-treasury.gov.uk/media/6/E/pbr06\\_gowers\\_report\\_755.pdf](http://www.hm-treasury.gov.uk/media/6/E/pbr06_gowers_report_755.pdf)
- <http://www.ipo.gov.uk/press/press-release/press-release-2008/press-release-20080108.htm>
- <http://www.baytsp.com>

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