

From illuminated manuscript to iPod – copyright solutions for the Digital Age

Moyra McAllister

Copyright Adviser

Australian Library and Information Association

Abstract

The main changes in copyright legislation have been in response to advances in technology. Is technology now advancing so fast that the legislation can no longer keep up? Since the development of the Internet, there have been major amendments to the Copyright Act every two or three years.

In an effort to counter piracy, the media industry, including entertainment and publishing, is resorting to its own technological fixes, such as Digital Rights Management (DRM), Technological Protection Measures (TPMs) and Broadcast Flags. While protecting copyright **owners** these measures conflict with the legitimate rights of copyright **users**. This paper will examine the current situation from the point of view of library staff trying to find a way to serve their clients in spite of the copyright barriers placed in their way.

Early History

The history of copyright law reflects the development of technology. In ancient times the written word was committed to stone and 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. Books were, and continued to be, extremely valuable as physical objects.

The printing press was invented in the 11th century in China, but it was not until the 15th Century that Gutenberg independently invented what we would recognise as the first press in Europe. Its use spread quickly and by the 17th century was already sufficiently established for a law to be introduced in England granting members of the Stationers Company a monopoly to print books. Although this law gave these printers the exclusive right to profit from their work it was not a copyright law as such.

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 14 years.

The American Constitution states that Congress shall have the power

- To promote the Progress of Science and useful Arts, by securing for **limited Times** (*my emphasis*) to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;¹

The first Copyright law in the US , the Copyright Act of 1790 also had a term of 14 years..

The comparison with current law is striking - the reference to the 'encouragement of learning' or 'to promote the progress of science and useful arts' has disappeared and the term of copyright has expanded to 70 years from the death of the creator.

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.

Modern developments

The law remained essentially unchanged until the beginning of the 20th Century. The Copyright Acts of 1909 in the US and 1911 in the UK were the first 'modern' copyright laws,. These Acts differed from the earlier ones by specifying that copyright applied to musical compositions, maps, photographs and prints. The 1911 Act was adopted into Australian law and remained almost unchanged (it was amended only 4 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 in response to the widespread use of the photocopier. Even after 1968, the pace of change was relatively slow until the mid 90s. It is interesting to compare the sizes of the Acts of the last 100 years

- *1911 Imperial Copyright Act* 23 pages
- *Copyright Act 1968* - original version 104 pages
- *Copyright Act 1968* - 1995 reprint 233 pages
- *Copyright Act 1968* - 2007 reprint 651 pages

In the process the duration of Copyright has stretched from 25 to 50 to 70 years 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. (It is telling that the US Act which extended the term of Copyright – the *Copyright Term Extension Act* of 1998 is commonly known as the *Mickey Mouse Protection Act* – it was introduced just as Mickey Mouse was due to come out of copyright!)

In Australia the term was increased as a direct result of the Australia – US Free Trade Agreement which has been widely criticizedⁱⁱ.

- Second, the new digital technologies have made the opportunities for copyright infringement easier, but at the same time made detection more likely.

How have the changes in technology changed the situation for libraries?

The first technology to impact on the library exceptions of the Copyright Act was the fax machine. Before the advent of this device, a photocopy of a requested item was sent by ‘snail’ mail to the requester, whether another library or a remote client. The fax machine speeded up this process but in doing so produced a second copy of the item. One copy was permitted under the Act, two were not.

After that, the developments came thick and fast and 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 include

- scanners
- electronic journals and books

- memory sticks
- internet
- mp3 players
- E-mail

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 legal use of material as permitted by the 'fair dealing' exceptions for research and study, parody and satire and reporting the news. They have made the jobs of librarians more difficult by preventing the legitimate copying of works for ILL, preservation and other administrative purposes.

Digital Rights Management

Digital Rights Management (DRM) is the generic name given to a group of technologies that can be applied to digital content to restrict access and use. (DRM is also referred to as Digital **Restriction** Management by its critics)ⁱⁱⁱ. Another term used to mean the same thing is Technological Protection Measures (TPM), this is the term used in the Australian Copyright Act as is Electronic Rights Management Information. Although there are subtle differences in meaning, for the purposes of this paper I have treated them as the same.

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 enforce the rights of copyright owners and uphold the law in, for example, the prevention of illegal downloading and copying. On the other it can severely restrict the rights of copyright users to make use of copyright materials as permitted by that same law.

The recent (2006) changes to the Copyright Act went some way to recognizing 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.^{iv} However, circumventing DRM is not a simple matter – it may require some computer expertise – and the Act prohibits anyone from providing a circumvention service.^v So unless the library has an in house 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 or because it was issued under a Creative Commons licence.^{vi} For instance, an electronic journal archive protected by DRM may contain historical material which is now in the public domain. DRM can prevent a student ‘cutting and pasting’ from an e-book version of a classic text such as ‘Pride and Prejudice’. There are many other examples from music, radio and film.^{vii}

But DRM has a positive side for librarians, it can assist them in controlling the use of copyright material.

- 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.

But DRM is not the only way in which copyright owners enforce their rights. Most libraries acquire electronic journals and books under licence agreements which may limit rights under the Copyright Act, particularly in the field of document delivery.^{viii}

Obsolete technologies also pose problems, at what point is it permissible to transfer a videotape to DVD? Legally acquired collections on floppy disc or in a word processing format which is no longer supported may be impossible to copy, either because the copyright owner cannot be traced or because they are protected by long forgotten passwords.

A modern chained library?

From the Middle Ages until the 18th Century librarians prevented the theft of valuable books by chaining them to the shelves. Today’s librarians are striving to find ways to release the wealth of information and entertainment in their libraries which has been ‘chained’ by digital coding, licence agreements and obsolete technologies.

ⁱ Constitution of the United States of America. Article I, Section 8 *Powers of Congress*.

ⁱⁱ Gittins, Ross 'Just what are we giving away?' *The Age*, (Melbourne), Aug 11, 2004 p.17

ⁱⁱⁱ Crawford, Walt 'Whose Rights Does DRM Manage?', *EContent*, Apr2005, Vol. 28, Issue 4, p42

^{iv} Copyright Act 1968, Sect 116AN(8)

^v Copyright Act 1968, Sect 116AP

^{vi} <http://www.creativecommons.org>

^{vii} Thompson, Bill. (Sept 22, 2006). 'When private locks shackle public works'. *BBC/Technology*.

Retrieved Sept 1, 2007, from <http://news.bbc.co.uk/1/hi/technology/5371182.stm>.

^{viii} Wiley, Lynn N. 'License to deny? Publisher restrictions on document delivery from e-licensed journals' *Interlending & Document Supply*, 2004. Vol32(2) p.94-102