

Road rage on the superhighway?

Alex Byrne, pro vice-chancellor, Northern Territory University

Rapid expansion of the 'information superhighway' has raised the stakes and heightened the tensions between the protagonists in the ongoing intellectual property debate.

The uneasy balance of power which had existed between producers and their representatives on the one hand and users and their representatives on the other has been upset. During 1996 and 1997, we have seen a major assault on the parameters of intellectual property management in many jurisdictions and internationally through the World Intellectual Property Organisation (WIPO). In some jurisdictions the term of copyright has been successfully extended, returning many publications (in all formats) to copyright from whence they had recently emerged. Attempts to extend the principles of copyright to digital media have been strongly resisted.

However, of greatest concern has been the challenge to the principle of 'fair dealing' for research and study. This well-established principle allows the use of copyright materials without payment of royalties for bonafide research and study. It is an important principle which supports the discovery and communication of knowledge, the fundamental concern of universities and other educational and research organisations.

Unfortunately, however, the current copyright debate over-emphasises 'property' at the expense of 'intellect'. Copyright and other intellectual property law provides a framework in which producers (including creators, publishers and other contributors) may be assured of obtaining a just return for these investments of time, intellect and resources while preserving a balance with the community's need for access to information. Traditionally, this balance has been achieved by conferring limited property rights for a period of time during which limited 'fair dealing' is permitted, followed by ultimate transfer of the copyright material and patents to the public domain.

Despite the efficacy of this well established balance of interests, the communications revolution has raised new

questions. Some producers are concerned that their intellectual property may be used, copied and modified without control in the electronic environment. They fear that they will lose both revenue and the capacity to ensure its integrity, that their moral rights to attribution and integrity may be discarded. We must be sensitive to such concerns, which are analogous to the fears of the car owner living in a theft-prone district.

Others, however, can be seen as the intellectual property BMWs of the information super highway as they roar past insisting that we all give way to their prerogatives. Our intellectual property laws, our 'super highway code', must balance the needs of all. It is important that we preserve the well-established fundamental principles through changing technologies. The underlying principle that copyright confers a limited property right in order to encourage research, discovery, development and publication must be maintained. It is essential that we protect the legitimate interests of producers so that they will get a return for their efforts. But it is also vital to maintain access for users without complex copyright permission systems and onerous charges.

Australian libraries have joined our counterparts overseas to voice our concerns about trends in intellectual property law. Our representatives at the WIPO conference in December 1996 served us well. The Council of Australian University Librarians, the National Library of Australia and IFLA have been pursuing the issues. But it is essential that each of us continues to argue the case for the users of intellectual property in all media and to advocate the continuing need for balance in legislation. ■

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