

Copyright on the net

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There have been a number of wild claims made in the past five years in relation to the protection of property rights over the internet. A number of commentators have rallied to the catch cry that 'information wants to be free' in support of theories that the internet is a new 'property free zone'. Is it true? Does information become absorbed within the public domain the moment that it is published on the internet? Is it legal to 'repurpose' material 'found' on the internet?

Well — no. There are circumstances in which you can do one or more of the above, but the web does not figure in them. The reason for this is the law of copyright. Copyright is a collection of statutory rights, the most notable of which is the right to copy (hence 'copyright'). Copyright has a long and colourful history, being grounded in a censorship regime in England after the invention of the printing press. In its most recent incarnation, the right has been given substance through the weight of a number of international agreements.

The *Copyright Act* prohibits a number of things in relation to copyright works. In general terms there is a blanket prohibition on copying anything that you, yourself, have not created. In fact, the rights go even further. They prohibit 'authorising' a person to make a copy of a copyright work. This means, that you cannot even say to somebody 'here, go and make a copy of this' (unless it is yours) because, again, you will be breaching copyright.

So, what is a 'copyright work'? The *Copyright Act* has a number of specific categories of works which are protected by the Act. Without getting too technical, these include such things as short stories, plays, musical notation, recordings of music, videos — just about anything that you could think that you would like to make a copy of. The only real limitation is that the work has a sufficient level of 'originality' and has been reduced to a 'material form'. To put it another way, if the work is particularly short or mindless it will not be protected. Similarly it will not be protected if there is nothing from which the work can be reproduced.

The final thing to note about copyright is that, where someone is an employee and they make a copyright work in the course of their employment, it is their employer who owns the copyright — not the employee. Thus, a public servant who writes a report for a department will not own the copyright in that report. Copyright in that report will be held by the department.

People have argued that when information is placed on the web it becomes 'free information' for everybody. This is false, but not entirely false. One aspect of the web is that, in order to read material on a web site, a reproduction of that material must be made. As such, when a person places some material on the web they can reasonably expect that people will make a reproduction incidental to viewing that material. The court will imply a licence for these 'incidental' reproductions. However, this does not mean that copyright in the work has ceased to subsist. Rather, it means that there are certain circumstances (the downloading for personal use) in which making a copy will not be a copyright infringement. If the copyright owner has placed an explicit statement of the licence on their website, then that statement will be conclusive of what you can do with the material once it is downloaded.

Some of the things that will be a breach of copyright include: the reuse of downloaded material on your own website; the inclusion in a magazine (including an inhouse newsletter); and e-mailing it to friends or workmates. These are going to be outside the scope of the implied licence to download the material, and are subject to any explicit statements of licence on the website itself. While attributing the author of a work is always a good idea (it is actually illegal to not properly attribute) it will not have any effect on whether you have breached copyright or not. 'But I had a hyperlink to their site' is not (and never has been) a defence. Further, if a rogue places copyright material on a web site, they will be liable for authorising the making of a copy by each person who comes to view that material. That is, each time an *end user* downloads a page, the *rogue* is breaching the Act.

Copyright exists on the web and there is a very restricted ability to download material, but you are not permitted to reuse that material. This applies not only to material which is created or hosted within Australia, but includes material created within any country that is a signatory to the Berne Convention on Copyright (read as 'the whole world'). Australia must treat the copyright works of authors of any of the convention countries as if they were Australian authors. So, if you copy American material (for example), you will still be in breach of the *Copyright Act* and subject to prosecution.

All of these rights will be augmented when the *Copyright Amendment (Digital Agenda) Bill* becomes law. The Bill introduces a new right of 'communication to the public'. That right will make it illegal to make a copyright work available over the internet (for example) without the copyright owner's permission. The proposed modifications represent a fundamental shift in the coverage of copyright protection. At present, copyright primarily protects production — that is, the right to make a copy. The amendments will extend that control to the means of distribution.

In response to lobbying by libraries and archivists the government is proposing that 'the existing exceptions for library copying should apply to the electronic reproduction and communication of copyright material for users and other libraries and archives' (from the Bill's explanatory memorandum). However, in reality this means that libraries' ideals will be trapped within book-based methods. The internet is about ubiquity and ease of access. By retaining the old exceptions without extension libraries of tomorrow will be shackled with yesterday's paradigms. We can expect a shift from paper to the internet over the coming decades. It is fair to assume that, over time, libraries will seem less and less like warehouses of knowledge for the community and more and more like mere billing agents for copyright owners.

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