

## Six Lurking Dangers in the Copyright Jungle

'Copyright can be a jungle where unforeseen dangers lurk,' said Derek Whitehead, President of the Australian Library and Information Association (ALIA), at a joint breakfast meeting of ALIA and the Records Management Association of Australasia (RMAA) on 10 July 2008. He warned of six lurking dangers – including threats and criminality issues – but also provided seven ways to keep safe.

Derek said that ALIA takes an active role on copyright because it impacts on the free flow of information. ALIA also provides a copyright service to members. He detailed his involvement in copyright issues as chairman of the Australian Digital Alliance (ADA), University Copyright Officer at Swinburne and a member of the (Copyright) Expert Reference Group of Universities Australia.

Derek explained that copyright is a bundle of exclusive rights, for a limited period, to do certain things with a work including to: copy, publish, communicate and perform it. The kinds of works include writing, visual images, music and moving images. Copyright applies to the expression of an idea or information, not the idea or information itself. There are exceptions to these rights which enable others to use copyright material.

The rights of copyright owners and copyright users may be becoming unbalanced.

Derek discussed the following six points:

1. Extension of copyright
2. Orphan works
3. Threats (chilling effects)
4. Three strikes and you're out
5. Criminalisation and
6. Canada's example.

### 1: Extension of copyright

Copyright exists to encourage creativity, however the term of copyright has been extended massively. It has now been increased to the life of the author plus 70 years via the Australia-United States Free Trade Agreement. Why has copyright been extended? The answer is money! Enhanced prospects for global earnings in an increasingly international copyright market (Jane Ginsburg). In

Australia the cost of statutory licences is increasing: the total licensing revenue for the Copyright Agency Limited (CAL) was \$103 million in 2006.

### 2: Orphan works

Orphans are works for which the copyright owner cannot readily be identified or contacted. These are often older works with trivial commercial value. While their copyright needs protection, it would be unfortunate if this results in a cumbersome copyright system. Derek suggests it best to take a risk management approach, by making

- (i) a reasonably diligent search
- (ii) a clear and adequate attribution
- (iii) remuneration or restitution if the copyright owner appears, and
- (iv) use disclaimers.

### 3: Chilling effects

Chilling effects are threats. Some individuals and corporations are using intellectual property laws to try to silence other online users. See Clearinghouse <http://www.chillingeffects.org/> There has also been a tendency to extend the meaning of words such as 'piracy'.

### 4: Three strikes and you're out!

This involves using ISPs to catch copyright infringers and punishing them by stopping their Internet access. The French plan to legislate to enable this. It will rely on a contract between the ISP and the customer.

### 5: Becoming a criminal

There is a tendency to criminalise copyright infringement. There are strict liability offences with fines up to \$6600 for each offence. Early discussions are under way for an Anti-Counterfeiting Trade Agreement (ACTA) about enforcement best practice; and enhancing the enforcement legal framework. It has created fears of increased search powers for customs and airport security officials. There is concern that there has been no public consultation on the treaty.

### 6: Canada's example

Canada has new copyright legislation and new rights but it also limits the right to copy and has harsh anti-circumvention provisions. The law should stop treating paying customers like criminals by giving them the right to legally shift their music to their choice of device. (Michael Geist)

## Seven rules for staying safe in the copyright jungle

1. Section 200AB of the Copyright Act provides special exceptions. See [http://www.smartcopying.edu.au/guidelines/info\\_flexible.html](http://www.smartcopying.edu.au/guidelines/info_flexible.html) currently under development by the Copyright Advisory Group (CAG), and forthcoming advice from the ADA and ALIA.
2. Use disclaimers and a formal procedure for investigation and take down, if necessary.
3. Use and promote open licences and give your own away. Creative Commons provides a guide to open licensing and the tools to use.
4. Avoid using anything that you need to pay for unless you have a licence.
5. Respect the rights of authors and creators to be acknowledged as such.
6. There is a large movement to slow the growth of the copyright octopus. Join it.
7. Stay cool join the ALIA and the ADA.

### ALIA's copyright advice service

The copyright advice service provides members with up-to-date information on copyright and how it affects the library and information sector. The service responds to members' queries about implementing their obligations under copyright and intellectual property law.

For further information, email ALIA's Copyright Advisor, Helen Roberts.

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