

Copyright: a barrier to freedom of access to information and freedom of expression?

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Copyright could be described as a system of law which protects creators from those who would copy their works. The notion that creators needed such protection is a relatively new one. In pre-modern times, both in Europe and China, imitation of past masters and the reworking of old stories were accepted as the core business of being an artist.

Copyright's beginnings are rooted in the invention of the movable type printing press. Only when Gutenberg was able to print the Bible at the staggering pace of 200 copies in three years did copying start to become efficient enough to warrant the attention of the law.

Copyright's relationship to freedom of expression and freedom of access to information has always been complex. The world's first copyright statute, Britain's *Statute of Anne* in 1709, grew out of the monopoly on printing granted to the Stationers' Company guild system.

Once copyright emerged more fully from its printers' protection racket beginnings, it came to the aid of freedom of expression and of access to information. Copyright provides an incentive to authors and publishers to create their works and make them available. And by providing this incentive, copyright provides an economic base from which a person can express their views. Without such a base, only the rich or those willing to endure poverty are able to share their creations with society. (Most writers must be willing to endure poverty anyway but at least they can hope...) Copyright thus allows a more diverse group of people to contribute to our stock of knowledge. By imparting some freedom from hunger, it enhances freedom of expression.

It becomes a mechanism, as the United States *Constitution* puts it, to promote the progress of science and useful arts. However, because this is achieved by granting the author some right to control who accesses their work, this will obviously have implications for freedom of access to information and our freedom of expression.

The European Union Copyright Term Directive 'harmonised' the different copyright terms throughout the European Union, trying to find a happy medium between Germany and Austria with their life-plus-seventy years copyright terms, and nations such as Spain which offered just sixty years. That happy medium was of course the upper limit despite the fact that most European countries adhered to the *Berne Convention* requirement of life plus fifty years.

The United States originally offered a copyright term of just fourteen years with a second fourteen years being available upon renewal (the copyright in the renewal period returned to the author even if copyright had been assigned to a publisher, a nice idea). In 1831, this was increased to twenty-eight years with a renewal period of fourteen. In 1909, it was increased again to twenty-eight plus twenty-eight. In 1976, it was 'harmonised' with the *Berne Convention*, and then in 1998, under the *Sonny Bono Copyright Term Extension Act*, the term was increased to life plus seventy to 'harmonise' it with the European Union.

There is now some pressure in Australia for us to extend our term so that we can be in 'harmony' too — strange how harmony only works in one direction.

This extension of the term has serious implications for access to information,

pushing the public domain with its guarantee of universally accessible information ever further away. In the 1950s the United States Copyright Office did a study of the renewal of copyrights that had first been registered in 1927. The average re-registration rate was just 9.5 per cent rising to a giddy height of 43.7 per cent for motion pictures and 45 per cent for published music with just 4.1 per cent for books and pamphlets and just 5.4 per cent for periodicals. This means that for all book publishers whose book was of sufficient value for them to register it in 1927, fewer than 1 in 20 thought it was still worthwhile to re-register for copyright protection just twenty-eight years later.

And yet, as the law stands in Europe and the United States today, material that would not have been worthwhile registering for copyright protection even when it was first published will be copyright protected until seventy years after the death of the author.

The chief means by which public access to such material has been guaranteed while it is copyright protected is through libraries. Libraries acquire books and other material and make them available to the public. Copyright permission is not required but this activity is often contemplated in copyright laws. The Copyright Acts of the United States, United Kingdom and Australia require the deposit of published materials with their respective deposit libraries. A number of other countries, including Canada, Denmark, Finland and Japan also have legal deposit laws, though not as part of their copyright regimes.

Access to information in libraries is fur-

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ther enhanced by various copyright exceptions, the most famous being fair use or fair dealing which allow a student or researcher to copy sometimes whole works to advance their education or their research.

Other exceptions exist which ensure that copyright does not act as too great a barrier to information in the print environment. Chief among these are the exceptions which allow libraries to supply copies of material in their collections for certain purposes. These exceptions are strenuously resisted by publisher interests but play a very important role in the flow of information in our societies.

It is ironic that as we move towards the digital age where information is more easily available than ever before, copyright is becoming an ever greater barrier to the freedom of access to information. Copyright in the digital environment frequently allows a level of control over information that a totalitarian state would find attractive.

In the print world, a single exercise of copyright underpins the book trade, the right of reproduction. With this one right, a physical book is created which, once sold, falls largely outside the control of the copyright owner, it may be lent, re-sold and most importantly, re-read an infinite number of times.

In the digital environment, with newly-minted copyright laws based upon the World Intellectual Property Organisation (WIPO) Copyright Treaties, the level of control over information is far greater and the exceptions which might balance this control are under attack from publishers interests. Let me illustrate. Just one exercise of one copyright underpins the entire book industry. Compare this to an e-book. Copyright permission must be sought to reproduce it onto a server; also to 'make it available to the public' (which is one of the new rights) on that server. That is one act of uploading but two exercises of copyright. Copyright permission must be sought for each and every communication from that server to your desktop. If the e-book is to be downloaded to your hard drive, permission must be sought again for that reproduction. But the real backward step hidden in new copyright laws comes with respect to temporary or ephemeral reproductions, copies which are made on your screen, in your RAM or in your PC's cache.

What is the significance of this? If you need a licence to make temporary copies on your PC then you need a licence to read. The very act of reading becomes a copyright protected act. Electronic books suddenly become very like yo-yos, put out there with strings attached.

In most countries, it was never clear that such reproductions were ever part of a copyright owner's rights; copyright laws normally require that reproductions have

some kind of permanency. But increasingly temporary reproductions are being viewed as the legitimate domain of copyright owners. As far as I am aware, no jurisdiction in the world has wholly exempted temporary reproductions from the copyright owners rights. In Australia, there is an exemption that covers such exceptions made as part of a communication.

The proposed EC Directive exempts certain temporary acts of reproductions but only where such reproductions have no 'separate economic value'. If controlling these reproductions allows publishers to control the very act of reading: who can read, for how long, how many times and under what conditions, then I would say that they have a separate economic value.

In the digital environment, there are no copyright-free zones as far as libraries are concerned. To provide services digitally that are anything like services that are provided in real-space, libraries either need licences or they need to be operating under a copyright exception of some kind. There is no digital equivalent of just buying a book and putting it on a shelf without having to worry about copyright.

In this environment, libraries and their users need more copyright exceptions than ever before just to preserve our current rights to access information. But digital copyright exceptions are fiercely resented by publisher interests as holes in their dotcom business models. Legitimate fair use/fair dealing activities by libraries and their users are characterised as piracy by some publishers. Furthermore, publishers are moving to swathe their electronic publications in new technological protections such as software locks which are themselves protected by new laws under the WIPO Treaties, effectively putting three levels of protection between information and would-be users.

And where freedom of access to information is threatened so too is freedom of expression. Human expression rarely emerges from a vacuum. Today's speech is made of yesterday's words. Today's output is tomorrow's input, and if we allow copyright to unduly restrict that then we have harmed our freedom to express ourselves, to 'output' ourselves.

Unless Governments can be persuaded to maintain the current balance between the rights of copyright owners and the rights of users then copyright will increasingly become a major barrier to the freedom of access to information and ultimately our freedom of expression.

This is an abridged version of a paper presented at the recent IFLA conference in Jerusalem. For information on the conference, and for copies of the conference papers, visit the IFLA website at <http://www.ifla.org/IV/ifla66/66cp.htm>

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