

Meeting Report: The future of copyright in the digital age and what it means for you

London, CILIP, Tuesday 15 November 2011

Roger Farbey reviews this one-day event reviewing the current state of play in copyright for digital users and the likely scenarios for the future, post-Hargreaves

If anyone is in any doubt about the value of UKeIG membership, they should have attended this course, because this is exactly what this CILIP special interest group is all about. The courses it runs, and this was a prime example, are of world class quality and in these cash-straitened times, superb value for money. Co-course leader, the ebullient Emily Goodhand, Copyright and Compliance Officer at Reading University, led the morning session, kicking off with a “pub quiz”, all 50-plus participants being divided into groups of five and attempting to answer a set of 15 questions on the basics of copyright law. Unsurprisingly, most teams answered most of the questions correctly and there was even a prize for the winning team who answered all of the questions correctly.

Following this “icebreaker”, there was a general discussion about the quiz answers and the serious business of what can and cannot be done regarding copyright, including multimedia and licence issues. A nice acrostic was flashed onto the screen, which spelled COPYRIGHT with each of the constituent letters standing for: **C**opyright, **D**esigns and **P**atents Act; **O**riginality; **P**rotects creative works; **Y** can’t I do that? (she couldn’t think of another use for the letter Y in this context); **R**ests with the author; **I**ntellectual

property; **G**ranted automatically; **H**orribly long (duration of copyright) and **T**erritorial (referring to countries affording their own copyright laws), respectively.

Launching into a general overview of copyright law as it stands, Emily gave the audience a résumé of the rights of copyright owners, (including performance, moral and database rights), the penalties of copyright infringement - she cited the case of Getty Images who won £2,000 in settlement for the unauthorised use of an image on the Web, reminding us that the default position is that all images on the internet are subject to copyright unless otherwise stated! There are usually other rights that need to be considered, as in broadcasting for example. Also copyright lasts for a long time, and in the case of recorded music this is due to be extended in the next two years, from 50 to 70 years from date of recording release, thanks to Sir Cliff Richard and his so-called “Cliff’s Law”.

Session two focused on the use of copyright material, what the law says users can (and cannot do), permitted acts such as educational use were discussed, and most importantly the permissions granted under both fair dealing and library privilege were outlined. These are all in them-

selves potential minefields. For example, can the BBC iPlayer be used for educational purposes under an ERA (Educational Recording Agency) licence? Well, no, because BBC programmes are *not available* under ERA licence, so if the licence is not available then you could argue that you don't need a licence to show material on the BBC iPlayer. However, you must *not* record this material!

Library privilege is potentially difficult since prescribed (not-for-profit) libraries are not automatically those who have charitable status. Non-prescribed library privilege only offers a restricted number of 'privileges' that a library can perform: copying published items for another prescribed library, make preservation copies of printed material and make and supply a copy of unpublished work. Under 'fair dealing' the subject of making copies to third parties from 'copyright cleared' material was mentioned and it was thought that this was probably permissible, but this is legally a grey area. Cases were cited both where the fair dealing argument has succeeded and also cases where it has failed, so yet another minefield.

Moving on to a section entitled "Applying the law in the digital domain", the common myths that everything on the internet is in the "public domain" and if there is no © symbol, material is free to use, were rapidly quashed. Examples were given of what does not constitute fair dealing in digital media, such as derogatory treatment, using more images than are needed, generating advertising publicity or using an image on a front

cover. Currently there is no provision for format shifting and even ripping music from a CD to an iPod is illegal (despite being universally widespread in practice); as Emily remarked, what can they do, practically speaking - take everyone in England to court?. This widespread habit in itself brings the copyright law into contempt so is another sound reason for its change. Note: this prohibition also applies to "back-up" or preservation copies of digital material.

There are of course licensing solutions for copying digital media, such as blanket licences provided by agencies such as the Copyright Licensing Agency, the Newspaper Licensing Agency and the ERA. But there are also transactional licences such as those afforded to the user directly by a publisher, which forms a contract between the two parties. Emily then concluded the morning session by stressing that current use is all about managing risk (ask questions such as, is there a licence associated with this and might its use be infringing copyright?). Where in doubt, try to get permission. Finally she advocated the use of best practice, have policies and procedures in place, clarify licence terms in plain English and offer user education.

Following lunch, the first afternoon session was led by the equally ebullient Charles Oppenheim, formerly Professor of Information Science at Loughborough University. This was all about Web 2.0, of which Charles quoted Tim Berners-Lee referring to it as "a piece of jargon"! Web 2.0 has unusual features that make for Intellectual Property Rights (IPR) problems. Since it is

collaborative, involving multiple players, often joint permissions have to be sought before use. It's also international, which further adds to the complications. The lifetime of copyright here is 70 years after the *last* of the joint owners dies. Charles also reminded the meeting that copyright infringement (e.g., downloading of illegal computer software) should be (and mostly is) a disciplinary matter. Charles then reminded us that in the UK employees do not have moral rights for anything they create in their employment. However, performers' rights are afforded to employees such as lecturers. Touching briefly on the as yet unenforced Digital Economy Act (DEA), Charles then mentioned a helpful website (of which he is one of the authors): www.web2rights.org.uk which aims to develop legal resources and guidance to support people in their engagement with Web 2.0 and which contains factsheets, contracts information, a licence terminology toolkit plus loads of other practical tools

Charles then moved on to cover Creative Commons (<http://creativecommons.org>) (there is NO "www" at the start). Creative Commons (CC) is a mechanism whereby authors of digital works (which are automatically copyrighted) may be grant certain permissions of use to others, such as copying and reuse, but not for commercial purposes, for which additionally users must credit the source. CC only applies to digital media, not print, but CC doesn't just apply to textual digital media. Orphan works are another minefield and there was discussion about whether to digitise material without permission (having tried to obtain it). Again, this action falls into the category of "risk management".

The final session, again led by Charles, looked towards the future and the outcomes of the recommendations of the Hargreaves Review. The recommendations included such innovations as setting up a so-called Digital Copyright Exchange for easy licences, introducing a raft of new exceptions including format shifting, parody, library preservation and archiving. Already implemented is a change in the name of the Patents County Court to the Intellectual Property County Court, able to hear small claims cases involving copyright infringement. However, there have been no cases so far. The Digital Economy Act 2010, promoted by Lord Mandelson in the last government, though not yet implemented, involves interesting sanctions such as "three strikes and you're out" in which downloaders of illegal material after two warnings would have their broadband switched off. Unfortunately, this could have ramifications for libraries or other institutions that offer broadband to visitors, by which if persons on their premises commit these illegal acts, *that institution* could find itself without broadband! Charles wryly pointed out that some of the recommendations (and much of the spirit) in Hargreaves emanate from the abandoned Gowers Review of Intellectual Property of 2006. It is hoped that many of the facets of the Hargreaves Review will be accepted by the government and published as a White Paper, mooted to be by the Spring of 2012, but as Charles said, "Spring" in government speak (and from previous experience) could be any time from March to December!

Roger Farbey is Head of Library & Knowledge Services at the British Dental Association