

New challenges for copyright
in the digital era: the case of
distance learning

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Origins of Copyright

- Copyright has its roots in the Enlightenment. The philosophers of the 18th century called for the recognition of an author's intellectual property rights in order to guarantee the fruits of their labour, with the higher aim of ensuring cultural and social development.
- As society needed to regenerate itself, question its values and to be entertained, creators needed an environment which would allow them to create and reproduce works.
- The idea of giving the authors the right to allow the reproduction and representation of their work against payment of remuneration was intended to guarantee their financial and intellectual independence.
- Far from being a selfish right, copyright was clearly conceived as a right imbued with an important social function, that of guaranteeing the right of access to information.

Copyright and Technology

- The principle of striking a balance between the right of access to information, and the freedom of expression, is the very essence of copyright.
- The balance has been disturbed by technological developments and their legal and technical consequences.
- Today we are witnessing a digital revolution. People today have a different relationship to technology than earlier generations. The importance of the internet in the daily life of citizens is constantly growing, and members of the public nowadays use it for entertainment as well as for information and for educational purposes.
- Young people in particular have been labeled as the “Net Generation” or the “Google Generation”. Nobody would disagree with the contention that in much of the developed world young people have greater access to technology than ever before.

Technology and Distance Learning

- Part of this increasing access to technology has arisen through distance learning.
- Distance learning is seen as an effective way of expanding student numbers without the need for additional teaching space.
- Distance learning also meets the growing demand for education throughout the globe, and has thus been linked to the widening participation agenda, seeing students from non-traditional backgrounds entering universities and fulfilling the ambition of “life time learning”.
- Almost every element of a distance learning system, including educational materials and the systems underpinning virtual learning environments (VLEs), will attract some element of copyright.
- Distance learning is operated through the open source systems such as Moodle, or the commercial system known as Blackboard.

Technology and Distance Learning

- These can be treated as learning platforms, which teachers and professors use to upload course materials. These materials are in the form of PowerPoint presentations, lecture notes and essential readings.
- A typical distance-learning course in any higher or further education institution will inevitably become an electronic file store for materials, which used to be included in course handbooks. This has of course turned the issue of educational copyright on its head.
- Course handbooks were printed and sold. Copying was prohibited as it infringed copyright. Thus copyright infringement could be easily identified, discovered and punished.
- In recent years institutions have started investing in lecture capture-systems. Through these, one can access not only slides from a presentation, but also the recording of a lecture alongside the presentation.
- Podcasts, screen-capture and other video and audio reproduction formats are becoming increasingly sophisticated, and are increasingly in teaching methods.

The Essentials of Copyright – a Layman’s Guide as to How it Works

- Copyright is the most prolific intellectual property right, arising automatically in respect of any qualifying work. It is an exclusive right given to the primary author or creator of a work. It protects the expression of an idea but does not protect the idea itself.
- However, authors are not the only interested parties. Since its inception, copyright law has attempted to reconcile the claims of various players, such as the public and commercial operators, producers and distributors.
- Balancing these various claims may prove to be a difficult task, especially where the interests of the different players vary considerably, and in certain situations may even clash.
- Creators will have an interest in benefiting from the fruits of their labours by receiving payment for the exploitation of their work. However, at the creative stage, they will also have an interest in accessing existing works in order to build on them and use them as inspiration. This is particularly obvious where the creator aims to produce educational work, since accessing existing works will provide a guarantee of the quality and seriousness of his research.

The Essentials of Copyright – a Layman’s Guide as to How it Works

- At the same time, exploiters will want to recoup their investment in the production of a work.
- Finally, the public will want to have easy and affordable access to works for information and entertainment purposes. However, it will also be in the public’s interests for payment to be made, in order to keep intact the funds which will enable the production of new works.
- The example of distance e-learning learning should illustrate the complexity of the interests involved and the need for the balanced approach that takes account of the needs and requirements with regard both to protection and to access.
- Distance learning and access to knowledge through digital libraries is taking on a whole new dimension thanks to the possibilities offered by the web.
- Alongside recognition of the dangers that new technologies may pose for the protection of copyright, there is also increasing awareness that they offer the possibility of broad and simple access to information, especially in the field of education.

O U C

The lecturer / researcher – publication

The University – publication

The students – use / publication

The Law

- Copyrights are protected both on an both international and national level. The Berne Convention for the Protection of Literary and Artistic Works is an international agreement governing copyright, which established a system of equal treatment that internationalized copyright amongst its signatories.
- In addition, the agreement also required member states to provide strong minimum standards of copyright law. All EU Member States are signatories to the Berne Convention, and this includes Cyprus.
- Article 10(2) of the Berne Convention states:
 - “It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.”
 - Accordingly, it is a matter for legislation in the Member States to define and provide the exceptions and limitations for educational use.
 - On a national level, many countries talk about the need for balance in terms of adequate copyright protection against theft and piracy, versus generous educational provisions that foster the free flow of information and ideas.
 - Provisions for educational copying are enshrined in almost all copyright laws throughout the world, but with many caveats.

The Legal Position in Cyprus

- In Cyprus, the applicable law used to be the English Copyright Act 1911, until the Cypriot law No. 59/1976 was put in force, and modified by the The Copyright Law no. 63/1977.
- The law defines a work as *“including translations, adaptations, revised versions or releases of existing works, anthologies, collections etc. having an original character”*.
- The Law also defines “scientific works” as including all types of scientific works irrespective of quality.
- There is no specific mention of distance learning or e-learning, but the wording of the law is wide enough and can be interpreted accordingly to permit use of copyright material for distance learning.

The Legal Position in Cyprus

- The accepted exceptions to copyright under Cypriot law are enshrined in clause 7(2) of the law.
- The first appropriate exception is under clause 7(2)(ist), which permits ***the reproduction on paper or any other form, using any photocopying technique or otherwise, subject to the copyright holders receiving fair payment.***
- This clause is wide enough to include the reproduction of materials in electronic form, and therefore a teacher or professor can use this exception to send students the appropriate materials for their study, and thus in a way permitting distance learning.
- The second appropriate exception is in clause 7 (2) (ih) and permits ***the use of any copyright material if it is to be used as an example in teaching or scientific research, as long as the creator of the work is named, where this is possible.*** This exception specifically mentions teaching, and so even though the Cypriot law has not yet been modified to include distance learning, it appears that it will be permitted under these clauses.

The Future

- Another significant change in the distance learning community has been the UK's Digital Economy Act 2010.
- Clauses of particular importance are clauses 4 to 18, which deal with the issue ***of online copyright infringement.***
- Guidance notes have, in fact been issued as to how the DEA will affect learning institutions.
- It is worth examining these:

How does the DEA 2010 change the current legal position?

- The Copyright, Designs and Patents Act 1988 allows copyright holders to pursue copyright infringement through civil action, and that applies equally to online and digital-based infringement as any other form of infringement.
- Copyright holders may identify offenders through forensic online analysis, such as the tracing of infringing IP addresses. These are the unique identifier codes for each internet connection in an 'internet access service' or network.
- The copyright holder can then apply for a court order to require the ISP to supply customer information relating to that IP, and then use that information to demand damages and/or pursue court action.
- There may be difficulties obtaining the customer details, however, where there has been illegal use of a connection or a connection has been hijacked.

How does the DEA 2010 change the current legal position?

- There have also been errors in ISPs' records connecting IP addresses to customer details, leading to misidentification.
- The new law places obligations on ISPs to monitor and report on IP addresses copyright holders allege to be infringing copyright.
- In the event of infringement being found, the ISP must also enforce sanctions against the alleged infringer connected with that IP address.
- Copyright holders will still be able to take action as before, but the measures taken by the ISPs are intended to be much more effective. The Act provides for an appeals process for those who face sanctions.

What are the key issues for colleges and universities?

- OFCOM is planning to restrict the scope of the initial code to the seven largest domestic ISPs.
- This means BT, TalkTalk, Virgin Media, Sky, Orange, O2 and Post Office will be covered by the code initially.
- These ISPs provide internet connections to over 96% of the market and based on evidence OFCOM has received from copyright owners, the vast majority of alleged infringement is amongst subscribers of those ISPs.
- However, OFCOM proposes to regularly review evidence of online copyright infringement across all service providers and to extend the scope of the code if appropriate, and it is possible that colleges and universities are included in future.
- In addition, the suggestion in the OFCOM draft code that application is restricted to certain ISPs is likely to be the subject of legal challenge by those ISPs.
- If the draft code is accepted, this will give colleges and universities breathing spece in the short term, and allow them to learn from the early application of the Act's provisions. However, in the longer term, the question will remain as to how institutions are defined under the Act, and thus the determination of the duties falling upon them.

What does each defined role mean for colleges and universities?

- The application of the Act is based on three definitions; ‘ISP’; ‘subscriber’ and ‘communication provider’, each with its own implications.
- The roles are not mutually exclusive – institutions could be held to be acting in all three capacities simultaneously, or any combination of them.
- Persons found guilty of infringement can have their internet access blocked, and their internet service providers can be fined for not acting against persistent offenders.

Summary and Conclusions

- While technology moves at an ever growing pace and offers educators greater possibilities in terms of delivering different types of resources to students across a network, copyright law is often perceived as being slow to change and out of step with what is now technically possible.
- Arguably, copying material for educational purposes has also been an area of unspoken tension between publishers and academics.
- Many academic authors are themselves rights holders and as content creators they wish to see their work protected and derive a income from their publications.
- However, the nature of education means that reproducing, copying, modifying and amending the work of others has always been a fundamental part of scholarship.

Summary and Conclusions

- Very little research is undertaken without building on the findings of previous studies, and conventions such as citation and referencing were developed to recognize and acknowledge the works of others.
- So it is inevitable that teachers will use other ideas in the classroom, particularly in the arts, humanities and social sciences, where debate, opinion and argument are a fundamental part of the learning process.
- The law is crucial in the protection of copyright, but the creation of distance and online learning has opened up yet another channel for the easy exploitation of copyrights, and the law has the hard task of tackling it. In practice it is almost impossible to track down and punish unlawful reproduction of works. Now, with the use of the internet and with most works being readily available and accessible online, it is all the more evident that legislative reforms must follow the developments in the digital environment, and start addressing the specific problems relating to distance learning.

THANK YOU

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