

EDUCATIONAL USE AND THE INTERNET- DOES AUSTRALIAN COPYRIGHT LAW WORK WELL IN THE WEB ENVIROMENT ?

UNLOCKING IP CONFERENCE

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The Digital Education Revolution

- Over the past 20 years, the World Wide Web has revolutionised the way we live and the way we educate our children
- No longer just an analogue world of textbooks and whiteboard - teachers and students are using websites, podcasts/vodcasts, wikis, blogs, mobile phone technologies and GPS as part of learning
- Incredible capacity for sharing ideas, collaboration between students, between classrooms (at the same school, between different schools, around Australia or around the world)

The Digital Education Revolution

- Australia Government Digital Education Revolution is a major policy initiative and is a:

“vital step in developing the digital literacy of students. The aim of the program is to contribute sustainable and meaningful change to teaching and learning in Australian schools that will prepare students for further education, training and to live and work in the digital world and participate in the digital economy”

Digital Economy Future Directions Paper

Digital Education Revolution

- Australia like other countries around the world has identified digital literacy as core foundation of its digital economy.
- DER will
 - Provide computer equipment to secondary schools via National School Secondary Fund
 - Support deployment of high speed cost effective broadband connections to schools
 - Increase access to online content
 - Develop web portals for parent interaction

Copyright and the Classroom-statutory educational licences

- 20th Century – 2 most important technological advances which assisted educators – the photocopier and the video recorder
- The photocopier enabled teachers to copy parts of books and magazines and provide copies to the classroom
- The video recorder enabled teachers to copy television programs off air to show later in the classroom
- Such copying was not permitted by the Copyright Act. Such acts were infringing and denied the copyright owner from sales and licensing income.

Copyright in the Classroom - Australian statutory education licences

- Statutory Licence for print copying was introduced in 1980 (PART VB)
- Statutory licence for copying broadcasts for educational purposes was introduced in 1989(PART VA).
- Statutory licences- provided a balance between
 - (1) the public interest in ensuring a free flow of information in education and
 - (2) the private interests of copyright owners.

Copyright in the Classroom- statutory education licences

- The licences protected an existing market threatened by technological change
- In 2000, the licences were extended to cover electronic reproductions and communications of
 - literary, artistic, dramatic works
 - radio and television broadcasts
- Aim to make the Copyright Act technology neutral and to give copyright owner the first opportunity to digitise and exploit their works

Scope and operation of Statutory Education licences

- Work well in analogue world - educational institutions may copy and communicate copyright material for educational purposes and copyright owners are remunerated under the licences
- Ostensibly work well in the digital world re e-books, CD Roms, and non web resources – copyright owner receives remuneration where a chapter of a book is scanned by a teacher for their class or a copy placed on a password secure school intranet.

Scope and operation of Statutory Educational Licences

- However the licences do not work well in the digital world.
- The Educational Print Copying Licence potentially applies to everything on the internet – even if the website owner had no intention receiving payment for people copying information from its website.
- Education institutions pay licence fees to website owners anywhere in the world where the institution has printed, saved, downloaded, networked, displayed or projected material from a publicly available website for non commercial educational purposes

Other educational exceptions

- Section 28 extended in 2007 to allow educational institutions to communicate material into the classroom
- Section 200 AB – new stand alone exception flexible dealing.
- Section 200 AB – allows educational institutions to copy/communicate material for educational instruction. The section incorporates the three step test.
- Educational Institutions can rely on this section if the use does not conflict with the normal exploitation of the work or unreasonably prejudice the rights of the copyright owner

Section 200 AB and the Statutory Licences

- 200AB does not cover materials covered by the statutory licences (podcasts/vodcasts of previously broadcast free to air programs, electronic print and artistic works)
- The statutory licences actually introduce costs for the use of internet material that would otherwise not exist.
- Australian educational institutions are the only ones in the world that pay for the use of publicly available internet material that is freely available to education everywhere else in the world and to anyone else in the world.

Section 200 AB and the Statutory Licence

- The licences are not protecting an existing market
- The statutory licence is the only thing that creates an expectation of payment.

What has changed?

- EVERYTHING
- Increased access to vast and expanding pool of internet resources
- Web2.0 and 3.0 technology facilitating creation, modification and sharing of resources by students and educators
- WWW has evolved - the worldwide web began as a network created by universities for sharing information for research and education. Commercial use forbidden until 1988.

What has changed ?

- In 2000, internet hardly in use - not many households had computers or access to the internet, not many computers in schools and access to internet limited and slow
- In 2000, access to educational resources (textbooks, etc) limited and costly to produce - distribution dependent on print run

What has changed?

- 2009 - most homes and schools have computers and high speed internet access.
- Internet use in everyday life - most of us do our banking, pay our bills and book our holidays online.
- The cost of production and dissemination of materials online dramatically less prohibitive -(fraction of the costs experienced in the analogue world).
- almost anyone can have a website and publish online.
- The rationale of posting material on a website is to make it freely available - if you don't want to make it freely available you protect it in some way by password or some other secure access.

Statutory licences and the Internet – a misfit?

- In our view, statutory licences do not work well in the context of the internet.
- This does not mean we do not support responsible use of copyright material for educational purposes or fair remuneration for copyright owners.
- Still support the Part VB licence for copying books, etc and CD Roms and e-books.
- Still support Part VA licence for off-air copying of television and radio programs.

Statutory Licences and the Internet – a misfit?

- Millions of website owner who put material up for free public consumptions, with no expectation of ever receiving a ‘brass razoo’ in copyright royalties, could now receive a windfall at the expense of Australian educational institutions and Australian taxpayers who fund the education system
- Is the balance seriously out of whack?

Statutory Licences and the internet – a misfit?

- The Part VA licence allows copying and communication of free to air broadcasts online but why are Australian schools paying for educational, non commercial use of online free to air broadcasts and the general public is not.
- No other country in the world has enacted such legislation that requires educational institutions to pay to use material for educational purposes from publicly available websites
- There are no international reciprocal agreements with overseas collecting societies – Australian educational institutions pay overseas website owners for educational use of their materials – non Australian educational institutions do not pay and are not required to pay equivalent licence fees to Australian website owners.

Statutory Educational Licences and the Internet- a misfit?

- We believe that those creators and copyright owners who expect remuneration for educational use of their on line materials, could do so by other means other than a statutory licence that has general application to almost everything on the internet.

Reform needed?

- Yes – a matter of public policy
- Educational institutions should be able to use publicly available information on websites for non commercial educational purposes, without having to pay copyright fees and that such information should be excluded from the statutory licences

Reform – a new exception?

- We suggest a new exception allowing educational institutions to freely copy and communicate material from publicly available websites for educational purposes:
 - Provided the source is attributed
 - The material is not infringing
 - The material is not protected by password or other secure means.

Reform – a new exception

- The exception would only
 - apply to educational institutions for copying and communication for educational instruction, and
 - Apply to material that has legitimately been put on the web without password protection or other secure access.
 - Publishers and creators of e-books and CD ROM will still be remunerated under the Statutory licences
 - Broadcasters and producers will still receive remuneration for off air copies made by educational institutions.

Reform?

- The Statutory licences effectively penalise educational use of publicly available internet material
- Genuine concern that the licence fees will increase to unsustainable levels
- Current data from Electronic Usage Surveys show that approximately 90% of the pages copied/communicated are from publicly available websites and between 5% to 10% are from e-books and CD Roms.

Reform?

- 2005 Copyright Agency Limited initiated copyright tribunal proceedings against Australian schools on a number of issues- one of which is an Electronic Use Scheme rate.
- Although proceedings still active, the Australian Education Senior Officials Committee (on behalf of Australian Schools) has formally asked the Australian Government to amend the Copyright Act and to exclude material made freely available on the internet from the educational statutory licences.

Australia's international treaty obligations

- Our submission considered the three step test
 - (a) to be a certain special case (applies to educational institutions copying for educational instruction only)
 - (b) not to conflict with the normal exploitation of the work (scope of exception does not enter into economic competition with non exempted uses. Applies only to material made freely available on a non commercial basis without password control or other TPM)
 - (c) not unreasonably prejudice the legitimate interests of the rights holder (limited to educational institutions for non commercial educational use. Does not allow for commercial exploitation by educational institutions- owners can still receive remuneration via subscription or other appropriate licence)

Three Step Test

- Important to remember the public interest
- See 2008 Declaration of Three Step Test
- Three steps should be considered together as a whole in a comprehensive overall assessment to achieve *‘the necessary balancing of interests between different classes of rights holders and the larger general public’*

http://www.ip.mpg.de/ww/en/pub/news/declaration_on_the_three_step_.cfm

Potential concerns

- Loss of revenue to website owners and some authors
- Loss of revenue from broadcasters and some producers
- Website owners will lock material up
- Opening the floodgates to schools distributing infringing content

Potential Concerns- website owners and some authors

- Some website derive income from advertising and new business models are currently being developed around monetizing the link economy.
- See <http://www.huffingtonpost.com/arianna-huffington/the-debate-over-online-ne b 185309.html>
- Authors who currently put material up online expecting payment under Part VB can still avail themselves of direct licensing options
- Opportunities to provide licence solutions direct to the education sector- www.audionetworks.com

Potential concerns – Broadcasters and some producers

- Proposal only applies to very limited pool of material - Australian free to air broadcasts made available for free download to the general public
- Will not apply to off air copying of television and radio programs
- Note number of broadcasters encourage the downloading and sharing of their online programs via bit torrent .
<http://video.ninemsn.com.au/catchuptv/section.aspx?sectionid=2868§ionname=catchuptv&subsectionid=150543&subsectionname=ladette2lady"target="new>
- Note mandate of public broadcasters is to educate all Australians – makes more sense to fund Australian public broadcasters to make available material for educational purposes rather than rely on indirect funding by the educational institutions via the statutory licences
- Note overseas broadcasters who make their material free for education – BBC NBC and PBS. Can access similar material from overseas which do not require payment.
- **Some Australian Producers also make their programs available on blip.tv- teachers can copy and communicate this material for free under Section 200 AB.**

Potential Concern- owners will stop putting material online

- User dominated environment - user encouraged to upload comments or to share, email, bookmark or tag on 'delicious'
- No other country in the world has a compulsory licence for educational use of online material – internet has not dried up and more and more material is being made freely available online
- Technology now exists to protect and exploit online works, eg crikey.com and Australian Financial Review

Potential concern- Floodgate to distribution of infringing content

- Proposal will not apply to infringing content
- We work hard with industry to educate students and teachers on copyright - emphasis is on the use of legitimate material

<http://smartcopying.edu.au/scw/all-right-to-copy/index.htm>

Conclusion

- Statutory licences work well in an analogue world and for digital products such as e-books and CD ROMs.
- A model that works well in one context may not translate to all spheres
- Is it a good fit? Does it meet current policy objectives?
- Technology solutions exist and new business models emerging

Conclusion

- Public interest to ensure students are digitally literate and able to live and work in a digital world and participate in a digital economy,
- Important to get this right now- increased use of internet is a good thing but if Australian schools have to pay copyright licence fees for material that freely available to the rest of the world, then costs to schools, governments, parents and taxpayers generally will rise exponentially and become prohibitive

Conclusion

- Is the general application of the statutory educational licences the right solution?
- Timely to examine other alternatives.