

# COPYRIGHT AND THE DIGITAL LIBRARY

Charles Oppenheim

Loughborough University

UK

*C.Oppenheim@lboro.ac.uk*

# WORLD INTELLECTUAL PROPERTY ORGANISATION

- 26 April 2001: World Intellectual Property Day
- Benefits that IP laws in general, and copyright in particular, have brought to society
- 2,000 word essay on “what does intellectual property mean to you in your daily life?”
- It means problems!

# RESTRICTED ACTS

- Copy
- Issue copies to public
- Rent or lend (though libraries ARE allowed to do this)
- Perform, show or play in public
- Broadcast
- Adapt or amend the work
- Importing, distributing or acquiring infringing copies

# INFRINGEMENT

is when you do a restricted act  
without permission of the copyright  
owner

# HOW CAN THE LIBRARIAN MAKE COPIES FOR PATRONS?

- *Take out a licence* from the copyright owner, or someone who acts on its behalf
- Make use of one of the *exceptions to copyright*

# LICENCES

- Copyright owner (licensor) grants licensee rights to do certain restricted acts
- In return, fees are paid
- Trend towards standardised terms
- However, a plethora of licensing initiatives around

# EXCEPTIONS TO COPYRIGHT

- Best known of these is “fair dealing”
- “Fair use” in USA
- “Private copying” in Continental Europe
- Individual may make a single copy - or in some cases, multiple copies, of all, or a “substantial” part of a work, without having to ask permission or pay fees
- Only can be done under certain conditions

# CONDITIONS

- Must be “fair”, i.e., not damage the legitimate commercial interests of the copyright owner
- Must be for the person him or her-self, or for a friend/colleague
- Must be for one of the permitted purposes, e.g., research, private study, personal private use, criticism or review, reporting current events
- **Must pass all three tests to be allowed**

# FAIR DEALING

- *In theory*, applies to electronic copying as well as photocopying
- However, copyright owners are very unhappy about electronic fair dealing
- But see JISC/PA document at:  
<http://www.ukoln.ac.uk/services/elib/papers/pa>

# FAIR DEALING IS A DEFENCE

- It does NOT provide guaranteed immunity against an infringement action
- You would have to prove you passed the three step test
- Can be very risky defence

# LIBRARY PRIVILEGE

- Available in South Africa?
- Unrestricted right to copy items for patrons
- Must follow the bureaucratic rules imposed by the law
- In the UK, the only other person guaranteed immunity against an infringement action is HM The Queen

# INTERNATIONAL COPYRIGHT

- Berne Convention
- Reciprocal protection
- **WHERE** did the allegedly infringing act take place?
- Raises problems in the Internet...

# DIGITAL MATERIALS

- Easy to copy
- High quality copies
- Easily done
- Easily copied to many other people
- Low cost copying
- Difficulty in policing such actions
- Different countries have different rules and traditions regarding copyright

# ELECTRONIC COPYRIGHT

- Everything in m/r form is copyright
- Includes digitised images, e mail, Web sites, e journals, databases, pre-print archives, etc.
- Just because it is available and free of charge does not change things.
- There is not necessarily an implied licence to copy

# NOT COPYRIGHT?

- Individual URLs
- Individual e mail addresses
- Collections of them may be  
copyright

# LINKING

- Placing a link to a home page is not infringement
- Providing a link and title is not infringing
- Providing a link, title and text may be infringement
- *Don't* use frames
- Be very cautious about “deep linking”.

# RECENT DEVELOPMENTS IN COPYRIGHT

- Pressure from major music, software and media corporations
- Lengthening the term of copyright from life + 50 to life + 70
- Special protection for databases

# EU DIRECTIVE ON DATABASES

- “Collection of independent works, data or other materials that are arranged in a systematic or methodical way and are individually accessible by electronic or other means”
- Each individual item may or may not be subject to copyright

# OTHER TRENDS IN THE LAW

- New restricted act: communicating to the public, i.e., sending material down a network to a distant recipient
- Illegal to tamper with any copyright or rights management information associated with a copyright work in order to infringe
- Illegal to tamper with ECMS/ECMS/DRM in order to infringe

# THE EU DIRECTIVE

- Due to come into force early 2003
- Confirms existing rights of reproduction, and distribution/sale
- New right for owners - communication to the public
- New criminal offences for by-passing or eliminating “technological measures” (ECMS), or copyright management information

# SUMMING UP ON COPYRIGHT

- Balance of interests
- Users' needs are simple

# USER NEEDS

- Delivered to desktop and when on the move
- User friendly search software
- Single portal
- Single ID and password
- Current awareness and retrospective retrieval
- No false drops
- Choice of titles, abstracts, full text
- Hyperlinking
- Don't care who supplies the information
- Seamless link between internal and external information
- Annotate and amend materials
- Disseminate to anyone.....

...and at no cost to themselves  
(or indeed, their employers)

# THE PROBLEMS

- This is the publishers' nightmare scenario
- Librarians are caught in the middle of the war
- The digital library cannot come about until these legal problems are resolved
- South African copyright law is out of line with developing trends
- Is that a bad thing?