

## **1. Introduction**

The role of intellectual property in emerging areas, such as the Internet, is often poorly understood by researchers in general. This can be attributed to the rapid development and implementation of these resources, which are often untested under current national and international copyright directives set out by the UK Government, the EU and WIPO. Significant new research and study has been carried out by JISC under the FAIR and X4L programmes and this workshop aimed to promote informed discussion of the intellectual property issues involved in these fields. Representatives from all of the main JISC-funded projects attended the workshop. The morning session was presentation-based with discussion seminars taking place in the afternoon. The following notes are the main points raised during the workshop.

## **2. Copyright and the EU Directive: *Emanuella Giavarra***

In its simplest terms, copyright is defined in the Copyright, Designs and Patents Act 1988 as “*a property right that subsists in original literary, dramatic, musical or artistic works*”. Copyright is automatically assigned upon initial completion of work to the author, unless subject to other factors, for example, contract law. The owner of a copyright has certain exclusive rights regarding copying, dissemination and adaptation of the original work, which last for the duration of the authors life plus an additional 70 years for literary, dramatic, musical and artistic works and films. In addition, the author has certain moral rights regarding the subject of copyright, which include the right to be recognised as the original author (*right of paternity*) and the right for the work to be unaltered without permission and acknowledgement (*right of integrity*).

There are three main recognised defences to copyright infringement; firstly ‘permitted acts’, more commonly known as ‘fair dealing’ which constitutes copying works for the purposes of private study, research, criticism, review or newspaper summary. Fair dealing with a work does not require the permission of the copyright owner or the payment of royalties. The second defence for copyright is termed ‘public interest’, where the work is deemed important for wider distribution. This defence has never been awarded for libraries and is really only used by newspaper publishers. Lastly, copyrighted works can be used with the direct consent of the author.

Any work subject to copyright is protected under law by three separate entities; the Berne Convention, National law and European Directives. The Berne Convention, initiated in 1886 and updated in 1979, is recognised in over 100 countries and provides a set of minimum rights only. This is supplemented by National law, which can differ widely between individual countries. To harmonise these laws within the member states of the EU certain European Directives have been passed, the most

recent being the EU Copyright Directive (May 2001), which has yet to be fully implemented in the UK.

In order to keep up with new technological developments the original Berne Convention and WIPO legislation for copyright law has been revisited and statements have been added;

*“Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner and form”.* **Article 9 (1) Berne Convention**

*“The reproduction right, as set out in Article 9 BC, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 BC”.* **Statement to Article 1.4 WCT**

In addition, the major change that will affect current copyright legislation is the new EU copyright Directive 2001 brought in to harmonise the paper and digital environments. The directive has three main strands; i) Broad Reproduction Right, ii) Communication to the Public Right and iii) Legal Protection of Technical Measures and Rights Management Information. Each strand has a combination of mandatory and optional exceptions, with new sanctions and remedies for infringements. Each Article is discussed below;

**i) *Reproduction Right (Article 2 Directive)***

*“Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part.”*

Exceptions to the Reproduction Rights are set out in Article 5 of the Directive and include; 1) transient and incidental acts of reproduction (mandatory), 2) copying on paper (not sheet music), fair compensation, 3) analogue and digital copying on any medium, by a natural person for private use, fair compensation, 4) specific acts of reproduction by libraries, educational establishments, museums and archives, which are not for direct or indirect economic or commercial advantage.

**ii) *Communication to the Public Right (Article 3 Directive)***

*“Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of*

*their works in such a way that members of the public may access them from a place and at a time individually chosen by them”*

Exceptions to the Communication to the Public Right are set out in Article 5 of the Directive and include; 1) illustration for teaching or scientific research, 2) incidental inclusion of a work, 3) uses for the benefit of the disabled, 4) ctp by dedicated terminals on-site, not subject to purchase or licensing terms.

**iii) *Technical Measures (Article 6 Directive)***

*“Member States shall provide protection against the circumnavigation of technical measures, legal protection against the removal and altering of certain electronic rights management information, measures to protect exceptions by voluntary agreements-if rights holder fails to do so the government is entitled to take measures. Circumvention not allowed if work was made available ‘on demand’ and agreed contractual terms.”*

**3. Conclusions**

Copyright is essentially money and power so it is vitally important to secure the rights or else any work undertaken is in vain. It is essential never to give away rights but to assign them to users. The new EU Directive described above is not yet implemented in the UK, although a summer date is expected. Under this legislation, if research is for a commercial purpose, any minor IPR infringement can be enforced and criminal sanctions can be imposed. Worryingly, there is no exception and the institution would be liable. Thus, it is the responsibility of the library to find out if there is a commercial or economic benefit. However, there is as yet no common definition of ‘commercial purpose’ in use!

Theo Andrew **Theses Alive! Project**  
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