Digital Culture and the Challenge to Copyright Law

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Copyright law was developed almost 300 years ago in a pre-computer, print based world when copying of printed works was difficult and visible. Based on ‘ownership’ of tangible works, the law granted creators the right to control the copying of their work for 28 years from publication, a period that has now been extended to 70 years after their death. Digital culture is now challenging the economic, cultural and social efficacy of this law. Digital culture has a ‘sharing’ (non-proprietal) dimension which promises a more universal sense of ownership of knowledge, information and cultural products. This paper looks at the clash of print and digital cultures in an emerging knowledge economy and argues that it is time to abandon the enforcement of the current proprietary system and to implement an alternative system that encourages innovation, creativity and the development of a vibrant, accessible public domain of knowledge and cultural works.
Digital Culture and the Challenge to Copyright Law

While the thesis that I am working on looks at digital culture and its challenge to copyright law within a broad context of cultural, economic and technological change, today I want to report specifically on some research undertaken in Australia.

Copyright law – essentially the monopoly rights of a copyright owner to control copying of their work – developed in association with print technology and I (and many others) have traced its accommodation over time to new technologies such as photography, the radio, film, video and other tangible creative forms. By adding new provisions and protections, the law has survived for almost 300 years, even though it is arguable that only the most assiduous copyright lawyers now are actually familiar with its provisions. The Australian Copyright Act, for example, now has 560 pages and one wonders who knows what it is about when its rather vague short title is: An Act relating to copyright and the protection of certain performances, and for other purposes. Certainly most of the creators that I interviewed understood few of the details of copyright law.

Even so, with a system based on protecting visible and tangible printed works (books, CDs, tapes) it is possible to make rules about copying and to police them. And because they can be policed, it is certainly arguable that people will more readily comply with them – simply for fear of being caught.

But with digital works – which are basically a series of intangible 0s and 1s - the policing is not so easy – but the copying is. So if you want access to digital works and you don’t know or don’t care whether they are copyright protected works, the risk is probably worth taking. This is attested to by the millions of people who unlawfully download works from the Internet in spite of the very real threat of legal action against them. In America, figures indicate that 60 million Americans regularly trade files. Certainly it is not uncommon in Australia and, I understand from speaking with the Pirate Party here in Sweden, that many people here think that non-commercial filesharing should not be a criminal offence.

So where does this leave copyright law? To find out, I decided to look more closely at creators in what I have called the digital and print cultures.

For 5 years I worked as Director of the Australian Society of Authors (ASA) – a 3000 member professional organization representing Australian writers, poets and illustrators – and then for 5 years as Director of the Australian Interactive Media Industry Association (AIMIA), again with about 3000 company and individual members, who worked in online media as content creators, producers, advertisers, web, games and software-developers. Both organizations are based in Sydney, Australia.

The visible differences between the two cultures were highlighted when I recently attended social functions with women from each. I went with the authors for a social drink – one activity that both groups have in common – at a pub distinctive mainly because it was near a bookshop and had comfortable, if shabby, chairs. We arranged by phone to meet at 3 in the afternoon, a week-day – because they either work part-time in a variety of jobs in order to leave time free to write – or they are academics and of course have all the free time in the world!!

Whether because I am a keen observer of my fellow creators – or merely superficial – I noted that most of the authors looked somewhat shabby – like the chairs. They wore dark colours, flat-heeled shoes, oldish, large and much-used leather or canvas bags containing books, papers, bits and pieces. Average age: 40-50. Drinks ordered: Poets’ Corner Red (an inexpensive and ubiquitous Australian quaffing wine) and light beers. The conversation centered on the demise of the publishing industry generally and especially literary publishing, how hard it was to get anyone to look at their work (without paying a manuscript assessor) how hard to get an agent, a publisher, a contract – and if you did finally get a contract – how
hard it was to get reasonable terms and conditions – how little you could earn after years of
hard work on your novel, novella, memoirs etc. In a word HARD. My overall response to
them and the meeting was that it was a bit – DEPRESSING.

And then I had drinks with a younger group of women (in their mid to late thirties) who
meet regularly to ‘debrief’ about their digital lives. I call them the Digichicks. The meeting
was arranged by SMS, and was held at ‘any time from 6.30’ at the converted warehouse
which serves as a home and a workplace (for 4 employees) of one of the group who has an
online business called ‘momento’. This is a service and software package that allows users to
be ‘produsers’ (a term coined by Axel Bruns to describe those who use digital technology to
both produce and use new works) and create their own digital photo albums. Bare flesh and
high heeled shoes, designer handbags, Mõet champagne and mobile phones, much laughter
and hilarity as stories were swapped and the latest digital gadgets discussed. Digital photos
were sent from a blackberry to one of the group who was unable to attend (she was at a
wedding where the bride had used her online business to select and order the colour-coded
bathroom accessories – from hand soap and candles to toilet paper). Even while chatting, it
seemed at least one of the digichicks was connected – to kids at home, to their emails,
partners and/or work colleagues. At 8pm two extremely lithe young men in black outfits
arrived to apply neck massages to those who had spent all day at their computers. In a word
COOL. I was, I realized, very taken with these young women and with their vitality and
energy.

It was the contrast between these two groups that led me to thinking about their different
cultures – and, as well as considering how they might challenge copyright law, I became side-
tracked (as happens in cultural studies) with modernity built in steel and concrete; postmodernity in biodegradable plastic’ and of course, ‘the death of the author’. But that is another story.

I developed 2 surveys which covered pretty much the same ground although it was clear
that the print authors were more comfortable with a paper based survey and the digital
participants expected an online survey. Some members of these two groups, mainly the
academics, create within both cultures. Even so, there were remarkable ‘cultural’ differences
in terms of their creative practice, their attitudes towards their work and to copyright and their
values in relation to digital developments – and, it seemed to me, in the threat that they might
pose to copyright law.

So far I have surveyed 30 print based creators (14 women and 16 men) and 28 digital
creators (16 women and 12 men).

Table 1.

<table>
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<tr>
<th>Print Culture</th>
<th>Digital Natives</th>
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<tbody>
<tr>
<td>64% write for personal satisfaction</td>
<td>52% create for personal satisfaction</td>
</tr>
<tr>
<td>22% write to earn a living</td>
<td>25% create to earn a living</td>
</tr>
<tr>
<td>44% earn over $10,000 (mainly education writers)</td>
<td>72% earn over $10,000</td>
</tr>
<tr>
<td>100% ‘solitary’ creators</td>
<td>10% ‘solitary’ creators</td>
</tr>
<tr>
<td>17% also work in partnerships</td>
<td>90% work collaboratively</td>
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The most interesting responses for my purposes were those that revealed distinct differences
that might affect how creators viewed copyright law. Thus it was interesting, although not
surprising, to find that print based authors mainly work as ‘solitary’ creators, that they write
more for personal satisfaction than to earn a living and that they do not earn very much from
their writing. Australian research – (Throsby and Hollister, 2003) indicates that writers for
example, in 2000-2001 had a median creative income of $4800 – less than the threshold for taxable income!

Digital creators mainly work collaboratively and in teams and they too create more for personal satisfaction than to earn a living. In contrast to the print based authors, most of them earned good incomes from their paid creative work. It is clear that they are used to having their work rewarded and celebrated.

Table 2.

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<th>Print Culture</th>
<th>Digital Culture</th>
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<td>61% considered themselves well-informed about copyright</td>
<td>76% considered themselves well-informed about copyright</td>
</tr>
<tr>
<td>40% actually understood ‘fair dealing’</td>
<td>90% understood ‘fair dealing’</td>
</tr>
<tr>
<td>95% did not know about anti-circumvention provisions</td>
<td>47% did not know about anti-circumvention provisions</td>
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<tr>
<td>44% familiar with ‘creative commons’</td>
<td>65% familiar with ‘creative commons’</td>
</tr>
<tr>
<td>28% familiar with ‘open source’</td>
<td>90% familiar with ‘open source’</td>
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More than half of each group considered themselves well-informed about copyright law but the print-based authors knew less about fair dealing (what you can use of other people’s work) and most were unaware of new anti-circumvention provisions for which there are now criminal sanctions in Australian law. Over half were unaware of the creative commons and open source software movements.

By contrast, the digital natives understood more about fair dealing and anti-circumvention provisions and almost all knew of the creative commons and open source movements which Thomas L Friedman (author of *The World is Flat*) sees as an example of the new collaborative, Internet model of ‘sharing’ information and knowledge.

Table 3.

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<th>Print Culture</th>
<th>Digital Culture</th>
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<tr>
<td>Over 50% had work copied</td>
<td>48% had work copied</td>
</tr>
<tr>
<td>90% took no legal action - too expensive, not worth the effort</td>
<td>100% took no legal action – no point, not worth the effort, too expensive</td>
</tr>
<tr>
<td>72% would contact the copier if feasible; 5% would be flattered</td>
<td>42% would contact; 48% would be flattered</td>
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Members of both cultures had had their work copied – about 50% in each case. Both indicated that it was too much effort and too expensive to take any legal action with several of the digital natives also adding that there was no point. Once a digital work is ‘out there’, it can be copied – the important thing is to be first to publish – first to market is the advantage. The main difference here was that almost half of the digital natives reported that they would be flattered by being copied; of the print authors only 5% would consider it flattering to have their work copied by someone else.

Participants were then asked to agree or disagree with a series of statements:

1. Copyright is stifling innovation and creativity.
   
   67% of digital natives agree but only 17% of print creators.
Taking into account other data from the surveys, this difference in attitudes is not difficult to explain. You will recall from the first slide that 90% of digital creators work collaboratively, mixing bits and bytes from various media forms. For them, copyright law restricts their ability to access, repurpose and develop new products. For authors, 100% of whom work alone with only their thoughts and the printed word, copyright protection supports their much more personal relationship with the work they produce. The idea of copyright law hindering rather than encouraging their creativity would be quite unfamiliar.

2. File sharing is a cultural phenomenon, not a criminal act.

85% of digital natives agree: 16% of print creators agree.

Digital natives for whom computers and software are basic tools, are aware that what computers do is copy – efficiently and cheaply. They are more aware of the collaborative open-source software movement and the creative commons movement and it seems perfectly normal to use digital tools to create new works, to experiment, share and play. It is not surprising that they see file sharing as a cultural phenomenon. Their familiarity with user generated content sites (100% for amazon, youtube, wikipedia) is likely to encourage a different view about the sanctity of ‘privately owned’ works and as indicated earlier almost half would be flattered if someone copied their work. For print authors however, many of whom still use computers only as word processors, unlawfully copying their work is like stealing their personal property – AND it is not flattering! It is equally unsurprising that they see file sharing as exactly the sort of activity that copyright laws should criminalise.

3. It is more important to protect individual creators works than to develop a public domain of accessible works.

54% of print authors agree but only 30% of digital natives agree.

This is an interesting result. While many more print authors than digital creators agree with this, there is still a significant number of print authors (46%) who disagree. This point was made to me by a colleague here at ACSIS and I went back to my raw data and found that of those print authors who disagreed, most were the academics who work in both print and digital media – and who might well have different view from fiction writers, for example, about developing a public domain of accessible works.

The print authors who did agree that protecting individual creator’s work was more important, undoubtedly have a greater sense of ‘ownership’ of the works they create and a greater interest in a system that legally protects them. For the digitals, a public domain of accessible works would be a bonus – it would mean fewer problems with identifying owners for re-use of materials and no need to pay the exorbitant licensing fees that are currently charged for the re-use of copyright material. This also reflects a tendency, identified in much of the research about digital culture, for its members to adopt a less personal and more universal sense of ownership of culture and knowledge, an issue that I want to research further.

4. Obscurity not piracy is the problem on the net.

80% of digital creators agree; only 26% of print authors agree.

For digital creators whose success relies on attention, hits and a community of loyal users, this statement (actually from Cory Doctorow, a Canadian blogger and science fiction writer who has successfully published work on the Internet) highlights a major challenge. Being found is more important than being copied. For print authors, protecting their work from copying seems to be more important than having it published!
5. Creators should be able to designate their work copyright-protected or copyright-free.

A surprising 100% of print authors agreed; 85% of the digital creators agreed.

This was to me one of most interesting findings. In spite of their greater commitment to copyright law, 100% of print creators thought that authors should be able to designate their work as copyright protected or copyright free. In all other areas, the print creators were more conservative about copyright but here they indicated that they would LIKE to be able to determine whether their work is to be copyright protected, suggesting that they too would like a ‘play’ space to experiment with their work, without it automatically being copyright protected. (I intend to follow this up in further interviews). The digital natives were less concerned about this – and again I will follow this up. Perhaps it is because they are less constrained by or respectful of copyright laws, so they don’t really care.

Concluding Comments

My task now is to add these findings and speculations to other observations and research about print and digital culture. There is for example, considerable research about the ‘copyleft’ protest movement in both law and cultural studies – and there is some evidence that digital natives who have grown up with computers are more likely to be more creative and individualistic and to be rule-breakers rather than rule followers. There is also much information about the new network/knowledge economy and new digital business models based on ubiquity rather than scarcity – all of which will impact on digital culture and on copyright law.

But it seems fairly clear that the attitudes and practices of digital creators will continue to undermine the efficacy of copyright laws that are increasingly complex, punitive and irrelevant to many creators. Demographically it is clear that over time more and more people, globally, will be digital natives – fewer will be print based. Specific studies such as the US National Endowment for the Arts ‘Reading at Risk’ research, also suggest that fewer people are reading and fewer are using print based products either for leisure or information. If this is so, it is a significant technological and cultural shift.

And perhaps print based authors will tire of being seen as shabby and poor (although I think some still claim it as a badge of honour). Perhaps they will surrender some of the copyright protection that hasn’t done them much good – and decide to join the more collaborative, less copyright-committed digital natives. If they do, the one thing I can safely predict is that sales of expensive champagne will go up – and copyright law in its current form might come down.