

## Copyright and Research in the UK

### *Maintaining a balance in the digital age*

#### *The British Library's perspective*

Copyright has traditionally balanced the interests of rightsholders, with those of the user – for the benefit of society as a whole. It protects the rights of the author, artist or publisher who has invested time and money in a new work, while at the same time ensuring that the public has access to the work in ways that do not impact upon the primary economic interest of the rightsholder.

The British Library is concerned that the shift from print to digital publishing is undermining the traditional balance at the heart of copyright in ways that could make it harder for researchers to access and use information. The recent Gowers Review on Intellectual Property made a number of material recommendations on updating copyright regulations, but the following fundamental issues still need to be addressed.

#### **A shifting balance**

- **93% of contracts offered to the British Library undermine copyright law.**
- By 2020 an estimated 80% of all research material will be available digitally. Digital material comes in the main with a contract which governs access to that material, rather than copyright.
- Contract law supersedes copyright law in the UK, and so has the potential to supersede the public good elements that have been nurtured by parliamentarians in the interests of broader society.

#### **Digital Rights Management (DRMs)**

- **There are no practical measures in UK law allowing circumvention of DRMs or TPMs where they undermine the legal access permitted in copyright law.**
- Technical protection measures (TPMs) can be used to control electronic access to all forms of academic material.
- Where TPMs interfere with rights currently enjoyed by users under copyright there are no practical remedies in UK law due to an inappropriate implementation of the European Copyright Directive.
- In the case of research libraries not only can TPMs interfere with fair dealing but also the ability to create preservation surrogates that ensure access to academic material for generations to come.

#### **Orphan works**

- **A title by title 'diligent search' for rights holders of orphan works would make any mass digitisation project impossible due to the high costs associated with any such search.**
- The British Library estimates that over 40 percent of all books, articles, images and recordings ever created are orphan works – creative works where it is not possible to track down the rights holder because they are not known or cannot be traced.

- Clearing reproduction rights for large library collections is a particularly acute problem, compounded by the fact that such bodies have a public access remit to increase access to their collections – with growing expectations that this should be via the web.

## The impact on researchers

**1. Restrictions on fair dealing.** Fair dealing is an exception within copyright law that allows an individual to make a copy from an in-copyright work in certain circumstances. Contracts or TPMs can prevent any fair dealing copying or, more frequently, its limits are more restrictive than is currently common practice under copyright law – inhibiting research and innovation.

**2. Access for research purposes is becoming increasingly unmanageable.** The British Library estimates it has over 17,000 digital titles on more than 500 platforms. As individual contracts frame access to copyright material held digitally, and the terms relating to fair dealing or library privileges differ contract by contract, managing legitimate access to digital material by libraries for researchers is becoming increasingly difficult and costly.

**3. Libraries' right to archive could be undermined by contract or TPMs/DRMs.** Contracts often prevent archiving by libraries of digital content, as can TPMs/DRMs. In order to protect access to our digital heritage for future generations, libraries need to be able to migrate formats for archival purposes with no restrictions.

**4. Tracing the rightsholders of orphan works costs an immense amount of time and money.** If rightsholders cannot be found, libraries and publishers can still be reluctant to use such material – for example, through mass digitisation – limiting public and commercial opportunities to make material more widely available.

## Restoring the balance

Given the international nature of digital data and licensing the British Library believes that the following legislative changes are needed in order to protect the balance that sits at the heart of copyright:

- **Statutory provision to ensure that limitations and exceptions in copyright law should not be undermined by private contract terms;**
- **Fit-for-purpose anti-circumvention measures where TPMs or DRMs interfere with limitations and exceptions;**
- **Clarification in UK law that limitations and exceptions are not dependent on the delivery medium – in other words echoing WIPO 'digital is not different';**
- **Exploration of how the UK could benefit from a system that actively enables the use of orphan works, offering certainty to the cultural institutions most affected by this issue.**

The British Library will continue to work with key partners such as the UK Intellectual Property Office to move this agenda forward.

### Glossary of terms

**Copyright** – is a set of rights which creators have in regard to works such as books, designs, films and sound recordings created by them.

**DRMs / TPMs** – DRMs (Digital Rights Management) and TPMs (Technical Protection Measures) are technological tools used to regulate access to and usage of digital data.

**Fair Dealing** – the 'right' to make a copy from an in-copyright work without permission from the rights holder for non-commercial research, private study, criticism, review and news reporting. For example most copying by students at university for academic purposes is done under the fair dealing provision in UK law.

**Limitations and Exceptions** – refer to the exceptions to the monopoly right of copyright. These include exceptions to facilitate education such as Library Privileges, as well as access to the visually impaired etc.