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INSTANT LICENCES MOVE COPYRIGHT INTO A NEW DIGITAL SPACE - IS IT TIME TO BECOME COPYRIGHT CANNIBALS?

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ABSTRACT:

Copyright has long been seen as complex, compliance-driven and the field of lawyers and librarians. As the world moves onward into e-learning, approaches to simplifying copyright issues has become paramount. Most educators are becoming e-publishers to meet growing student demands.

AShareNet has been pioneering different approaches to accessing educational materials through a suite of online multilateral licences, which aim to provide consistent, legally-robust, and timely options. The Company brokers two different models: online licences for those who want some monetary return or where special conditions are required; and the recent launch of Instant licences - which is in response to the need for accessible and identifiable options within a digital environment.

Most educators today live in a "cut-and-paste" world, and rarely use a resource without wanting some change. Instant Licences provide a range of options while concurrently ensuring that copyright conditions are respected. The major difference with the Instant Licence concept is that the requirement to seek permission is no longer required. As long as the Mark is attached to the material (and the copy is obtained by legitimate means), the licence is automatic.

Encouraging educators to build on the work of others and stop re-creating the wheel is now critical, if the world of education is to meet the student requirements for timely, up-to-date and appropriate resources. Licensing models are emerging as viable options for the digital age.

1. INTRODUCTION

Copyright and cannibals in the same sentence evokes images of voracious hunters avidly consuming other people's goods. Copyright has been under siege in the past decade, and new groups attempt to find innovative and simpler ways to manage a complex legal minefield. The digital age has given both consumers and producers alike a new playing field – online, connected and global.

The internet has impacted on everyday life in unimaginable ways. People discovered they could get access to previously restricted information through using search engines; e-shopping emerged and continues to evolve for both young and older generations; internet banking is now more commonplace; online bookings for travel is a preferred medium; online libraries are blossoming; and chat rooms support new consumer trends. Newspapers offer online options to their readers – and one can quickly access news from any corner of the globe rather than waiting for shipments of hard copies to arrive.

Governments quickly capitalized on the medium to disseminate public information; and e-government is now a central strategy for departments to connect with their client groups. Portals have become flavour of the month as a means to provide co-ordinated information. Even metadata is back in favour, as the realization dawned on how it can assist discovery! Didn't they used to call it cataloguing?

The big surprise for consumers occurred when they realized that much of the online material had copyright implications, often requiring some legal impositions. The consumer was rarely concerned with copyright in everyday life – but the ground has now moved. Taping of TV programs; copying CDs; downloading and sharing music; using iPods; electronically copying of website information – these all lead down the Copyright Trail.

2. TODAY'S EDUCATOR

In the educational environment there has been ongoing and continuous changes as traditional classrooms morphed into different forms. After a variety of new terminologies such as online delivery, e-learning and distance delivery; the sector has temporarily settled with the terminology of "flexible learning". This implies that the educator has a range of possibilities when working with students.

A scenario for today's educator could include some any or all of techniques such as face-to-face instruction, supplemented by online materials and discussion groups, additional readings through libraries and online journals (to which libraries must now subscribe); perhaps printed coursepacks with copyright-cleared articles; and any variety of web-surfing to find materials of relevance to the topic. Students often have access to individual PCs and libraries are no longer quiet reading rooms, but rather busy interactive centres with hubs of computers which are always online. Many larger public educational institutions have internal digital repositories (or intranets) where student resources are made readily available. Some materials are even available as interactive CD-ROMs which can be adapted by teachers and individualised.

The educators who are early adopters can work with educational technologists to design online web-based approaches to a subject area and have any number of options for students to interact as part of the process including the use of chat rooms and blogs. Those educators who have not yet fully engaged with the new internet-enabled world might utilize a smaller range of resources – print or electronic, which they cut-and-paste into their lessons. And, of course, there would be any number of variations of the theme given the range of people included in today's education industry.

3. PUBLISHING INDUSTRY CHALLENGES

One of the areas that have been the slowest to change has been the publishing industry (Clarke, 2002). Textbooks were the foundation stone for education as reference material and as

readings. Some publishing houses are moving these online in response to the e-learning movement, but in general they have not yet been able to provide mix and match type options so educators can just use the 'bits' of interest.

Today's educator is now an e-publisher; in fact, so are many students. This applies to anyone with access to word processing tools complemented by internet access. Copyright is now critical if these users are to be kept out of the courts for infringing owner's rights. Collecting societies are clearly watching this space, using tools such as robots to discover where infringements might occur.

Copyright owners are reacting to this new environment by searching for new technologies which track and lock-down their intellectual property, and protect both their rights and any income streams required.

4. RE-USE IS NOW THE ORDER OF THE DAY

Educators who live in this new internet-enabled world with endless possibilities to find interesting information to use within their classrooms are frustrated by the slowness of the legislators to bring copyright into the new environment. While they might have been content to have librarians obtain permission to use materials in the pre-internet days, and would have waited some weeks for this to happen, they have lost patience and can't understand why they can't download and use materials without the need for long and protracted processes. Educators worldwide have had a reputation for not complying (Ninch, 2002) – although for many it has been simply a matter of misunderstanding and ignorance about the legalities.

If education is to succeed, there is a need to keep up-to-date in a rapidly changing world. As quickly as the resource is developed – it is often out of date. Resources are becoming increasingly expensive to develop, particularly when they are online materials, and they are often equally expensive to maintain.

What most users typically want is to use bits of material from a number of sources, and include with some of their own thinking – hence my concept of 'cannibalisation'. Copyright terms for this include definitions such as adaptation, customisation, contextualisation, enhancement, supplementary work, compilations and derivatives (AEShareNet Glossary, 2005). Educators need a Copyright Kitbag to help them de-mystify the maze.

A simpler explanation could be to use a term such as re-use i.e. take something that has been done by someone else, and make some changes. This has the advantage that it saves time developing something from scratch, is more cost effective, can be quickly modified to suit today's needs and can be re-published using a range of available electronic tools.

5. LICENSING AS AN EMERGING BUSINESS MODEL

Licensing, as the new business model for keeping materials current, has a lot going for it (Clarke, 2004). It is interesting to look at the needs of the two parties involved: the copyright owner and the user.

As the owner of a product, it is not unreasonable for them to decide how they wish their material to be used. There are a range of choices to make: can the work be changed in any way or should it be used in its entirety; if the materials is changed, is there a need to check (vet) in case

reputations might be tarnished; is the work restricted to any particular place or territory or can it be used globally; is there a requirement for some payment to use the material? The answers to these questions form the basis of the licence (or contract) that the owner requires.

Now to the user. It is also not unreasonable that the user respects the owner's wishes, given they produced the material in the first place. Licensing makes the conditions under which the material is offered very clear. It is often possible to negotiate a change, if a cogent reason is explained.

6. THE AESHARENET MODEL

About the time the internet was just emerging, so too was some thinking about how education might enter an unknown and emerging online world (Gilding & Fripp, 2004). While education is indeed a business, the development and publishing of materials is not the core business of the institutions and so it is often referred to as Resultant IP. In general, the education industry does not get into the publishing area either, unless they are a specialized distance delivery organization.

So, what emerges is a range of materials that are educationally sound, but not generally produced to be commercially marketable.

The Australian Government Solicitor was engaged by the Commonwealth Department of Education, Training & Youth Affairs to explore ways to avoid duplication of effort and to try to simplify the management of copyright for educational materials. The result, after some years of debate and investment, is an online copyright licensing platform to encourage greater sharing of learning materials across Australia.

As a Company, AEShareNet operates in a virtual world with a website as its central core. The website offers general copyright information as a service to the community, while at the same time providing a secure part of the site where licences are transacted and stored. When you arrive at the Home Page, it is clear that the Search function offers a place of prominence. With over 22,000 resources in the catalogue – it offers a solid starting place to discover material on offer.

The Model has gone through some iteration while it evolved and had to meet rapid changes as the digital world exploded (AEShareNet, Licensing Overview). The Model today has two distinctly different approaches: a brokered online facility to trade and manage licences; and the recently released Instant Licence approach.

All materials can be catalogued to assist discovery, and it is quickly obvious that some materials have 'Instant Licence' conditions. Instant Licences have only recently been launched and were end in response to a world where web and digital resources were growing. A quick, identifiable and easily accessible mechanism was needed.

Instant Licences are basically automatic. The owner makes a choice to Mark their material with one of the four Trademarks and as long as the user legitimately acquires a copy – the licence is 'Instant'. In the graphic there is a specific URL which leads the user to the actual conditions that are on offer. They are free, able to be used by anyone, anywhere, and are highly suited to electronic materials, digital repositories and websites.

Some owners are happy to share many of their resources through an instant licence mechanism, while concurrently they may have materials which have a higher value for which they want some money to change hands, or where they are prepared to negotiate variations.

This is where the AEShareNet trading platform emerges. The owner selects the conditions under which they are prepared to share their material from a standardized template and the Licence Contract is displayed on the website. When there is interest in accepting this offer, the user simply presses a “request licence” button which generates an email back to the owner. The request might be to accept the conditions as displayed, or to request a variation. Some licences go through in minutes while others take longer depending on the extent of negotiations.

There is a range of incentives to using a transaction approach. Licences are pre-prepared and avoid the need for legal advice; there is no need for paper to change hands, nor signatures; the licences are electronically stored on the AEShareNet site and provide a record and audit trail of all transactions over time. The Company operates as a typical broker: sending out electronic tax invoices, collecting monies, reconciling accounts and transmitting funds to owners at the end of each quarter. It obviates the need for micro collections and micro-payments. For those who have royalty schemes – it provides a range of facilities to manage the routine follow-up required.

7. OTHER PLAYERS IN THE MARKETPLACE

The Commons movement has accelerated with the birth of Creative Commons, headed by Lessig since 2001. Creative Commons was borne out of a challenge by the US Copyright Office to come up with some new thinking. Some would suggest that the Commons and Public Domain are often interchangeable; however the Creative Commons is about public rights created by voluntary licensing by copyright owners. The movement was internationalised via iCommons Associates – in Australia this is spearheaded by QUT.

The Commons movement is similar in philosophy and approach to licence-based public rights such as AEShareNet and there are similarities and differences between the two models (Oi, 2004). Prior to both these models, there has been a strong presence from both the Free Software Movement (Gnu operating system) and the Open Source Movement eg Unix and Linux operating systems; Open office and Mozilla Web Browser. Many have misunderstood the Open Source Movement as being available at no cost; whereas it can be used to create proprietary software. Open does not necessarily mean free, in terms of cost. (Clarke, 2004a).

New players will inevitably emerge into the marketplace, as will a range of technologies around digital rights management.

8. WILL COPYRIGHT SURVIVE IN THE DIGITAL WORLD?

Is copyright dead? An oft-asked question, and many consumers would like it to disappear so they can get on with downloading and using without interference. The recent debate about intellectual property in the US Free Trade Agreement, and also as part of the Digital Agenda Review, is ensuring that copyright is again under the spotlight (Crisp, 2004). Far from being dead, new models are slowly emerging to offer new opportunities to free up information, and also to share under agreed terms.

AEShareNet is a government not for profit company pioneering new thinking, and exploring partnerships and alliances.

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