

GOWERS REVIEW OF INTELLECTUAL PROPERTY

SUBMISSION BY REED ELSEVIER

Reed Elsevier is a world leading Anglo–Dutch publisher and information provider, operating in the business to business, legal, educational and science technical and medical markets. Its principal operations are in North America and Europe. Its total revenues for the year ended 31 December 2005 were £5,166m of which over 90% were derived from sales outside the UK. Reed Elsevier businesses employ over 36,000 people, of whom 6000 work in the UK. Reed Elsevier's objective is the delivery of highly valued and demonstrably superior information solutions to professional customers, increasingly via the internet.

Reed Elsevier welcomes the acknowledgement in the call for evidence that Intellectual Property is a critical component of success in the knowledge economy. It is self evident that commercial publishers and producers of information databases will be reluctant to invest significant time and money in compilation and distribution if they do not expect to be able to achieve an acceptable return on capital. As the bedrock of the product, intellectual property in the form of copyright and database right is fundamental to the publishing and information industries.

How IP is used

Depending on the product, our content is either originated in-house, such as in the case of educational textbooks and business to business journals, or sourced externally, such as with academic publications. In total Reed Elsevier employs some 8,000 editorial staff to author or manage content. Practices vary according to the nature and use of the work involved, but generally our publications take rights from independent authors in the form of assignment or exclusive licences. With content being disseminated through the internet to a worldwide audience, publishers increasingly need to acquire global rights. Examples of global reach include Elsevier's Science Direct which contains over 7 million articles and is disseminated direct to the desktop of 10 million scientist and researchers in over 200 countries, the Lancet which has 1 million registered online users and Reed Business' Variety portfolio which reaches more than 70,000 entertainment industry readers in 76 countries.

How well does the UK IP system promote innovation?

We believe these examples speak for themselves in terms of demonstrating the innovative energy of UK publishing. The industry has been a front runner in developing new online services, working within the flexible framework of copyright law. The fundamental tenet of European and UK law that balances the interests of rightholders and users within the safeguards set out in the Berne Convention 3 step test has stood the test of time and change. Copyright practice has adapted to an electronic infrastructure. An example of this can be seen in Elsevier's author copyright agreement Appendix 1 which has evolved since the print era to enable authors to post their work on their own and their institution's web sites. As an industry that has always managed its affairs by contract, changing digital needs have been met in practical, pragmatic ways by licence agreements without the necessity for legislative interventions.

In this context, whilst there may be occasional need for amendment in specific areas, such as was the case with the "transient copy " exception in the 2001 Copyright Directive, experience has shown that the current UK copyright and contract framework is sufficiently flexible to empower and promote innovation.

Specific issues

Copyright and IP is under challenge

It has been reported that when asked what they wanted to do when they leave school, a high proportion of UK schoolchildren want in some way to be involved with the creative industries. Sadly many of those same schoolchildren have grown up with blind spots about copyright when it comes to downloading. The connection between copyright protection, sustainable employment and financial return needs to be more generally understood outside of the creative industries. We support the efforts the Government is making in this area but would welcome even greater awareness raising of the importance of IP. The US Copyright Office provides a good model of how to effectively champion the cause of copyright whilst maintaining full regard for both rightholder and user interests.

Database protection

Activist lobby groups with a particular agenda can drown out the broader message of the value of IP protection in the stimulation of economic growth. This is exemplified in the current discussions about the EU database directive. This legislation protects the effort of compilation of data, not the data itself. Moreover, because of recent developments in European law, databases in which the underlying data is generated incidentally to another activity and not solely for publication are denied protection, notwithstanding that substantial investment may be required for formatting (metatagging and hyperlinking), updating and verification. Inaccurate claims about "locking up facts" risk overshadowing sensible debate on the huge benefits brought about by investments in electronic databases. See Reed Elsevier's submission to the European Commission Appendix 2.

Limitation of liability

In terms of enforcement, in the online environment, a key to effective compliance is the attitude of service provider and other intermediaries. We have found that joint venturing with intermediary partners has brought positive benefits for all participants. However well reported cases involving search engines highlight how the activities of intermediaries can play directly into intellectual property issues, and if mismanaged, can cause serious harm. In the light of this, Reed Elsevier strongly supports the Digital Content Forum position that introducing any limitations on liability for IP infringement for intermediaries risks undermining the very notion of copyright and the permissions based culture on which it is built.

Library Privilege

Similarly our industry has many examples of long term cooperative ventures with third parties such as national libraries. The British Library has for many years offered an excellent document delivery service to its readers, copyright fee paid or free under library privilege, depending on the circumstances. Publishers are working with the British Library to agree terms for the extension of the service to electronic UK distribution subject to appropriate safeguards. With the market moving increasingly towards content being made available on a pay per view basis, there is a concern that publishers should not find themselves in unfair competition with library vendors abusing legal exemptions to engage in parallel publishing at a discount to the commercial vendors. This issue of abuse is currently being addressed in the German courts.

Digital Libraries

Technological advances are bringing forth a flurry of proposed projects around Europe and elsewhere, often taxpayer funded, to digitize existing library print holdings for broad free dissemination. The model whereby a reader could borrow for a period and return a book or journal, or could visit the library and read it on the premises posed no threat to the financial viability of the publisher. However electronic copies are by their nature more potentially damaging to the publisher's business.

It is a matter for concern that the rush to be at the forefront of free electronic dissemination risks brushing aside the very real issue of the author and publishers' investment in the production of that work. Publishers have been and will continue to be leaders in electronic dissemination (£1.8bn (35% of our revenues in 2005 were electronic), but care needs to be taken that, in the enthusiasm to share the benefits of digital dissemination through library networks, such as is proposed in the EU Digital Library initiative, voices that raise the issue of economic value are not simply viewed as killjoys and ignored. It is not acceptable that print items deposited under statutory legal deposit for archival purposes should be subsequently digitized and disseminated freely without regard to author and publisher interests.

Conclusion

Reed Elsevier supports the comments on orphan works, private copy exemptions and regulation of DRM technologies set out in the responses from the European Publishers Council, the Publishers Association, the PPA and the ALPSP.

We believe that the balance of UK copyright and database law is fair and does not require amendment. We welcome initiatives to broaden the understanding of the importance of copyright and database right, thereby resisting trends to substitute "cutting and pasting " for real creativity, enterprise and innovation.

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