

Submission to the Gowers Review of Intellectual Property:

Nicholas Bentley
L'Ecole de la Combe
26510 Rémuzat
France

Scope of this submission:

The thrust of this submission is aimed at addressing one of the practical issues you raise in the 'call for evidence', namely:

“The widespread use of the Internet and the advent of high-speed digital networks has made it increasingly easy to copy and share digital information quickly, easily and without appreciable loss of quality. This has enabled widespread copyright infringement, most notably the use of file sharing technologies to download unlicensed music. It has been suggested that copyright exceptions lack clarity and are ill equipped to deal with these technological challenges. Furthermore public awareness of the boundaries of lawful use is low, and legal sanctions on infringement appear to lack clarity and consistency across different forms of IP.”

Hence my primary concern here is copyright, the impact of digital technologies on a copyright regime designed for an analogue world, and my suggestions on how the review might be extended to consider 'copying rights' in a new light.

Self regulation is the issue:

In the world of analogue media the intangible intellectual product was closely linked to a physical product (a book for instance) that was used to distribute the intellectual content. These physical products are private goods in the economic sense, both excludable and rivalrous, and they effectively endowed the intangible content with the same private good status. Private goods lend themselves to trade and hence these intellectual goods could be fairly distributed and traded. In addition, copying of these intellectual goods was expensive and difficult, especially for the general public, and so regulation of these physical proxies for the intellectual content was largely **self-regulating**.

As these intellectual goods become digital they become “increasingly easy to copy and share” as you say in the call for evidence. The intellectual goods become almost as intangible as the intellectual content and the distributed product becomes a public good,

neither excludable nor rivalrous. Because the general public can easily copy and share these new digital public goods the inbuilt self-regulation of the analogue world is lost.

To try and replace copyright's traditional self-regulatory characteristics two trends are taking place. First, more regulation is enacted and increasingly these regulations have to be enforced in the courts on an individual basis. Second, Digital Rights Management (DRM) is used to try to restore digital copies to a tangible status by using encryption and other Technological Protection Measures (TPM) to control copying.

Both these measures are expensive: Expensive in regulatory time and effort, expensive in the DRM infrastructure required, and expensive in the social arena ranging from potential loss of privacy through to effects that might limit social exchange of creative ideas and the availability of archived material.

I urge the review team to look for measures in the copyright realm that will continue to promote self-regulation rather than costly measures that require increasing levels of central control and regulation.

Copying rights as a solution:

If copies are no longer a viable private good that can be used to commodify intangible intellectual content society should look elsewhere for a means to reward intellectual creativity.

I maintain that we don't have to look far. Copyright already recognises the individual creative effort as the primary source of value by granting the author exclusive rights to their works. Contrary to the statement in the call for evidence, "Intellectual Property protects the value of the knowledge that resides within goods and services." the true value introduced to the system is the work that goes into producing the knowledge not the knowledge itself. Once it is unleashed, knowledge is a true public good that is of great benefit to society as a whole but does not reflect the work that went into producing it.

As copyright already recognises the true value of intellectual work by granting rights to the author the rights system should be extended to encompass all users of the work. Rights of access to the intellectual product could become the commodity. This is already happening of course. Authors traditionally have transferred rights to publishers in exchange for a fee. Many digital works are distributed under terms of a license that conveys some limited right to the consumer. Should society not be formalising this system of right transfer and provide protection of the rights of all concerned rather than granting some users (namely 'right holders') exclusive rights and others (namely consumers) only limitations on these rights?

By granting all users a right rather than an exception to another's copyright all the problems of lack of clarity inconsistency would disappear.

Conclusion:

A formalised system of right transfer within the intellectual property regime is only one suggestion for a digitally interconnected world. However, to avoid any new distribution model being disadvantaged in the future, I ask the review team to take a hard look at any proposals that tax or impose artificial restrictions on this valuable digital infrastructure purely with the aim of supporting the outmoded copy based model for trading intellectual products. I also call on the review to take the broadest view of the issues involved. Issues such as what society was trying to achieve within the copyright regime and how these values can be best achieved with the digital infrastructure now available.

Supporting documents and resources by the author:

- € 'Managing copyright in a digital world' -
 - http://www.indicare.org/tiki-read_article.php?articleId=133
- € 'Intellectual Contributions' –
 - <http://www.omidyar.net/group/intellectual-contributions/ws/index/>
 - Print version - <http://www.commonrights.com/CRprint.htm>
- € Common Rights web site - <http://www.commonrights.com>