

Connecting Culture and Commerce – getting the right balance

National Gallery

26 January 2007

Introduction on behalf of the Museums Copyright Group

On behalf of the MCG, I am delighted to have seen this conference take shape and become a reality after nearly two years of planning in conjunction with King's Digital Consultancy Services, and delighted that it should be happening at the National Gallery.

Part of the background to this event is that, in 2005, the Museums Copyright Group was contemplating its impending 10th anniversary, considering how best it could contribute to the sector. We could justly take some pride in the progress made with at least some of our original programme – to represent the museum sector in lobbying on copyright legislation, and to encourage the dissemination of knowledge and best practice in the management of copyright. If there is a higher level of knowledge about copyright among museum professionals at the coal face, then it is I believe in no small measure due to the efforts of the Group.

But we felt that there were wider strategic issues that still needed to be addressed. While we were equipping people with the tools – knowledge of the basics of copyright – we felt there was still a gap in terms of coherent thinking, applicable across the sector, about *how* those tools should best be deployed – and for whose benefit. A key part of plugging that gap, we felt, was to understand the role that copyright and other intellectual property rights play in facilitating, or obstructing the objectives of cultural institutions.

And the first point that is obvious to anyone who spends a few minutes thinking about the issues is that cultural institutions, such as museums, have competing objectives. In this they have something in common with HE institutions, and also public service broadcasters such as the BBC. It is a defining characteristic of the sector.

Unlike purely private sector exploiters of IP, museums, to take the category of cultural institutions dear to the heart of the MCG, are established by Act of Parliament, charter or trust deed with legal duties that require them to provide and, if possible extend access to their collections, and to entertain and to educate the public. That can be compared to the obligations of HEIs to teach and carry out research, and of PSBs to provide programming to the wider public.

This obligation is supplemented by strong themes in current government policy – above all to increase access. It is also given a new impetus by the rapid development of new means of engaging with audiences through new media, whose full potential is perhaps only just beginning to be realised. The on-demand world – in all its manifestations – seems an environment curiously well-adapted for the delivery of content that is truly rooted in our great collections.

At the same time, the trustees of our institutions have a duty to manage their assets for the benefit of the organisation. Copyright and intellectual property rights are assets that should be put to work. Because copyright is fundamentally an economic right, the classic way of cultivating it is to license it for economic gain.

Now, while the debate about the proper management of copyright in cultural institutions is not a new one, nothing in the last 10 years has made it any less relevant. Indeed, the steady attrition in core funding over time forces institutions to continue to look to ways of generating revenue – ideally in order to be able to fund investment, and to fulfil demands for greater access, but all too often just to maintain key services. And balancing the government's access policy is its Wider Markets Initiative, encouraging public bodies to explore commercial opportunities, identify under-utilised assets and generally become more business-like.

Copyright is at the fault line – indeed *is* the fault line – where the competing priorities of access and education, and commercialisation, meet. What is the proper framework for managing this key asset in order to satisfy these competing objectives – and bridge the fault line?

The law itself contains at least the potential for providing an answer. Copyright is not a monopoly and the law represents a *balance* between the rights of the owner and the interests of users. However, although the voice of the museum sector has at last been heard in the debate, notably through working with our friends at the Libraries and Archives Copyright Alliance (LACA) to lobby for a shift in where that balance should lie, we have so far not succeeded in persuading legislators to change that balance. That is, perhaps, not wholly surprising: the advent of new technology and on-line uses of works has challenged this balance as never before, and the first reaction of legislators to vociferous lobbying from all sides has been – at least in the area of permitted acts and exceptions – to preserve the *status quo*.

In that regard, our colleagues in the library, archive and HE sectors can at least point to remission from the strict application of copyright in the existing régime, albeit only for uses of copyright works that do not prejudice the economic interests of the right holder – and even if in some detailed respects they may not go far enough.

It is nevertheless encouraging that in the latest examination of the balance by Andrew Gowers in his *Review of Intellectual Property*, the issue of balance has been recognised as a central issue worthy of detailed attention. As the *Review* states in its Executive Summary:

“Balanced and flexible rights should enable consumers to use material in ways that do not damage the interests of rights holders and will help ensure that citizens have trust in the system. They will enable cultural institutions to preserve our heritage, and help research institutes to further knowledge by using ideas protected by others”.

We look forward to hearing more on this later today – it is not clear that the detailed recommendations of Gowers go as far as they might in this area, although a number of recommendations, notably those relating to orphan works (works where the copyright owner cannot be identified) are of great interest if they can pave the way to releasing many works in our collections from their copyright limbo.

The relative immobility of the boundaries provided by the statutory framework has, nevertheless, led to creative thinking about how copyright could be handled differently. We have always been conscious that copyright needn't just be about preventing people from doing things, but that it is equally a means for allowing them to do things. Permission lies at the heart of the system. This is the notion that led Larry Lessig and others to launch the Creative Commons movement, which has vividly reminded us of the choices available in licensing strategies.

However, while Creative Commons and other initiatives inspired by it undoubtedly have much to offer, they just represent one of many means of managing copyright. Creative Commons can explain when one of its licences may be appropriate, but it cannot replace the strategic judgement of when to use a Creative Commons licence and when not to – that underlying policy question still needs resolving.

At the same time, cultural organisations from the BM to the BBC are users of *other people's* content. The basis on which this is licensed determines how it can be exploited by the institution – and much work still needs to be done here: indeed, clarifying the bases on which institutions can manage other people's copyrights is an important part of the overall solution, and the discussions which the MCG is having with DACS, for example, point the way at least potentially to a future where we could have commonly agreed categories of use and a transparent and coherent fee structure, reducing transaction costs and creating a platform for an integrated sectoral approach.

But institutions still have to have a thought-through approach to help them decide when to be commercial, and when not to be. When considering proposals for re-use of their content, they need to understand their customers' business, and be alert, for example, to the distinction between the genuinely educational and the 'commercially' educational. The need is particularly acute as institutions begin to explore more ambitious ways of leveraging their content, for example through on-demand video programming. In short, what is needed is a content management policy.

Of course, not all institutions will want to strike the balance in exactly the same place. There are many activities where this debate ebbs and flows, the handling of images by picture libraries, for example, or publishing.

However the Museums Copyright Group believes that there is much scope for sharing ideas and learning from others about possible models to help formulate a coherent content management policy. We should learn from novel initiatives which enable cultural resources to be leveraged in new ways. I have mentioned Creative Commons as one example – relevant principally to non-commercial uses – but there are others, for example the Science Museum’s bold step of putting its commercial exhibitions business in a joint venture funded by Fleming Media. We should also look to other organisations and sectors with similar issues, and it is for this reason that this conference has been designed to bring insight from the experience of the BBC and the Higher Education sector.

May I say that I am particularly delighted to welcome representatives from the BBC today. The BBC has – albeit on a different scale and in a different regulatory environment – wrestled with the same questions we are debating today and I am sure that there is potential for cross-fertilisation of ideas.

The more consistent the approach, the easier it will be for individual institutions to resolve internal tensions between commercial and non-commercial objectives, and to be able to deal effectively with external partners – knowing yourself is the first step to a mature relationship with others.

The MCG has been interested in these issues ever since it was founded in 1996. The MCG, which itself was born in the wake of a conference on 'Museums as International Businesses', celebrated its 10th anniversary last year and hopes this conference will identify the right questions, and provide at least the ingredients to help cultural institutions find the right answers. We are delighted to have been able to work with Simon Tanner of King’s Digital Consultancy Services to make this happen, and the MCG is very grateful to Simon and his colleagues for taking on the task – and the risk – of running this event.

I believe that cultural institutions are poised on the threshold of a new phase in the way they manage their intangible assets. Understanding the nuts and bolts of copyright law will remain an essential foundation – the digging of which was a key part of the MCG’s first 10 years – but the time has now come to build on that foundation. I see the next 10 years as an exploration of dynamic new ways of managing content both for the benefit of audiences and – where appropriate - for commercial reward.

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