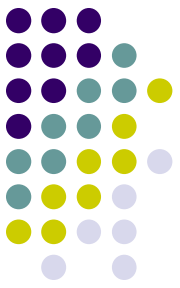


IP policy, cultural and social changes

Day 9 - WIPO - BCC
Advanced Training Course
on copyright and related rights

Andrew Yeates

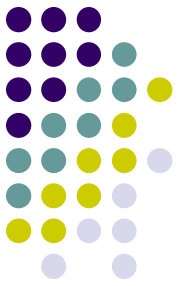




Political change

- Highlights the importance of stability provided by international agreements.
- Slow moving but vital agreements and Treaties secure a focus for future development.
- For copyright, the significance of the TRIPS Agreement must continue to be recognised.
- UK and EU and other regional changes around the world must reflect this.

The importance of the TRIPS Agreement



Copyright and related rights

Trademarks, including service marks

Geographical indications

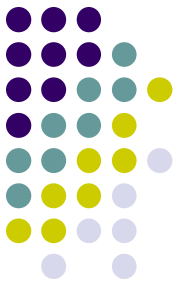
Industrial designs

Patents

Layout-designs (topographies) of integrated circuits

Undisclosed information, including trade secrets

TRIPS Agreement

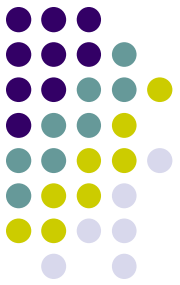


- Annex 1 C of the Marrakesh Agreement establishing the World Trade Organisation – signed in Morocco on 15 April 1994.
- Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure the measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

Intellectual Property - an economic and cultural force



- how basic principles of the trading system and other international intellectual property agreements should be applied.
- how to give adequate protection to intellectual property rights.
- how countries should enforce those rights adequately in their own territories.
- how to settle disputes on intellectual property between members of the WTO.

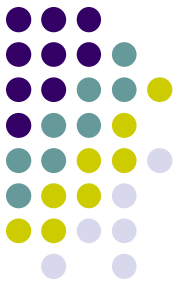


Free Trade Agreements

- Multilateral Agreements
 - Enhancement of international standards or restrictive precedents?
 - CPTPP – enforcement provisions
 - Suspensions or precedential threats?
- Bilateral Agreements
 - Can they push the WIPO Agenda?
 - Artist Resale right
 - Collective Management standards?

Importer or exporter?

Balancing protections

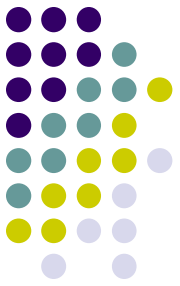


How does IP (and copyright in particular)
support creators and innovators?
apply for local industry?

Support v perceived “barriers” to innovation.

Do local creators and businesses have a real understanding of the value of their intellectual property and what then can do in practice to protect and enforce their rights?

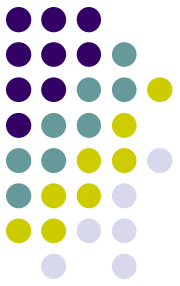
Positioning of creative industries and industrial sectors of the economy



- Goods
 - The significance of exhaustion
 - International – pressures of free trade
- Services
 - IP communications electronically and positioning with Telecommunications Regulation
- Digital trade
 - Public subsidy
 - Treatment of Audio-visual services

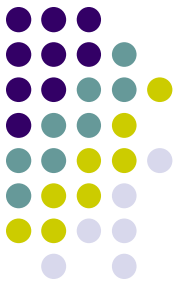
The EU copyright acquis

Developing application of TRIPS?



- [Management of Copyright and Related Rights](#) 2014/26/EU
- [Copyright in the Information Society](#) 2001/29/EC
- [Orphan works](#) 2012/28/EU
- [Rental and lending rights](#) 2006/115/EU (repealed 92/100/EC)
- [Term of Protection](#) 2011/77/EU
- [Satellite and Cable](#) 93/83/EEC
- [Resale right](#) 2001/84/EC
- [Protection of Computer Programs](#) 2009/24/EC
- [Protection of Databases](#) 96/9/EC
- [Protection of semiconductor topographies](#) 87/54/EC
- Enforcement 2004/48/EC

Technology driving changes to copyright policy

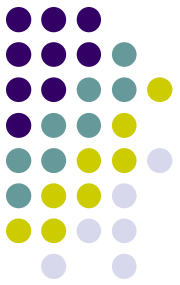


- Copyright must remain relevant in the digital environment.
- The balance between recognition of linked reproductions and electronic communication of copyright works and performances will be central to development.
- Copyright exceptions and limitations must remain a governed by the three step test.



Artificial Intelligence

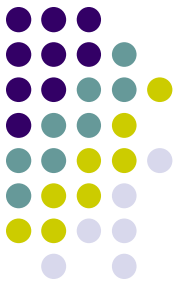
- A new era of one for which the existing IP framework can evolve?
- Do advocates for “new rights” mean “removal of rights” for others?
- Licensing solutions must be understood.
- Remuneration systems for new uses (with support of collective administration) a way forward?



Practical application is vital

- Education about the rights which exist
- Understanding how to value rights
- Reasons for collective administration must be enabled under national laws
- National Treatment rules may need reassessment
- Exclusive rights v equitable remuneration.

Properly addressing the exceptions and limitations debate

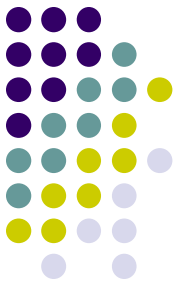


- Freedom of expression
- Education and private use
- Research
- Libraries and Archives
- Preservation of knowledge

BUT

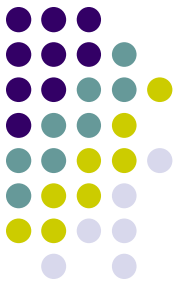
Respect for IP creates jobs, innovation and economic growth and rewards investment.

Are all exceptions and limitations relevant to cross border use?



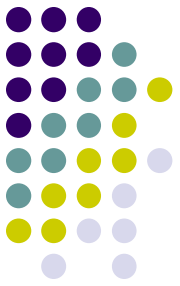
- No
- Is harmonisation for genuinely locally applied exceptions and limitations really going to improve cross border access?
- Fair compensation or licensing options linked to local exceptions work at a local level may actually support culture and investment more effectively than a one –size fits all approach?

International flexibility for copyright exceptions and limitations



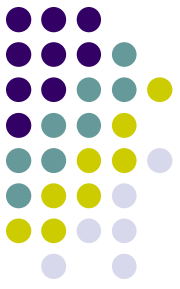
- WIPO Copyright Treaty 1996
- Article 10
- Limitations and Exceptions
 - (1) Contracting parties may, in their national legislation, provide for limitation of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
 - (2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

Main challenge for copyright?



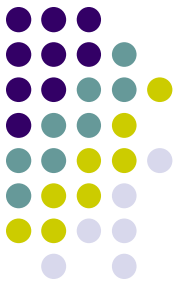
- Application of copyright exceptions and limitations to otherwise exclusive rights.
- What are the circumstances within which individual right holders **CANNOT** rely upon their exclusive right to authorise or prohibit the communication to the public (including the making available to the public of their works) because exceptions or limitations apply?

Pressure for new exceptions and limitations



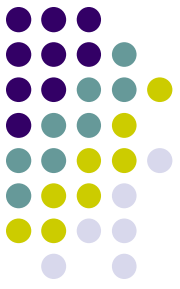
- International – WIPO
- European Union – Mandatory?
- UK – new Regulations implemented 2014.
- International – exceptions before markets in place – removing opportunity?
- EU – problems with harmonisation when difference supports cultural and linguistic differences and consumer choice.

How will exceptions apply at the point of online access?



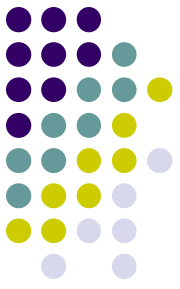
- The difficult issue is less the exceptions themselves – but more :-
- How rules will develop which dictate the national laws which apply at (a) the point of emission and (b) at the point of reception of electronic transmissions of copyright works within digital market places?

If making available is not addressed are exceptions and limitations a scapegoat?



- Can the three step test really be improved?
- Consider key differences between
 - Exceptions and limitations that apply to the inclusion of works within films or sound recordings or broadcasts and other electronic services, and
 - Exceptions and limitations that apply to the receipt and re-use of content delivered by electronic services.

Harmonised definitions – an issue?



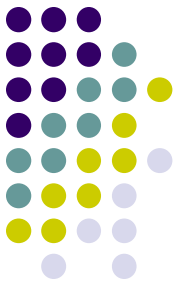
- Reproductions on paper or any similar medium
- Natural person for private use (boundaries)
- Social institutions pursuing non-commercial purposes
- Use for the **sole purpose** of illustration for teaching or scientific research.
- What is an educational establishment in an online world?

Harmonised “institution” definitions to distinguish wider on line “market” use?



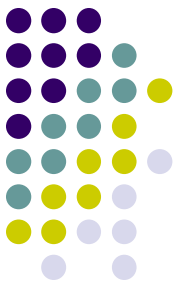
- Publicly accessible Libraries
- Educational Establishments
- Museums
- Archives
- Institutions operating in ways that are not for direct or indirect economic or social advantage

Copyright working for education



- Defining “educational”
- Commercial and non commercial
- Curricular and extra curricular
- Defining “educational establishment”
- Exercise of rights
 - Licensing
 - Application of copyright exceptions and limitations
- Many copyright works are created specifically for educational purposes.

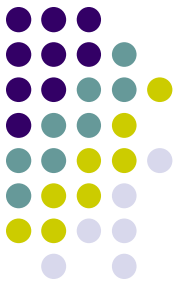
Distinguishing “commercial” from “non-commercial”



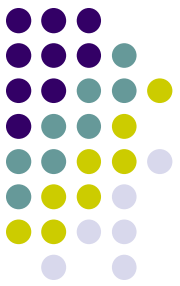
- The organisational structure and funding of the establishment are not decisive in showing whether it is commercial or non-commercial.
- “Commercial” means engaged in commerce.
- Activities which are conducted with a view to profit are likely to be “commercial” rather than “non-commercial”.

Litigation to clarify? Do we now need a “minimal” definition for “non-commercial” to support harmonisation?

Distinguishing “non-commercial” use.



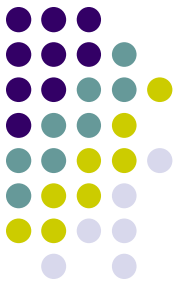
- When is “educational use” commercial?
- Can “educational use” that is “non-commercial” be reconciled with “research” that is “non-commercial” (as opposed to commercial)?
- Will a general “non-commercial” research exception for all types of copyright work undermine provisions for fair compensation linked to copying for private use?



Fair use and litigation

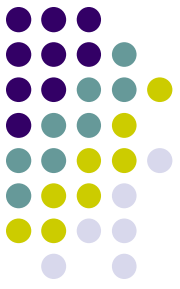
- Real concerns about changes leading to greater uncertainty and more litigation.
- Penalising small firms and individual creators
- Reconciling “cherry picked” terms from US legislation inappropriate for individual EU Member States bound by Directive. 2001/29/EC.

US Copyright Act 1976 (as amended) – too much room for “interpretation”?



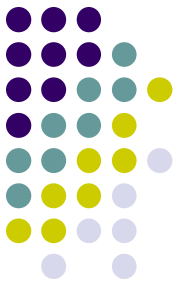
- S 107 – Fair Use
- Consider :-
 - (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
 - (2) the nature of the copyrighted work;
 - (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - (4) the effect of the use upon the potential market for or value of the copyright work.

Copyright is a vital part of the legal framework for society



- CREATE principles express key aspects of the value of IP in a modern economic and social setting.
- **C Creativity** drives innovation and improves the quality of our lives, and underpins our economic prosperity at home and abroad.
- **R Respect** for rights promotes investment in innovation. Creators, inventors and rights holders receive appropriate reward and respect for their work, which stimulates choice and access for consumers.
- **E Education** is vital to help people understand what intellectual property is, and how, like physical things, it is relevant to and improves their everyday lives.
- **A Access** to art, science, technology and creativity enhances diversity of choice and quality of life for everyone when properly balanced with reward for those creating and investing in new work.
- **T Trust** between the creators, distributors and consumers of products that is built on intellectual property is vital for a creative and competitive economy.
- **E Economic** benefits from intellectual property must be publicly recognised by government and understood by the community, if they are to continue to provide new jobs and growth in the global economy.

Thank you



Andrew Yeates

Consultant – Copyright and Creators' Rights

Email: Yeates559@btinternet.com