scripted

Volume 6, Issue 2, April 2009

National and Global Dimensions of Public Rights in Copyright

Graham Greenleaf[*] *and David Vaile*[†]

DOI: 10.2966/scrip.060209.197

 © Graham Greenleaf and David Vaile 2009. This work is licensed under a Creative Commons Licence. Please click on the link to read the terms and conditions.

[*] Professor, University of New South Wales; Co-director, AustLII; Academic Director, Cyberspace Law & Policy Centre.

[†] Lecturer, University of New South Wales; Executive Director, Cyberspace Law & Policy Centre.

This issue of SCRIPTed features nine papers presented at the Conference "Unlocking IP 2009: National and Global Dimensions of the Public Domain", held at the University of New South Wales, Sydney, on 16-17 April 2009. The "Unlocking IP" project, funded by the Australian Research Council, investigates the rapidly changing relationship between public and private rights in Australian copyright law and practice.

The "public domain" of the conference title is used in the most expansive sense, to include all aspects of public rights in copyright works.

The global dimension of copyright public domains is introduced in Graham Greeneaf's paper "National and International Dimensions of Copyright's Public Domain (An Australian Case Study)" (a background paper to the conference presentation), which argues that there are common elements in the national copyright public domains of the vast majority of jurisdictions around the world – principally because of the near-universal adoption of the Berne Convention and some global effects of the Internet; particularly those associated with search engines and viral licences.

Jeremy Malcolm of Consumers International takes a different approach to the global dimension in announcing and explaining the inaugural edition of "The Consumers International IP Watch List 2009". This Watch List aims to assess how well the copyright laws and enforcement policies of the surveyed countries support the interests of consumers, by allowing them fair access to the fruits of their society's culture and science. The 2009 list covers sixteen countries, ranking them by the fairness of their copyright systems in balancing the economic interests of rights holders with the compelling economic, social and cultural interests of consumers. The lists of best and worst rated countries are surprising and sure to provoke discussion. Australia features in neither list.

The focus of the next four papers is on the Australian national dimension, and specifically on the perceived inadequacies of public rights in Australian copyright law and practice. Sally McCausland signals in her title, "Googling the archives: Ideas from the Google Books Settlement on solving the orphan works problem in digital archive projects", how developments in the global dimension of the public domain can potentially influence how national public rights develop. Australia as yet has no provisions dealing with orphan works, and which if any of the existing models should be followed is a difficult question.

Abi Paramaguru and Sophia Christou focus on a neglected practical factor that helps make public domains effective in "Extension of Legal Deposit: Recording Australia's Online Cultural Heritage". How can the public domain be effective unless works are available for re-use when the copyright term expires? Australia has a legal deposit system for print works, but not for audio-visual or digital works, and this paper explores the implications of that gap.

Delia Browne, in "Educational Use and the Internet: Does Australian Copyright Law Work in the Web Environment?" takes a very critical look at how compulsory statutory licences for educational uses (a major element of public rights in the Australian copyright system) are working in the context of 21st century classrooms and digital teaching resources. The key problem is that the broad nature of some of

these licences means that they potentially apply to everything on the Internet, with the result that schools may have to pay to access materials that everyone else accesses for free. Can the new "flexible dealing" provisions in the Australian legislation serve their intended functions in light of the way these statutory licences operate? These are probably questions particular to the Australian situation, but they illustrate how national systems can deal with universal problems by means other that a general "fair use" exception.

Finally, Anne Fitzgerald and Kylie Papallardo argue for Australia to be "Moving Towards Open Standards", examining how copyright-protected standard specification documents and patented technologies included in standards can be managed to ensure that standards are open. Other gaps in the national copyright public domain are covered in the second half of Graham Greenleaf's "background paper" on "National and International Dimensions", which surveys the many ways in which public rights in Australian copyright could be strengthened, including PSI and re-usable government works, and public rights in publicly-funded research.

Two papers explore business models, which utilise public rights in copyright in innovative ways. Susan Murray-Smith in "Sydney University Press: A Model for Combining Open Access with Sales" explains the overall Sydney University Press (SUP) publishing approach which combines Open Access with commercial publication. A number of SUP titles are freely available chapter-by-chapter in the University repository, with a link to enable purchase of the printed volume. Read all about how it works and earns its University funds.

Roger Clarke and Danny Kingsley take a global perspective in "Open Access to Journal Content as a Case Study in Unlocking IP", arguing that the accessibility of refereed papers published in journals represents a litmus test of the extent to which openness is being achieved in the face of publishers whose business model depend on exploiting IP. A specification of the requirements for "unlocking IP" in refereed papers is presented and applied, leading to positive conclusions about progress but limited practical impact because only a small proportion of papers are as yet self-deposited.

SCRIPTed published papers from the 2006 Unlocking IP Conference in 2007 (Vol 4, Issue 1). In that issue, Diane Nicol's paper on biotechnology reminded us that public rights and commons are not found with copyrights. Here, Luigi Palombi does so in his paper, "The Role of Patent Law in Regulating Restricting Access to Medicines", which argues that history shows that patents are not the promoters of innovation that the pharmaceutical industry would like us to believe.

Another link between the Unlocking IP Project and SCRIPT at the University of Edinburgh School of Law is the Public Rights Licences database at <http://www.worldlii.org/int/other/PubRL/>, which was launched at the Unlocking IP Conference. It is a searchable database of the texts of (at present) 420 copyright licences which grant rights of public use in various forms, dating from 1979 and originating in thirty-nine countries. It is still a work in progress, but a valuable source of information about the history and scope of public rights licensing.

We would like to thank Abi Paramaguru and Sophia Christou, researchers on the "Unlocking IP" project team at the University of New South Wales, whose hard work made the Unlocking IP Conference such a success, and who followed through to obtain papers for this issue. Thanks too, from all of us to SCRIPTed for again offering

to undertake the arduous work of arranging refereeing and publishing. We hope these articles contribute toward a richer understanding of the global and national dimensions of copyright's public domains.