

# Back to rights

THE UK's Prime Minister David Cameron announced on 4 December yet another review of the law of copyright, to "look at what the UK can learn from US rules on the use of copyright material without the rights holder's permission" as the BBC reported it. He said that "The founders of Google have said they could never have started their company in Britain. The service they provide depends on taking a snapshot of all the content on the internet at any one time and they feel our copyright system is not as friendly to this sort of innovation as it is in the United States."

The answer? "Over there, they have what are called 'fair-use' provisions, which some people believe gives companies more breathing space to create new products and services." Google continues to argue that its scanning of millions of books without permission is "fair use". When, however, authors' and publishers' organisations took it to court, it came up with a \$125 million settlement offer (which is currently stalled in the courts).

So Cameron announced that "we are reviewing our IP laws, to see if we can make them fit for the internet age." Professor Ian Hargreaves, lately of the *Statesman*, *Independent* and *Financial Times*,

will head this, to report in the Spring. At the same time, the Parliamentary Select Committee on Culture, Media and Sport announced its own inquiry into copyright.

Camerson also announced what is bound to be called "Silicon Marsh", with investment between London's Old Street and Hackney Marshes supported by technology companies, including Google.

So what's this "fair use"? It is a general principle in US law: which sounds fine until you realise that this means others will use your works claiming "fair use", but neither of you know whether it is "fair use" until you've taken them to court.

UK "Fair dealing" is a set of explicit, defined permitted uses, such as making Braille copies or archiving in libraries. "Fair dealing" complies with the "three-step test" in international law, which is defined in the World Trade Organization TRIPS agreement. These specify that "exceptions" to copyright that permit use without the rights holder's permission may only be for:

- certain special cases
- which do not conflict with a normal exploitation of the work or other subject-matter and
- do not unreasonably prejudice the legitimate interests of the rightholder.

As in other respects, US law is an anomaly internationally and not obviously in compliance with treaties.

Why does this matter to almost everyone? Almost every child now in school will be published or broadcast author or performer before they can vote – thanks to YouTube™, Facebook™, and NextBigThing. They may be quite content to give their work away to the world – but few understand what this means until something goes wrong. The experience of the *Freelance* is that they mind very much when their work is taken and used in a context that they object to, whether or not they object once they realise how much profit can be made from it.

© Mike Holderness

- Meanwhile, the UK High Court has ruled that certain headlines are copyrightable works, in a case brought by the Newspaper Licensing Agency against a media monitoring service. The *Freelance* is still boggling at the possible ramifications.
- And in another corner of the copyright forest we still await the EU Commission's recommendation on "orphan works" for which no rightsholder can be found.

## Paywalls – will they work?

IF NEWSPAPERS keep pursuing the now-standard model of charging for print and giving away content online "you probably had a problem somewhere down the line," observes Dan Sabbagh, founder of media news website Beehive City, former *Times* media correspondent, and appointed *Guardian* media editor the week before his talk on paywalls at LFB's November meeting.

Dan updated us on current newspaper paywall models. While these may yet save journalism, Dan doesn't see them presenting many opportunities to freelancers yet.

The online *Guardian*, says Dan, brings in about £40 million of which £10 million is from "dating". Online advertising revenue covers only half the editorial budget. Young folk today expect everything online to be free, but they're comfortable with the gadgets, and with paying for "apps" – software for mobile phones, Ipads and such. This allows non-paywall papers to charge something for digital. A *Guardian* app just launched delivers otherwise-free digital content to iPhones for £4 a year. Rupert Murdoch's Sky TV, a

"bit of a joke" at its 1989 launch, now has earned £20 million a month for 10 million subscriptions. Print newspapers and the licence fee model are troubled, but income from Sky's paid-for digital model – bringing them in cheap, let them "enjoy the sweets", then up the price – is performing well. So owners News Corp probably felt it was time to try a similar model at the *Times*.

A *Times* website paywall went up in June, charging £1 a look or £8.66 a month, less than for the print edition. In November, figures for initial *Times* paywall sales finally appeared, showing 105,000 people had paid at some point up to then, of which about 50,000 already had subscriptions, with many of the remainder capitalising on introductory offers or

See PAYWALLS on p 2



Dan Sabbagh

Photo © Matt Salusbury