



How to keep cyberspace legal

A recent seminar in Melbourne examined the issues and implications of copyright on the Internet

On November 19, Quantm and eMerge held a seminar in Melbourne entitled Going Digital, "Legal Issues for Multimedia and Electronic Commerce". Dr Andrew Christie from the University of Melbourne addressed the issue in his speech "Copyright Protection for Web Sites".

Dr Christie takes the view that you can do anything you like in cyberspace providing there is no legal restriction. If there is a legal restriction, it may be that others don't care or are unaware of what is taking place. You may proceed despite legal restrictions because you feel that the risk of being pursued may be very low.

But if something is an infringement in the analogue world then it is 95% likely to be an infringement in the digital world as well, according to Dr Christie. Though this may not apply in relation to transient storage in a computer memory.

Copyright protection is based on the idea of "reproduction". Of a real, non-transient version of a work. Reproduction includes non-transient digital storage. But is transient storage in a computer memory a reproduction? If you're afraid of risk, assume yes, if you're a gambler assume no, says Dr Christie.

Anything on a web site is likely to be protected under one of the copyright categories. Generally the creator is the owner, except where the material is produced in the course of employment. In general, an independent contractor owns the copyright unless there is a signed written agreement transferring ownership.

Dr Christie discussed linking

which he said, while not a big problem generally, can create some confusion. With a Hypertext Reference (HREF) Link there is no copyright in a textual HREF button but there might be copyright in a graphic HREF button. Making the link is definitely not a copyright infringement.

An Image (IMG) Link displays material that is not on the site but appears that it is. It allows the user to get material from another site. This might possibly be an infringement of copyright, by authorising the site user to reproduce linked work. The user may not download the material, so it may be only transient use. Also there may be an implied consent from the owner of the linked work.

"When engaging in an activity where there is some question, calculate the risk of harm, and of anyone taking action against you."

In linking to another site via a Hypertext Reference (HREF) Link, the textual or graphic link button might include a trademark, but it will not be a trademark infringement because it is not being used as a trademark. It is unlikely to be seen as passing off or misleading or deceptive conduct under s.52 of the Trade Practices Act. Making the link fails to infringe trademarks, passing off or s.52.

But making a link via Image (IMG) Link might be an act of trademark infringement if the graphic is used "as a trademark", such as distinguishing services provided in the course of trade by the site host, from services provided by another. It may also be

passing off or an infringement of s.52 if the graphic misleads or deceives site users into thinking there is a business connection between the site host and the trademark owner.

Dr Christie also discussed framing another site. This concerns the user of a page being able to see small frames of two or three other web pages while using the page they are already on. While with framing there is the possibility of infringement of copyright by authorising the site user to reproduce framed works, there might also be implied consent from the owner of framed works to reproduce them. Framing is actually unlikely to be problematic with traditional copyright principles.

There is more likely to be an infringement of moral rights through framing. By framing there might be false attribution of authorship of the framed work if the name of the owner is not also disclosed. Correct attribution is important as would be avoiding obvious pitfalls such as framing a politician's page on a pornography site and such like.

In summary, Dr Christie had some practical advice for those dealing with copyright in cyberspace.

- Use common sense.
- When engaging in an activity where there is some question, calculate the risk of harm, and of anyone taking action against you.
- If it is an analogue problem then it is also likely to be a digital one.
- Be careful with linking and framing. Make it clear that there is no business relationship. Put in a disclaimer, and always attribute to the original creators of the work.

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