The impact of consumer-friendly copyright limitations and exceptions

This research considers how copyright limitations and exceptions affect consumers. In some cases new limitations and exceptions for consumers have been introduced (as with Australia's personal copying exceptions, allowing for example format-shifting of music from CD to MP3 player), and in other cases they have been removed (for example, following US pressure, the Philippines repealed a compulsory licence for exorbitantly-priced textbooks).

Very often when the introduction of new limitations and exceptions is proposed, industry lobbyists will cry foul and exclaim that these will decimate the publishing, software or entertainment industries as the case may be. These claims are often parroted in the United States government's annual Special 301 Report, which, driven by rights holders, criticises developing countries that provide weaker protection for copyright and patent rights than the US would prefer.

However little research has been conducted before now to assess the actual impact of the introduction or repeal of copyright limitations and exceptions on the interests of rights holders. The present research consists of case studies of particular countries that have adopted or repealed particular copyright exceptions or limitations. Research was undertaken in the following countries:

- Australia in respect of its 2006 Copyright Act amendments that allow time, space and format shifting of copyright works.
- Israel about the impact of its fair use copyright exception introduced in 2007.

Download both reports as chapters of our book Access to Knowledge for Consumers: Reports of Campaigns and Reports 2008-2010.

Australia

Our study in Australia, conducted with the University of New South Wales Cyberspace Law and Policy Centre, and our member CHOICE, dealt with the effect of new exceptions to facilitate time-shifting, space-shifting and format-shifting of copyrighted works. It found that there had been no basis to the fears of industry that the proposed exceptions posed a “potential dramatic threat” to the interests of copyright holders.

Indeed, if anything, there was evidence to suggest that the amendments may have increased compliance with the law -- not only by legalising the common and harmless consumer practices in question, but by improving some consumers' respect for the fairness of copyright law in general. This in turn may have dissuaded those consumers from infringing copyright in other respects, such as downloading music or TV shows without permission.
The research also confirmed the finding of our global access barrier survey, that consumers were not wanton in their consumption of unlicensed copyright material. Whilst many consumers do share music or video files now and again when it is not possible or convenient for them to buy, only a small minority believe it to be morally acceptable to download as much as they please. Most are in fact concerned not to deprive artists of their income.

The study's author concludes with a message that we hope other countries considering such amendments will heed:

> It appears the risk of action to bring laws into compliance with certain low impact consumer behaviour are unlikely to generate the worst effects feared by creator advocates, and considerable potential for improvements.

### Israel

In Israel, our research, supported by the Israel Consumer Council and conducted by a team of scholars led by Dr Nimrod Kozlovski, dealt with the new “fair use” right in Israel's Copyright Act -- against which industry railed last year, arguing that it “risks creating gaps in protection.”

Whilst the study acknowledges that fair use jurisprudence in Israel has been spotty – due in part to the mis-matching of US common law principles with British-derived legislation – it finds that the general trend of the law has been to adapt fair use principles to the practices of consumers, taking account of their cultural needs, and the heavy reliance on content re-use by Israel's biggest employers and industries.

Rather than reacting to such re-use of copyright content in “knee-jerk” fashion as US-based rights-holders are wont to do, investors in Israel take it in their stride, even when the use may be legally grey. The authors conclude that:

> More than any other factor, what should be learned is from the Israeli praxis, and not theory, whereby copyright infringement in business is considered as a business risk, and where artists and creators wish to share and allow others to create.

Once again, this country-level study also supports the finding from our global access barrier survey that consumers are not inveterate pirates, but are in fact willing to pay for an easy and simple means to consume content. An appropriate fair use right, that does not treat consumers as criminals for fulfilling basic educational and cultural needs, is a key measure in establishing such a mutually beneficial copyright ecosystem for creators and consumers alike.

Having said this, Israel's fair use right is found to fall short in some respects. The authors of our study recommend that it should be supplemented with a set of permitted uses, to serve as a non-conclusive guide to the extent of fair use under Israeli law.

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