

# Copyrights, author's rights and fair use

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ISC has already published a presentation and review (by Ruth Rikowski, in ISC 23) of *The Copy/South Dossier, Issues in the economics, politics and ideology of copyright in the global South* (ed. by Alan Story, Colin Darch and Deborah Halbert, <http://www.copysouth.org>).

I shall just add a comment to this particular passage:

" One continuing colonial "relic" in the countries of "French-speaking" West Africa is that they still use a "droit d'auteur" copyright system which privileges the so-called "moral rights" of authors; this system significantly reduces what are called "fair dealing/fair use" exemptions. It has been reported that photocopiers at a university library in one such country were being used for unauthorised copying and that when the university was having its annual inspection as a university, conducted by the "mother university" in the United States, this fact was revealed. The African university was evidently told that this had to be corrected by the time of the inspection in the following year or it might lose its accreditation. As a result, a senior university official reportedly had all of the public photocopiers removed from the library. "

(The Copy/South Dossier, p 110)

It might be noted that the concepts of copyright and droit d'auteur reflect two different traditions, the Anglo-Saxon and the Continental. <sup>1</sup>

The French - and more generally, continental - approach to moral rights and fair use is quite different from the Anglo-Saxon. The continental tradition emphasizes the importance of the moral rights, which belong exclusively to the author (auteur, Urheber), and can therefore not be traded (sold) to another "rights holder".

The Anglo-Saxon idea of the copyright, on the other hand, stresses what the word says: it is the right to copy. This is a tradable right, which the author can sell to a publisher, or any business person who wants to try to make a profit out of the work of the author by copying and selling it.

The concept of the moral rights has been marginalised for a long time now, because of the intense pressure from mainly American media conglomerates. The general tendency today - which was codified in the TRIPS agreement of the WTO 1995 - is to get rid of the moral rights of the author and thereby to complete the separation of the intellectual or cultural product from its producer(s).

In order not to create too exclusive monopolies, and to establish some "user rights" that are parallel to the rights of the "rights holders", the Anglo-Saxon concept allows for provisions of "fair use" of copyrighted materials. (The quotation I made above, for example, is a "fair use" of a text.)

But the idea of the "fair use" is weak in the Continental tradition. For reasons that are not quite clear to me, but which might need to be discussed and clarified, the French defenders of the *droit d'auteur* sometimes even adopt a rather fundamentalist attitude *against* "fair use" (although they allow exemptions for reproductions which are reserved for the private use of the copier).

That aversion against "fair use" may be of significance in the case of the photocopiers that were removed from the West African university. It would seem that we have here an unhappy *combination* of French opposition to "fair use" (maybe with neo-colonialist overtones) and American power to police anybody who does not conform to their view of copyrights.

In my view we ought to support and defend both the rights of the authors (creators) and the rights of the users. About the copyrights, I am of the same critical opinion as the authors of the Copy/South Dossier.

The term of the copyright on literary and artistic works, for example, must not be extended. On the contrary, the time has come to make it shorter. An editorial of the magazine "The Economist", which described present copyright law as "worse than anachronistic in the digital age" (quoted in the Copy/South Dossier, p. 17) proposed that the term of the copyright be again limited to 14 years, like it was during the reign of Queen Anne. I support the proposal.

The distribution of written works via the internet should henceforward be controlled directly by the authors. Scientific and educational works by salaried academics ought to be distributed for free over the internet.

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1 Paul Goldstein describes these two cultures of copyright from an American perspective in *Copyright's Highway. The Law and Lore of Copyright from Gutenberg to the Celestial Jukebox* (Hill and Wang 1994, ch 5). Illuminating material on the birth of the *droit d'auteur* is found in Carla Hesse: *Publishing and Cultural Politics in Revolutionary Paris, 1789-1810* (University of California Press, 1991).