Resolving international copyright

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Publishers commonly profit from the creative works of their freelance contributors not only in the traditional print format, but increasingly digitally through websites, databases, and multimedia output and through syndication and sales to third parties publishers. More enlightened publishers make provision for this in the contract with their freelancers and pay royalties on such secondary and tertiary practices, but this is not common practice.

Writing in the *International Journal of Intellectual Property Management*, an Inderscience publication, Canadian researchers argue that the disparity between different jurisdictions around the world means that the legal position of freelance workers hoping to profit from their intellectual property is unclear.

The issue of which party should own and control digital exploitation rights is treated differently in North American courts, for instance, where judges struggle to apply vague and seemingly "neutral" copyright law provisions. In contrast, continental European courts apply express legislation and as such as more well-equipped to resolve copyright issues.

"In tandem with necessary legislative reform, North American courts may do well to consider some of the civilian approaches in common law decision-making," says Giuseppina D'Agostino of the Osgoode Hall Law School, Toronto, Canada.

She points out that freelancers have launched a series of copyright infringement cases against newspaper and magazine publishers where

republication and syndication rights were not explicitly sold in the original contract. One such recent challenge, points out D'Agostino, which has been argued before the Supreme Court of Canada, deals with ownership rights vested in freelance works. Similar cases have also been launched in Quebec, the USA, across continental Europe, and in the UK.

Although the law is clearer in Continental Europe and apparently encourages better relations between authors and publishers, this may be due to the simple fear of litigation should an ambiguous agreement by reached in establishing a contract.

Across the globe, "Freelancers argue that they receive no notice, give no consent and obtain no payment for the exploitation of their works through these new digital uses. Publishers justify that because of contracts previously made with their freelancers they can exploit new uses of such works through an implied license," explains D'Agostino.

She explains that one of the objectives of copyright law, especially as reflected in what is left of the relevant provision is to protect the creator of the work. However, freelancers are independent contractors and so without an agreement stating otherwise, the intellectual property remains with them and they are able to exploit the rights they own over their works. At issue is much of the work that pre-dates widespread electronic publication when there were often no written contracts between freelancers and publishers and only key terms such as submission date, word count, and fee, were agreed prior to submission and publication.

"Without clearer rules on contract formation and interpretation, especially in common law countries, there is no telling what future decisions will be rendered when new technologies are developed, no doubt to the detriment of both parties, especially freelancers," concludes D'Agostino.

Source: Inderscience Publishers