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Seminars for Arts Professionals

## MARCH 2007 SEMINAR SUMMARY

### VIRTUALLY MINE: COPYRIGHT IN A DIGITAL ENVIRONMENT

**Speakers:** Caroline Morgan – General Manager of Corporate Services at the Copyright Agency Limited, President of the Copyright Society of Australia  
James Dickinson – Licensing Executive at Screenrights  
Virginia Morrison – Copyright and Commercial Lawyer

**Chair:** Vanessa Cogan, (SAMAG committee member)

Monday, 26 March, 2007 – Australia Council for the Arts: 372 Elizabeth St SURRY HILLS

By Frances Derricourt

“In the late 1990s when Fukuyama was postulating the end of history, a lot of internet pundits were postulating the end of copyright. They believed one day it would no longer be relevant, that everything would happen online, and that there would ultimately be a direct transaction between the creator and the users of the works.”

It is ironic that as speaker James Dickinson relates this idea at the March 2007 SAMAG seminar, he is part of panel of copyright specialists whose professional lives are dedicated towards protecting the rights of artists in a digital age. Far from seeing the new digital environment as the death knoll for copyright, the three speakers see it as an exciting new arena to re-negotiate the relationship between creators, content and the medium.

The speakers represent three groups of creators – publishers and authors, visual artists and those working in audio-visual mediums. Caroline Morgan is from the Copyright Agency Limited (CAL), a collecting agency which acts on behalf of authors and publishers. James Dickinson is from Screenrights, which monitors copying, collects royalties and distributes this money to their members, who are from the film, television and radio industries. Virginia Morrison is a Copyright and Commercial Lawyer, and specialises in the Visual Arts and advising artists on their rights.

Each speaker provides a fascinating perspective on how their industry has been affected by the vast changes brought about by digitisation. For Virginia, the facts present ample proof as to how art and the web are tangled up – she quotes a recent survey that showed that 43% of copyright content that is available on the internet consists of artistic works or visual images. “Most companies want to enhance their online presence with the use of images, but how much of the material used is authorised by the copyright owner is unknown.”

Virginia also mentions two other developments affecting artists. The first is the explosion of online auction sites, such as Ebay, where works need to be reproduced in order to sell. The second is that many cultural institutions are undertaking major digitisation projects in order to make their collections available online. “All this brings the issues of copyright into play and brings to light the gaps in the rights of visual artists that exist”, says Virginia.

Sydney Arts Management Advisory Group E [info@samag.org](mailto:info@samag.org) T (02) 8250 5722 W [www.samag.org](http://www.samag.org) P 60 Margaret Street, Petersham NSW 2049



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The new online environment has forced the publishing industry to rethink the way it sees its market. Caroline talks of the 'long-tail effect' whereby booksellers have traditionally been constrained by the physical environment, and forced to work on a high demand for a small number of titles. Now that the physical restraints have been removed you have a relatively low demand for a far greater number of titles, creating a new market.

While this has many benefits, publishers are anxious about users accessing this huge amount of content, and want to be able to ensure search engines and print-on-demand services can still bring them revenue. Of course, Google have also taken notice of the long-tail effect and are ready to take advantage.

"Google have a vision to access works and scan and digitise all 32 million titles in print. There is Google Print Library which publishers don't like, and Google Publisher which publishers do like" explains Caroline. Google Print Library is a partnership with Google and libraries to scan all books in a collection – the digital version is offered to the library and not back to the publisher. Google Publisher works with publishers to make the scanned works available through the web by linking to publisher's websites and bookshops. Whilst Google Print Library argues that they are scanning a book for a 'transformative use' (ie users will not read it, but use it to find information), publishers are clearly concerned about one organisation having unlimited access to their product.

James admits that film and television have been one of the last groups to be affected by digitisation. While they watched the explosion of music file sharing shatter the music industry, film and television creators were protected by the knowledge that downloading a DVD of over 4 gigabytes was just too hard. But with the exponential growth of bandwidth, and sites like U tube which use flash media player, this protection has disappeared. "The last episodes of the program '24' were broadcast first on U-tube before they were on television – this is what is making the industry sit up and pay attention", says James.

So how has each industry reacted to these dramatic changes?

"New Yorker described the response of the publishing industry to the new digital environment as a mix of lethargy and panic", says Caroline. Large international companies have basically been waiting for these issues to be resolved overseas, whilst small companies are looking to the web for publishing opportunities but have no idea about how to protect copyright online. "I can't believe that something like copyright, which is basically the cornerstone of their business and the way they earn their income, they know nothing about",

Caroline explains that a lot of authors are making their material available electronically or online using an open or flexible licence such as a Creative Commons licence, but this limits a collecting society's ability to collect money. Instead copyright collection societies need to develop different licences to respond to the digital environment, in order to "find new ways of getting material into the hands of users and making them pay for it". The newspaper industry is one group which has been struggling to make money out of online access to their content, but Caroline tells of a UK organisation which has come up with a new idea. They have launched a



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digital media monitoring service, where all the latest newspaper editions are emailed to an agency in the Philippines, broken down then sent to the monitors. This service is then sold as a subscription service to clients, and is proving to be extremely popular.

At the recent Frankfurt Bookfair publishers also came up with a plan to control the way Google and other search engines can access material. ACAP (Automated Content Access Protocol) works by checking the authenticity of the material found by the search engine, and also providing a multi-layered search result, which will be divided into content you can get for free or content you have to pay for.

James says the reactions of the music industry to content sharing has inspired film and television creators. "The explosion of music file sharing seemed to predict the end of the music industry, but it didn't work out that way. The record companies weren't going to lie down - firstly they forced their legal rights by litigating people like Napster and secondly they offered that content legally for sale over the internet."

Similarly the television industry is beginning to litigate, as we've seen in the last two weeks with Viacom launching a case against U Tube. Television companies are also making their material available legally, and there is a proliferation of free downloads offered by most stations. Technology is being improved to protect works, such as new technology to tag files and workable digital rights management system to control rights so a show can only be played for 24 hours. "The battles being fought in the courts, computer labs and market places by these huge companies are building the infrastructure for new online marketplaces for all".

The visual arts world has had to rely on the law to keep up with digitisation, and this hasn't always been successful. "The communication right was introduced back in 2000 and this right, the right to communicate works to the public, is a key right in the digital environment", says Virginia. "But there are still some uncertainties over what constitutes a communication and who is responsible for that communication" People can often avoid responsibility by linking to other people's content, and when it comes to online auction houses it is unclear as to whether a seller or the site is responsible.

However the introduction of moral rights for artists in 2000 could prove to be vital in the digital environment. Moral rights are personal rights that belong to an artist, which means the artists have the right to be attributed for their work, to not be falsely attributed for their work and the right to the integrity of their work. The first successful case was that of Vlades Meskenas against Woman's Day, which had purchased a photograph of Crown Princess Mary of Denmark standing in front of a Meskenas painting which they wrongly attributed to another artist. The Court found that ACP breached the moral right requiring it to attribute the author of the portrait and, whilst this is not an online case, it does promise protection to artists whose works may be used on other people's websites.

Artists can also make use of Viscopy which licenses the copyright in artistic works and pays the artist or copyright owner a royalty for the reproduction. As a copyright collecting agency Viscopy works on a national and international basis through reciprocal agreements.



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So what does the panel recommend to creators in the new digital environment, as well as the users?

Caroline recommends to authors that when entering into a relationship with an aggregator service, or someone who might be making your content available online, to make sure this relationship is non-exclusive. To publishers, she recommends that the new market requires a licensing model rather than a sales model, and that they should work to apply Digital Rights Management systems to content.

Virginia is firm about our new responsibilities: "copyright owners need to be vigilant about protecting and users need to take a close look at their obligations". This means getting to know the organisation which is there to protect you, and making sure you understand your rights. More importantly, as James emphasises, there is money to be made from the digital world, as can be seen by the recent sale of U Tube to Google. If you know exactly what you own, you as a creator will be successful in this new world, instead of it getting the better of you.