Copyright Reform: Incremental Development or Analysis Paralysis?

Copyright has been going through an identity crisis in the digital age, according to a report in Primary Opinion's Intellectual Property Edition. For some, the free-flow of information online has rendered it an obsolete legal concept, incapable of meaningful enforcement and contrary to the public interest and the freedom of expression. From a more traditional perspective, it is a fundamental right necessary to incentivise and protect copyright authors and owners, which benefits the public through the continuous creation of works while driving the economy. As the policy debate rages, many jurisdictions are seeking to balance these competing interests, with varying success, by gradually reforming their copyright laws.

Earlier this year, the UK Government decided not to take any action following the UKIPO's consultation on reducing the duration of copyright in certain unpublished, and often very old, works, despite Parliamentary approval to change the law in order to 'bring it into line with the standard copyright position to achieve fairness and legal clarity, to reduce the administrative burden on businesses and to bring UK law into line with EU law'.

Similarly to the UK, 'the fact that a work is old does not necessarily mean it is in the public domain' in the US, where it can be just as 'complicated to find out whether or not an older work is still in copyright'. New York firm Cowan, Liebowitz & Latman, PC notes that 'even a very old work can still be under copyright if it has never been published or registered in the U.S'. The 'single most important fact for works created before 1989' is when the work was 'first

“published” by or with the authorization of the copyright owner’.

Canadian copyright law also ‘continues to grapple with our ongoing technological revolution’. In regard to fair dealing, Gowling Lafleur Henderson LLP note that the exception ‘has undergone somewhat of a transformation’ since the Supreme Court of Canada ‘described the defence as a “user right”’ that must be balanced against the rights of copyright owners in 2004. ‘Ever since, users have attempted to assert a broader and broader scope of rights’.

Read the story.