Copyright has been described as an "insanely inefficient property system". In the digital age, is abolishing copyright the solution or should we just abolish the "insanely inefficient" part?

Lawrence Lessig has described copyright as an "insanely inefficient property system".[1] The problem is simple: a copyright is automatic, but tracking who owns the property rights created by law can prove difficult, particularly for older, out-of-print works.[2]

The solution Lessig proposes is that all copyrights should be registered, and that there should be methods for filtering out works that have no continuing need for copyright protection. There is, however, a fly in the ointment. "Clarifying the system" has been vigorously opposed by the film, music, and book publishing industry—in short, those who feel they have the most to lose from an overhaul of the law.

The issue of copyright reform is a legal and political hot potato. In this digital age, where copying is easily achieved and works effortlessly disseminated, would-be copyright owners are calling for stricter controls in current legislation and increased measures to combat copyright piracy. By contrast, proponents of less copyright argue in favour of a "weighing and balancing" approach, in that the interests of rights-holders should be weighed against the interests of society as a whole: access to digital material should not be overly restricted by the chains of copyright law.[3]

But where should the balance be struck? The proliferation of digital material has raised difficult questions for copyright but produced few answers. This essay will argue that reforms are necessary, as copyright, having been created in the age of the printing press, is unable to adequately cope with issues of proprietary rights stemming from the internet era. Although efforts have been made to address these issues—for instance, in the

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[1] Lawrence Lessig, "Let a Thousand Googles Bloom", *LA Times*, 12 January 2005, at <http://articles.latimes.com/2005/jan/12/opinion/oe-lessig12> (last accessed 28 February 2009).
[2] *Ibid.*
[3] Hafladi Kristjan Larusson, "Uncertainty in the Scope of Copyright: The Case of Illegal File-Sharing in the UK", EIPR 2009, 31(3), 124-134, at 124.

Gowers Review of Intellectual Property in 2006—such proposals have not gone far enough.

Abolishing copyright, however, is not the solution. The concept of copyright is an inherently sensible one; removing it altogether would be throwing out the baby with the bathwater. This essay will consider a number of ways in which the "insanely inefficient" parts of copyright may be eliminated in order to accommodate the digital age, without compromising the legal foundations of copyright. In doing so, various provisions in both English and US law will be considered, since US law has developed rapidly in this area and can provide useful lessons for a reform of UK legislation.

Copyright and the digital era: uneasy bedfellows

We live in a world of instant communication. E-mails are transmitted in the blink of an eye, blogs and home videos can be uploaded to "Blogosphere" sites and YouTube, and a search via Google or Yahoo trawls through millions of pages to find the desired results. These methods have also changed the way in which culture is represented and replicated, from downloading music to one's iPod to file-sharing via peer-to-peer (P2P) networks. As Brian Fitzgerald notes, "creativity and sharing have taken incredible new dimensions".[4]

Problems emerge once the "social network"[5]—networking sites such as Facebook, Flickr, YouTube or MySpace—uses commercial material. There are a vast number of YouTube clips of Hollywood films or music videos. Under copyright law, such material has to fall under one of two categories: licensed and/or paid-for; or, alternatively "fair-use" (under US law) or "fair dealing" (under, *inter alia*, English and Commonwealth law). Otherwise, the social networking site or search engine displaying the commercial material would have to pay the companies sourcing the material. In *Viacom v YouTube and Google*[6], Viacom claimed US$1 billion in damages for the sharing of 150,000 videos on YouTube

[4] Brian Fitzgerald, "Copyright 2010: The Future", EIPR 2008, 30(2), 43-49, at 44.
[5] *Ibid.*
[6] Case No. 07 CV 2103 (S.D.N.Y., 2007).

sites. Although denied punitive damages in the Southern District Court of New York, Viacom could still sue for damages, with statutory penalties for infringing copyright, ranging from US$750 to US$30,000 per violation (and up to US$150,000 if the violation was committed willfully).[7]

Google has also been mired in controversy over its Google Books project, in which thousands of books, including those under copyright, have been scanned in order to prepare indices, which reveal extracts of a few sentences of the book to anyone undertaking an internet search. In 2005 a number of publishers[8] and writers[9] sued Google for copyright infringement, since its search functions operate for commercial purposes: Google realises increased revenue due to its improved search capabilities.

The impact of these cases is that internet sites must constantly be on the lookout lest they fall foul of the law. This would have a knock-on effect on web users; a clampdown on content from music and publishing companies would reduce the possibility of knowledge transfer through either viewing or downloading. Although Google itself may be able to swallow the consequences of breaching copyright, since it is able to defend any lawsuits arising from its actions, the vast majority of websites cannot afford this risk.

The question, therefore, is whether copyright, in its present form, is sustainable in these fast-moving and transformative times. It is clear that certain parts of copyright law are inefficient, outdated, and inappropriate to newer forms of intangible property. However, in order to identify the inefficient elements of copyright, it is useful to step back and consider why copyright exists in the first place.

Copyright is based on three principles, the first of which is the natural rights theory, which states that copyright protection should be granted because it is right and proper to

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[7] Chris Albrecht, "No Punitive Damages in *Viacom v YouTube*", at <http://newteevee.com/2008/03/10/no-punitive-damages-in-viacom-v-youtube/> (last accessed 28 February 2009).
[8] *McGraw-Hill Co. v. Google, Inc.*, No. 05 CV 8881 (S.D.N.Y., filed Oct. 19, 2005).
[9] *The Authors' Guild v. Google, Inc.*, No. 05 CV 8136 (S.D.N.Y., filed Sept. 20, 2005).

do so.[10] Since a poem originates from the poet's mind, no one else should be entitled to benefit commercially. The author retains a natural right over the fruits of his labour[11]; therefore, copying is equivalent to theft.

The second principle is that of the ownership of intellectual matter: the poet owns the poem as property. In *Designers Guild v Williams*[12] Lord Bingham stated that this principle was clear: "anyone who by his or her own skill and labour creates an original work...shall, for a limited period, enjoy an exclusive right to copy that work".

The reward theory[13], the third principle, is controversial, as it presupposes that the existence of a temporary monopoly in copyright is good for society, since copyright encourages creative artists to produce without fear that their works would be easily copied and disseminated. According to the theory, if copyright did not exist, creators would not have sufficient motivation to write books, songs, or programmes, which would in turn be detrimental to the wider public. Hence, the legal protection afforded to copyright rectifies the "market failure" that would otherwise occur.[14]

These justifications have contributed to the evolution of copyright law to the point of ever-greater protection for authors and copyright owners. Take, for instance, the increased duration of protection since the Copyright Design and Patents Act (CDPA) was passed in 1988. When the Act was first enacted, the term of monopoly for literary, dramatic, musical and artistic works was for the life of the author plus 50 years. As a result of the EU Duration Directive, however, an additional 20 years' protection was granted to these works. Films, which were protected for a fixed term under the original 1988 Act, also receive amplified protection, as they are considered more as authorial creations.

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[10] Lionel Bently and Brad Sherman, *Intellectual Property Law*, 3rd ed (Oxford, 1993), p. 35.
[11] J Hughes, "The 'Philosophy' of Intellectual Property" (1988) 77 *Georgetown Law Journal* 287.
[12] [2001] FSR 11, para. 2 (HL).
[13] Also called the "incentive" theory by Bently and Sherman, *supra* note 10, p. 37.
[14] William Landes and Richard Posner, "An Economic Analysis of Copyright Law" (1989) 18 *Journal of Legal Studies* 325.

This duration demonstrates just how far copyright terms have gone: the 1842 Literary Copyright Act conferred copyright protection in books to 42 years, or the author's life plus seven years[15], a factor that has since increased *tenfold*.

The "dead hand" of copyright: elements of an inefficient system

The exponential rate of the growth in copyright term over the last century has reached the point of absurdity. This is the first element of an inefficient system: it is questionable whether such long durations actually serve a useful purpose. The interest in exploiting a work tends to blossom almost immediately after the work comes out. The attraction, however, rapidly wanes; nevertheless, as Sir Hugh Laddie has put it, the "dead hand" of copyright lingers on.[16]

An extreme example is the copyright of J M Barrie's *Peter Pan*, which was bequeathed to Great Ormond Street Hospital. The term of 70 years after the author's death in 1937 expired in 2007, but, thanks to a campaign by former Prime Minister Jim Callaghan to amend the Copyright Act 1988, the royalties with respect to UK performances and adaptations will continue to accrue to the hospital forever.

Secondly, due to the automatic nature of copyright, no effort is needed to avail of this protection. The fact that no proactive steps, unlike those in the patent process, must be taken to register copyright means that creators can passively sit back, safe in the knowledge that they need do nothing. In the US, the situation is somewhat more complex. As Lessig explains, "for works created before 1978, a copyright had to be registered to be secured and then renewed for the author to enjoy a full term of copyright protection".[17] Since over half of these works never were registered and the majority never renewed, it can be expensive and time-consuming to track down which works are still protected, and which have fallen into the public domain. Even for works remaining under

[15] Catherine Seville, *Literary Copyright Reform in Early Victorian England* (Cambridge, 1999).
[16] Hugh Laddie, "Copyright: Over-strength, over-regulated, over-rated?" EIPR 1996, 18(5), 253-260, at 257.
[17] Lessig, *supra* note 1.

copyright, those wishing to ascertain current copyright information similarly face an uphill struggle.

Thirdly, the ambit of copyright is extremely broad: nearly all written material, film clip, photograph, or sound recording is covered. A letter written to a friend attracts copyright as much as does a street directory[18] or a racing information service.[19]

Issues surrounding the lack of awareness, as well as unfairness of the current legislation, also come into play. For example, consumers often do not know that the transferring of music from CDs they own to their MP3 players is illegal.[20] Those who are aware of the law tend to see these restrictions as unreasonable. Although a limited "private copying" exception has since been approved by the UK Government[21], the fact that a considerable number of people violate copyright every day threatens to make a mockery of the law.

A similar situation arises in the copying of books or other print material for non-commercial use. The "fair dealing" exception covers the making of a single copy of a short extract of a work or other very limited use of a work, as long as it falls within the realm of "private study".[22] However, there appears to be an arbitrary distinction between what is and is not permitted. For instance, a collective request from several people for a librarian to photocopy multiple copies of the same work (such as for a class) would be unauthorised, whereas individual requests from the same people for single copies would not infringe copyright.

The extensive rights of the copyright owner may have served the age of print well, but in the digital era, such rights have become too widespread. Moreover, the rights of users are all too often subordinate to those of creators, a situation that has the potential to conflict

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[18] *Kelly v Morris* (1866) LR 1 Eq 697.
[19] *Portway Press v Hague* [1957] RPC 426.
[20] UK Intellectual Property Office ("UK IPO"), *Taking Forward the Gowers Review of Intellectual Property: Proposed Changes to Copyright Exceptions* [hereinafter "Taking Forward"], (UK IPO, 2007), para. 81.
[21] See section on "Reforming the System", *infra*.
[22] UK IPO, "What are the private use exceptions?" at <http://www.ipo.gov.uk/types/copy/c-other/c-other-faq/c-other-faq-excep/c-other-faq-excep-priv.htm> (last accessed 28 February 2009).

with other important interests—such as promoting knowledge, as in the case of the Google Books project—and to stifle creativity.[23]

Reforming the system: a rocky road ahead

Calls for copyright reform have grown louder with the continued development of digital media. Key concerns include strengthening the enforcement of copyright where necessary, while improving the balance and flexibility of rights to allow individuals and businesses to "use content in ways consistent with the digital age".[24] This includes simplifying copyright law so that it provides a "comprehensible normative framework" for both creators and users of works.[25]

In 2006, the Gowers Review on Intellectual Property[26] highlighted areas of reform in the UK. While it acknowledged that rapid advances in technology over the last decade have increased the threat of piracy and illegal downloads[27], the Review also sought to take into account the perspective of end users, who are often faced with uncertainty in the law. Among the report's proposals was a limited "private copying" exception, which would permit those buying music in one format to transfer it to another for non-commercial use—such as transferring a CD to an iPod. These plans were supported by the Government.

Another proposal, which was also approved by the Government, was that of maintaining the status quo in the term for copyright protection of sound recordings, currently 50 years from the year of creation. This is in contrast to the analogous copyright term in the US. In *Eldred v Ashcroft*[28], the Supreme Court held that the US Congress was entitled to declare a 20-year retroactive extension of the terms of existing copyrights. Specifically, for works

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[23] Robert Burrell, "Reining in Copyright Law: Is Fair Use the Answer?" IPQ 2001, 4, 361-388, at 364.
[24] Jonathan Cornthwaite, "Copyright Law Reform: Hot Topics", Corp. Brief. 2008, 8-11, at 9.
[25] Pamela Samuelson, "Preliminary Thoughts on Copyright Reform", <people.ischool.berkeley.edu/~pam/papers/Preliminary%20Thoughts%20utah.pdf> (last accessed 26 February 2009).
[26] HMSO, 2006.
[27] Gowers Review, para. 2.18.
[28] 537 U.S. 186 (2003).

that were published before 1 January 1978 and still in copyright on 27 October 1998, the term was extended to 95 years.

In the UK, however, the Government endorsed the Gowers proposals, much to the chagrin of musicians lobbying to extend copyright in sound recordings as a host of 1950s artists, including Elvis Presley and Cliff Richard, fell out of copyright. The maintenance of current levels of protection means that genuine efforts are being made to balance the rights of copyright owners with those of consumers and members of the public.

But significant flaws in the system remain. For instance, the proposed private copying exception would not allow consumers to copy works and then pass on the original, since this would "result in a loss of sales for rights holders".[29] The UK Intellectual Property Office admitted, however, that such a law would be "difficult to enforce and be regarded as impractical or nonsensical by consumers, which would not enhance respect for the law in this area".

Copyright law, then, has become an absurdity in places. Andrew Gowers' statement that "if any law is routinely disobeyed by more than half the population, something is wrong somewhere"[30] is particularly apt; indeed, reading, studying, listening to music, and surfing the internet can all give rise to violations by anyone, every single day. The Review emphasized that downloading commercial content from the internet, particularly music and film clips, is currently the most common legal offence committed by young people aged 10 to 25.[31] Ignorance of the law may not be an excuse, but the existence of laws that increasingly resemble those of a banana republic threatens to undermine respect for copyright.

There is also criticism that the proposed reforms are not comprehensive enough. Kim Walker, Head of Intellectual Property at law firm Pinsent Masons, believes that the

[29] UK IPO, "Taking Forward", *supra* note 20, para. 86.
[30] Owen Gibson, "Chancellor offers £5m for pursuit of pirates", *The Guardian*, 7 December 2006, at <http://www.guardian.co.uk/business/2006/dec/07/media.politics> (last accessed 28 February 2009).
[31] Gowers Review, para. 2.18.

Gowers Review is "predictable" in its recommendations and only suggests "tweaks...to fill obvious gaps, facilitate enforcement and remove inconsistencies".[32] Examples of such tweaks include the recommendation of a new exception to copyright for the purpose of "caricature, parody or pastiche"[33]. As such a right already exists in other EU member states—including Belgium, France, Lithuania, Luxembourg, Malta, the Netherlands, Poland and Spain[34]—and is provided for in the Copyright Directive, this suggestion provokes little controversy.

Furthermore, the Review mentioned a number of key areas for reform, but failed to formulate sufficiently concrete proposals. A prime example is the hint that something similar to the "fair use" exception in the US should operate in the UK: "there is concern that, at present, the UK exceptions are too narrow and that this is stunting new creators from producing work and generating new value".[35] This argument, however, is nothing new, as will be seen in the next section.

The Review discussed "fair use" in context of its recommendation of an exception for "transformative use", i.e. to enable creators to rework material for a new purpose or with a new meaning.[36] For instance, the use of music for sampling comes under this exception under US law, but is an infringement under English law. Unfortunately, the Review stopped short of more extensive proposals in the "fair use"/ "fair dealing" arena. Although the Gowers Review advised an extension to the "fair dealing" exception for copying for research and private study to encompass all forms of content, notably sound recordings, films and broadcasts, it was unclear as to the nature of the "appropriate scope and form"[37] for any amended exception.

Another controversial area which was not adequately addressed was that of peer-to-peer (P2P) file sharing. P2P is defined as the sharing and delivery of files among groups of

[32] Pinsent Masons, "Gowers Reckons Intellectual Property is Doing OK", OUT-LAW News, 7 November 2006, at <http://www.out-law.com/page-7558> (last accessed 28 February 2009).
[33] Gowers Review, paras. 4.89-4.90.
[34] UK IPO, "Taking Forward", *supra* note 20, para. 195.
[35] Gowers Review, para. 4.68.
[36] *Ibid*, para. 4.85.
[37] UK IPO, "Taking Forward", *supra* note 20, para. 139.

people logged on to a file sharing network.[38] Typically, individuals download files, such as music tracks, with internet service providers (ISPs) as the intermediaries between the user and his personal computer. The entertainment industry, in particular the Recording Industry Association of America, has repeatedly sought a crackdown on individual infringers to discourage people from transferring huge quantities of files, but so far this has not proven an effective deterrent. On the contrary, the number of P2P users has grown by leaps and bounds.

The Review also referred to a possible offence of "secondary infringement", proposed by some copyright owners, in which those responsible for facilitating P2P file sharing—such as ISPs—could be held to violate copyright. This concept is analogous to the "contributory infringement" principle, which was used by the Supreme Court in *MGM v Grokster*[39] to conclude that Grokster, a software company, had infringed copyright by helping users illegally download files via a P2P file-sharing programme that it had created.

However, the Review admitted that practical difficulties with the introduction of a secondary infringement offence would arise. For instance, it was likely that ISPs would start limiting content in their networks if found to breach copyright. Oddly, the Review then stopped short of specific recommendations for reform, citing uncertainties in English law due to a lack of litigation in this area; rather, it only mentioned that "this may need to be reviewed sometime in the future".

Therefore, the gaps left by the Gowers Review are significant, and are a missed opportunity to address a number of substantive issues in copyright law, which must go further than mere tweaking.

Meanwhile, in the US, proponents of reform have argued that the Copyright Act of 1976, which was intended by its drafters to be flexible and adaptable to new technologies, is

[38] Gowers Review, Appendix A.
[39] 545 U.S. 913 (2005).

woefully inadequate to answer questions posed by the interaction between digital media and its consumers.[40] At the same time, however, it has been suggested that a meaningful overhaul of copyright reform is unlikely to happen in the near future[41], since copyright owners, who have the most to lose from the balance being "set right", are likely to resist any attempt to have the scales swung in a way that would jeopardise the rights they currently enjoy under the law.

"Fair dealing" v "fair use"

The Gowers Review observed that the "fair use" exception to copyright in the US is more flexible in its application than "fair dealing" under English law, which is restricted to particular acts mentioned in the Copyright Act 1988. In recent years, several commentators have advocated the introduction of a fair use defence. It is unsurprising, therefore, that the Gowers Review raised this possibility. A number of Commonwealth jurisdictions, such as Australia, have explicitly called for the implementation of fair use; the Australian Copyright Law Review Committee, for instance, recommended the adoption of a general fair use defence in 1998.[42] This section will analyse to what extent, if at all, provisions more closely resembling the US fair use doctrine should be introduced into English law. The question is whether such an implementation would assist in bringing copyright fully into the digital era.

The arguments in favour of the fair use defence have tended to rest on its flexibility relative to the certainty and rigidity of fair dealing in the UK. Sir Hugh Laddie has provided a colourful comparison of the two doctrines:

> As the US Supreme Court has said...this fair use defence "permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster". Compare that with our

[40] Samuelson, "Copyright Reform", *supra* note 25.
[41] *Ibid.*
[42] Copyright Law Review Committee (Australia), *Simplification of the Copyright Act 1968, Part 1: Exceptions to the Exclusive Right of Copyright Owners* (Canberra, 1998).

> legislation. Rigidity is the rule. It is as if every tiny exception to the grasp of the copyright monopoly has had to be fought hard for, prized out of the unwilling hand of the legislature and, once conceded, defined precisely and confined within high and immutable walls.[43]

One key consideration, however, is missing. This rationale fails to take into account how English judges would react to the introduction of a fair use defence. Robert Burrell has argued that unless the introduction of a fair use exception were accompanied by a transformation in judicial attitudes, it would be unlikely to do much to improve the current position.[44]

The fair dealing exception allows users to invoke the defence if they can demonstrate:

(i) fair dealing for the purposes of research or private study [sections 29(1) and (1C) Copyright Act 1988;

(ii) fair dealing for the purposes of criticism or review [section 30(1)]; or

(iii) fair dealing for the purpose of reporting current events [section 30(2)].

It is usually not difficult to prove that the dealing falls under the purposes permitted by the 1988 Act. Ascertaining the purpose for which the work was used, however, is more challenging. It is indicative of the imprecise nature of fair dealing that in *Hubbard v Vosper*[45] Lord Denning stated that fair dealing was "impossible to define". Giving guidance as to the factors that a court should take into account in an assessment of fair dealing, he went on to say:

> You must consider first the number and extent of the quotations...Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be a fair dealing. If they are used to convey the same

[43] Hugh Laddie, "Copyright: Over-strength", *supra* note X, at 258.
[44] Burrell, "Reining in Copyright Law", *supra* note X, at 365.
[45] [1972] 2 QB 84.

> information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. Other considerations may come to mind also. But...it must be a matter of impression.[46]

English law generally excludes commercial use from the fair dealing defence. Chadwick LJ stressed this point in the Court of Appeal decision of *Newspaper Licensing Agency v Marks & Spencer plc*[47]:

> A dealing by a person with a copyright work for his own commercial advantage—and to the actual or potential commercial disadvantage of the copyright owner—is not to be regarded as a "fair dealing" unless there is some overriding element of public advantage which justifies the subordination of the rights of the copyright owner.

US law, however, has no such limitation. Under fair use, there is no infringement if the court is satisfied that the use is fair[48], even if it is commercial. Google has argued that the scanning of books and the displaying of snippets via its Google Books project comes within the fair use defence.

17 U.S.C. § 107 (the US Copyright Act 1976) states that, notwithstanding other provisions of the law, use of a copyrighted work

> ... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —
>
> (1) the purpose and character of the use, including whether such use is of a

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[46] *Ibid.*
[47] [2000] 4 All ER 239, 257 (Chadwick LJ) (CA).
[48] Copyright Act 1976 (US), s107.

commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The challenges of the digital age make fair use an attractive option. US law appears more flexible, as it does not contain an exhaustive list of exceptions. But appearances may be deceptive. Melissa deZwart argues that the step-by-step approach allows for little consideration of the "general question of fairness", which reduces the flexibility of the defence.[49] Nor will fair use accommodate technology any better than fair dealing in balancing the rights of owners and the concerns of end-users. Although deZwart refers to Australian law, one can extrapolate a relevant conclusion for English law, due to the similarities in fair dealing between English and Australian law.

Moreover, the decision in *Grokster* has generated more, not less, uncertainty in this area. In considering whether fair use would protect personal use, the Supreme Court acknowledged the need to balance the encouragement of technological innovation with benefits of copyright protection. The court examined the case of *Sony v Universal City Studios*[50], in which time shifting using a video recorder fell under "private copying" and the fair use defence. Nevertheless, the judges disagreed as to how the standard in *Sony* should be applied to a determination of infringement with respect to digital media. Although the court held that the 9th Circuit had misapplied *Sony* to the facts of *Grokster*,[51] it declined to provide further consideration of whether *Sony* could be extended to new technologies.

Because copyright law in this area is embryonic, it is unclear how the courts would apply

[49] Melissa de Zwart, "Fair Use? Fair Dealing?" at <http://ssrn.com/abstract=1069183> (last accessed 28 February 2009).
[50] 464 US 417, 104 S. Ct. 774 (1984).
[51] de Zwart, *supra* note 49.

the *Sony* standard in future cases. At present, the chinks in the armour of the fair use doctrine may be significant enough to deter other jurisdictions from adopting this defence.

Next steps and challenges to reform

It is said that the road to hell is paved with good intentions. The road to copyright reform is not quite a doomed path, but it is strewn with considerable stumbling blocks and the conflicting opinions—and good intentions—of commentators on either side of the copyright divide.

What is undeniable is that reform is long overdue. The ongoing debate between copyright owners and users must not be allowed to obscure any sound proposals for reform. As has been seen, however, what constitutes a workable solution—one that achieves an overhaul of copyright rather than merely being a quick-fix—is notoriously difficult to ascertain. Although it would be controversial, one measure that could possibly be implemented is a system of copyright registration in the UK, in order to avoid the current *laissez-faire* situation where rights automatically accrue.

Conclusion

Abolishing copyright altogether is not the solution. Only the "insanely inefficient" parts of copyright, such as its excessively long terms, legal uncertainty, and all-encompassing reach, should be eliminated. The justifications for copyright—that it rewards creators for the fruits of their labour and incentivises people to produce intellectual works—are generally sound, but must be modified in light of new issues presented by digital media.

In particular, the expectations of copyright owners should be managed, taking into account the rights of users, who face considerable uncertainty in determining whether or not their behaviour vis-à-vis computer programmes, downloads, and file transfers is legal. It remains to be seen how new technologies will influence the agenda for reform, as there

has not yet been a body of English case law in this area. Most importantly, reform must not be ignored. Otherwise, copyright law may well find itself in a Peter Pan scenario, never growing up to face the demands of the digital era.

(Word count: 4,971 including footnotes).