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SATURDAY, 1 DECEMBER 2012

Buying a book: How hard can it be?



Books as things no longer?*

The news this week that ebooks purchased from Barnes & Noble will self-destruct upon the expiry of the purchaser's credit card, again raises the question of what exactly is an e-thing, and what are we buying.

I've written before about the nature of virtual goods at law, and whether they constitute property or not. The issue here is related.

Buying a book

When purchasing a book (a tangible thing known at law as a chattel personal, a chose in possession) we think we purchase one thing: a book. In fact, we purchase two things. A book (paper, binding, ink) and a right to use intellectual property; that is, the story within the pages. The latter is a chose in action, an intangible thing.

The transfer of property in the physical book is absolute - once we have paid for it, no one can take away from us the book or the story it contains. Because of the physical embodiment of the story, there has never been the capacity for the copyright owner to take it away from us.

All that has now changed and it is important that we understand the different types of property exchanges that occur in the tangible and intangible (digital) arenas.

I assume, without having read the terms and conditions, that Barnes & Noble is selling a licence to access the story (the intellectual property, an intangible thing) for a limited time. That time is determined by the expiry date on the purchaser's credit card.

This is not a property right. It is a personal right under a contract, to use something for a determinate time. It is different from the implied right in perpetuity to use (read) the story contained in a physical book.

An e-book is not a book...

The problem is that we are still thinking in analogue terms - we call the product an e-book for example - but the seller is selling us a digital right, not property in a thing. It is the difference in expectations that is at the heart of the problem here.

To further compound the issue is the pricing structure. If for example the price of an e-book

ABOUT ME




Kate Galloway

I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education.

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is equivalent to that of a physical book, even if it is discounted, then this will engender an expectation of a more permanent right to the story; not a right that will disappear when your credit card runs out.

Regardless of the time frame for the use of the intellectual property, I still think that the buyer will only ever get a personal right to use, and not the property right to which we are accustomed in the analogue world i.e. not akin to the right in the physical book itself.

This leads to other questions of course - already people are discussing whether you can leave your digital assets in your will (I think not, as they are personal and not property rights) and whether you can lend or gift them (again, I think that this is in breach of the usual forms of the personal licence). One only has to look at the restrictions placed on an iTunes library to see the limits of what we are purchasing.

Does copyright support cultural exchange?

There are two ways to address this. The first is to understand just what it is that we are purchasing, and to demand a pricing structure that reflects the limited rights we buy. The second is to ask why intellectual property (copyright) gives such extensive control over works. Sharing, keeping, re-using are all essential to cultural dissemination and the spread of ideas. This is now able to be rigidly controlled because of property rights that are way beyond what could have been imagined when the law was developed.

We need to question what we want from copyright for creators, but also for our cultural heritage.

**Image from Farshitecture <http://farshitecture.wordpress.com/>*

Posted by Kate Galloway at 11:45

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Labels: copyright, digital, e-books, intellectual property, personal property, property

3 comments:



Mabel 1 December 2012 12:21

Kate - nice encapsulation of the issues! As I was reading through this, the broader picture of IP vs user's rights clash kept running through my mind and reminded me of the issues re pharmaceuticals - patent and the right to profit vs the right to health. As always, it seems, when it comes to conflicting rights, there is no easy answer.

In this case, Barnes and Noble could respond, if you don't like our terms and conditions and the nature of e-books, stick to the physical book.

Reply

Replies



Kate Galloway 1 December 2012 12:31

Thanks for your comment Mabel. I agree - there are a lot of issues we need to resolve concerning the philosophy behind intellectual property rights. TheB&N response is correct - it is surely a matter of managing expectations.

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Website design Brisbane 6 December 2012 22:04

Simply wanna say that this is very useful , Thanks for taking your time to write this.

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