



Interview with Mark Seeley

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KENNEALLY: In a media obsessed society such as ours, individual citizens and global businesses alike thrive on information. The digital environment largely satisfies this craving by providing access to online content in nearly unlimited quantity and often undetermined quality.

Welcome to Copyright Clearance Center's podcast series. I'm Christopher Kenneally for Beyond the Book. Our insatiable hunger for content naturally opposes any limits to access, whether they are technological or legal. Ever faster download speeds help to overcome the former, of course, yet legal challenges persist as copyright holders defend their rights. Is the conflict between technology and rights an absolute and inevitable one, or is there a middle path that allows for a pro-digital and pro-copyright world?

As the general counsel for Elsevier, the leading global publisher and analytic provider for the scientific research and health markets, Mark Seeley leads a global team of lawyers and others at the intersection of IP, technology, and collaboration. He is a frequent speaker on copyright and publishing ethics issues, and last week in London, he gave the closing keynote address on the future of copyright at the STM-sponsored Innovations Seminar. Mark Seeley, welcome to Copyright Clearance Center's Beyond the Book.

SEELEY: Thanks very much, Chris. And your question about whether there's an inherent conflict between digital and rights of course is kind of the ultimate question. It's kind of the final question. But in my perspective, it's really important for us to address this question of the conflict because so much out there in the world, whether it's about lobbying on copyright reform or discussions about rights and rights management, really involves that kind of area of conflict, and it's really important for us to address it.

KENNEALLY: Well, let's go into this. You are the right person to speak to about it. And I guess a place to start is around why we have these kinds of questions at all. So what is it about the digital and online environment that really does raise questions about copyright so pervasively and so persistently?



SEELEY: I think there's a lot of huge benefits and value that has been created for users and consumers and researchers by publishers and other information providers and other producers of content going online and going digital. We all know that in an online world, as you said, everything is accessible, everything is available. But in addition, we have the opportunity to really create new forms of value by enabling content to be not only indexed and searched and retrieved and therefore discoverable, but also by enabling content to be recombined, to be sorted, to be extracted, to be abstracted, to be annotated, to have additional information and links attached to it. So it's a huge opportunity for us to really offer a marked increase in value for consumers.

KENNEALLY: But the online world has changed things for media companies particularly because it has, in a way, put the media companies like Elsevier, the *New York Times*, or CBS News or any other that you can imagine right up against – in fact, smack right beside the providers of the information, the ISPs, essentially. And I'm thinking of Google, beyond that, some of the social media players like Facebook and Amazon, too, which provides technology services. So give us a rundown about that conflict and that tension there between those two sides.

SEELEY: So one of the positive things that I have seen develop over the past six months to a year is exactly this question about the quality of content. You mentioned a little bit about the fake news controversy, and I would like to think that as a community, as a culture, we are all thinking about the fact that high quality content that's vetted, that's edited, that's reviewed, that's part of a system that really values truth and correctness is important to support.

What I think the challenge that we all have is that people accept that and they believe in that, but then they sometimes fail to follow through. If you look at the pervasive availability of information and content that is on the web, you can understand why a technology or a telecommunications company wants to use that information. After all, the telecoms are just basically obtaining revenue by the volume of stuff that goes through their pipes. So they don't really have a strong preference for whether it's legal or illegal. They don't sort of care.

Technology, perhaps, is a bit of a different construct. They are interested in providing additional tools on top of some of this content or services, so they do value the fact that some of it is better than others. After all, even in a Google search result, there are some things which are higher in the search results than



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others. So there's some type of review system, in a sense, that's going on, whether it's done by an algorithm or whether it's done by a person.

So I think these are the issues that we have to work on. There is a perception of value that's out there, but we need to connect that perception of value with actual commercial considerations or perhaps legal considerations.

KENNEALLY: And it's tough for the content consumer, whether they're an individual consumer or professional client of Elsevier's – any of those, because they get trained by their provider, by Google, or by others to expect instant delivery and so forth. And really, to them, that's the issue. To see any kind of a roadblock represents an inconvenience and sometimes more than that. So they're naturally inclined, if you're going to take sides, to side with that provider of instant gratification than with anyone who says, wait a minute here, we need to vet things, we need to maybe pay for things. And so there's some tension there that the customer's right at the middle of.

SEELEY: And it's odd also because there is an increasing level of expectations. If you go back in the time machine just a little bit and you said to a researcher 10 or 15 years ago that we can provide you a lot of terrific results, it may take us a little time to organize it and then we have to vet it, so if you come back to your computer in 10 minutes' time, we'll have a terrific amount of search results for you – these days, that's completely unacceptable. So there's this huge push in terms of time and demand, and you can understand why people will want to take shortcuts. And after all, as a consumer, we understand that very well and we share some of those considerations.

KENNEALLY: So here at Elsevier particularly, but to an audience like the STM Conference audience, how are they responding to this? It has been a long road for everyone on the internet. The unexpected has happened almost on a regular basis. But are they beginning to understand the dilemma better, do you think, after 15 years now?

SEELEY: I think they are, and I do think often of the adage that's usually attributed to Charles Clark that the answer to the machine is in the machine. Now, that was in the context of the 1990s debate about some of the international copyright and digital copyright treaty issues then, but I think it is still a good consideration for us to have.



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I think that there are folks on the product side and technology side within publishing houses and other content producers that totally get and totally understand user demands for speed, convenience, universality of results – totally get that. So our job is to try to find ways of improving our results and what we're able to serve up technically and perhaps also by collaborating and working across industry through organizations like Crossref and the STM RA21 project to make those things happen more quickly.

KENNEALLY: When it comes to the media companies and the technology companies, whether it's in legislative battles or just online, providing information or providing information in certain fashion, there seems to be a conflict that some people think is inevitable, is inherent in the online environment. So what's your answer to that? Is this inevitable? Is there a way out? As I said in the intro, can we wind up being pro-digital and pro-copyright?

SEELEY: I think that the technology and telecoms industries have to really think about the question of what's referred to in Europe as a value gap, and what that basically means is a recognition that there is huge value in the curation and the discovery of important information, and that there's a bit of a gap in terms of how that is then turned in to a commercial model. And those players in the industry that are responsible and mature will think about these issues and will try to come up with good solutions. So what we do see is a beginning of some movement and some decisions by organizations like Google, for example, to be more responsible, to be more mature, to support, for example, journalism in the context of the news media issues.

KENNEALLY: So that's interesting, because I suppose long term, there's an interest in it for them, as well, but the short term is really what drives so many of those business – very short term, indeed. So with that having been said and with some recent battles in our memory of SOPA and PIPA and all the rest of this, and an ongoing effort around the world, in the US, in the EU, to reform copyright, what's the direction? Where do you expect things to be going in the next 18 months or so?

SEELEY: Well, it's almost inevitably a bad discussion for rights holders if there's a copyright reform or copyright revision issue on the agenda, because almost inevitably, the discussion is about exceptions to copyright and limitations to copyright, and there's a perception that somehow copyright is a too rich environment. Personally, I think this is incredibly ironic, because I think copyright is one area of intellectual property that has the most exceptions and limitations and qualifications already compared to patent law, for example.



But nonetheless, that is the kind of debate that's happening around the world. For example, around the world, there are lots of discussions about adoption of fair use principles, which comes largely from the US, that has a bit of an analog in fair dealing in the UK. Now, what exactly does that mean? Well, generally, what that means is greater exceptions or greater limitations and an erosion of copyright protection.

So we kind of start from a perspective of if there's discussion in a given jurisdiction about copyright revision, it's almost always negative. And what we try to do is to try to get the best that we can in that discussion and perhaps highlight the fact that there is real piracy out there, which is having an effect on rights holders, that there is an important value in high quality content, and that legislatures and actors such as some of the industries should do more and should recognize that.

KENNEALLY: Well, it's fascinating that the discussions around copyright reform are beginning to crest at the very moment when people have realized that the value of content is more important to them in their lives than ever in the past. You brought up fake news a couple of times. We've seen the impact of that around the world. People are concerned about fake science, as well. It's not just limited to reporting from Washington or Moscow or wherever.

So perhaps there's a way for these two sides to come together, because, as I say, the Googles and the others have an interest long term in providing the right kind of information. Otherwise, people will go to another search provider that does do that. Do you think there is a chance that the two can converge, can come together and have a mutual interest in providing the right kind of information at the right moment?

SEELEY: So I do think so. I have been observing the DSM, the digital single market discussions in Brussels with a lot of interest, and what I find in the discussion and in the various drafts is there are positives and negatives, of course, and there is recognition of the value gap proposition. There is recognition of the problem of digital piracy, while there's still probably too much, from my perspective, on exceptions and limitations.

So I do feel that the issues are being correctly recognized as complex, and where there is a need to really balance the interests and concerns of different stakeholder groups for all the right reasons. And I am guardedly optimistic – I'd like to be optimistic about that, but I have to say that I think that it's an area that's going to



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continue to be a struggle for us and that we're going to continue to have to pay a lot of attention to and really communicate a lot about the value that we see and that we think is so important in the content that we produce.

KENNEALLY: Absolutely. And finally, Mark Seeley, it's been the case for a long time now that technology and copyright have been running this kind of race with technology sort of jumping ahead and copyright law coming in behind it, and everything seemed to be in sync for at least a moment, and then it changes yet again. If there is anything inevitable, that's the part of it – the leaps that get made in technology require people like yourself to think the issues through and then to find out where copyright can exist with that technology. So there's your cautious optimism, I suppose. We're going to get there, but the problem is the pace of change has just accelerated tremendously.

SEELEY: I think that's right, although as I look around this industry and other content industries, I see a lot of innovation. I see a lot of people that really want to respond to those intense, pent-up, built-up consumer demand. So I think there is a real possibility there, and I think that we want to find ways of tapping into that energy and that capability.

KENNEALLY: Mark Seeley, general counsel for Elsevier, thanks for speaking with me on Beyond the Book.

SEELEY: Thanks, Chris. It was a great discussion.

KENNEALLY: Beyond the Book is produced by Copyright Clearance Center, a global leader in content management, discovery, and document delivery solutions. Through its relationships with those who use and create content, CCC and its subsidiaries RightsDirect and Ixxus drive market-based solutions that accelerate knowledge, power publishing, and advance copyright. Beyond the Book co-producer and recording engineer is Jeremy Brieske of Burst Marketing. I'm Christopher Kenneally. Join us again soon on Beyond the Book.

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