Copyright Policy

Dangerous copyright proposals hit medical community hard

If one were to ask the average physician to name imminent policy reforms relevant to the medical profession, copyright law is not among those topics most likely to leap to mind. This may soon change: the Canadian government is contemplating dramatic copyright reforms that could have a detrimental impact on medical research and education. If the medical community fails to speak up on these issues, it will do so at its own peril.

There is a growing sense among some medical schools that the balance is skewed heavily to the advantage of rights holders. One such example concerns Myriad Genetics, a Utah-based company that holds patents on diagnostic tests and treatments involving breast cancer genes. The company has entered into licences with medical schools, universities and hospitals, giving them the right to use their tests in research on breast cancer. These licences have faced growing criticism, however, as medical school researchers are forced to abandon their work because of licensing terms that exclude clinical research by restricting research to a laboratory setting.

Copyright law is slated to undergo changes in Canada that will provide rights holders with similar strangleholds over their content, to the detriment of the medical research community. One of the most troubling copyright proposals concerns technological protection measures (TPMs), which are used by owners of online databases and other digital content to establish a layer of technical protection that prevents users from making unauthorized copies of their work. For example, popular medical texts designed for handheld electronic devices such as the Palm contain TPMs that restrict the use of the electronic books in ways not found in the paper-based versions of the same work.

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release an important study on encryption. When he publicly disclosed his plans, he was served with a warning that he faced potential legal liability under the DMCA if he publicly disclosed his findings. Similarly, in 2001, a Russian software programmer was arrested and spent the summer in a California jail after highlighting encryption weaknesses in an Adobe software product at a public conference. These cases sent a wave of fear through the research community, not only leading foreign researchers to avoid traveling to the United States, but also leading cyber-security czar Richard Clarke to acknowledge that “a lot of people didn’t realize that [the DMCA] would have this potential chilling effect on vulnerability research.” For researchers of all specialties, the restrictive potential of DMCA-style legislation is a cause for concern.

The proposals would also harm the use of the Internet as an educational tool within Canada’s medical schools. The federal government’s copyright proposals contemplate reversing the decade-old policy of avoiding Internet licensing by creating a licensing system for Internet content that would create new restrictions to accessing online content. Although the proposals began with the laudable goal of increasing access while providing creators with appropriate compensation, by proposing a very narrow definition of what can be accessed without compensation, the plan would effectively force millions of Canadian students to pay for access to content that is otherwise publicly available.

Rather than adopting an approach that facilitates the use of the Internet, the government is moving toward a model that will force schools to pay to use Internet materials — contrary to the expectations of many creators. Canadian medical schools, which are struggling with 20th-century budgets to provide a 21st-century education, should call on the federal government to reject the proposal and instead adopt a balanced copyright approach that encourages the use of the Internet in Canadian schools.

One possibility would be the establishment of a limited educational-user right to publicly available work on the Internet. In keeping with long-standing and widely accepted practices on the Internet, publicly available work would include materials that are neither technologically nor password protected — i.e., information that the author or publisher would want to make widely available, such as the CMAJ archive.

Although the US Medical Library Association has been an active participant in that country’s copyright reform process, the Canadian medical community has thus far been largely silent on Canadian copyright reform. Given the direct impact of these troubling proposals, it can no longer remain on the sidelines. The medical community has the opportunity to emerge as a positive force for change by actively supporting a uniquely Canadian vision of copyright that supports both creator compensation and facilitates, rather than hinders, research and education.

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