

# *Why Angels No Longer Fear - the Use of Multimedia in Law Libraries*

**Jennifer Douglas<sup>1</sup>**

Senior Associate at Mallesons Stephen Jaques specialising in communications and intellectual property law

---

## *Introduction*

My first experience with legal research was nearly ten years ago. I was writing my undergraduate legal thesis and discovered that undertaking the initial task of reference searching was a time consuming, laborious and often mind numbing task. Fingering page by page through volumes of the *Australian Government Information Service* and other similar indexes certainly tested my patience to the limit. Indeed, I was beginning to believe that the title of my thesis "Where angels fear to tread" more accurately described the task of reference searching I had to undertake

Needless to say, there has been a dramatic change in the indexing and information provision systems of law libraries over the past ten years. The electronic storage of databases, the ease with which those databases may be updated and the wide variety of ways in which they may be used and disseminated has radically improved the task of legal research

Multimedia now has the potential to revolutionise the provision of information and other services in law libraries throughout Australia, by utilising interactivity and combining exciting audio and video elements in what have traditionally been text based services.

I have been asked today to consider the issues raised by multimedia for you as legal librarians. I would specifically like to do three things. Firstly, I will outline what is meant by the term multimedia, given that many of you are no doubt confused as to its meaning, having seen the term used in relation to a variety of seemingly disparate technologies. I would then like to highlight the current and potential uses of multimedia in law libraries and identify the key copyright issues raised by multimedia.

---

<sup>1</sup>This paper was originally presented at the Inaugural Law Librarians' Symposium, Melbourne, October 1996

As part of her Masters degree, Jennifer carried out a detailed analysis of, and wrote a major thesis on the copyright protection available to multimedia products and avenues for reform.

## ***What is Multimedia?***

### **Key features of multimedia**

Each multimedia product has the following key features;

- (i) it is digitised;
- (ii) it has multiple inputs; and
- (iii) it is interactive.

Based on the above characteristics, "multimedia" can be more precisely defined as "new computer based products which incorporate two or more forms of media in a presentation with which a user may interact". Considering each of these features in turn

### **Digitisation**

It was really the development of digital technologies over the past ten years which made multimedia products possible. Prior to that time, video and audio material was unsuitable for use on computers, limiting the content of any computer presentation. With improvements in digital technology, such material may now be digitised and form part of a computer program, making multimedia products possible.

### **Multiple inputs**

A multimedia product incorporates two or more forms of media in its end presentation. "Multimedia" per se, i.e. the mixing together of more than one medium, is nothing new. The combination of different forms of media, such as sound, graphics and text, is common in films, sound recordings and television broadcasts. However, unlike previous forms of media, multimedia may incorporate every type of media ever developed and in combinations not previously possible. Inputs may include not only text, sound (in the form of music or speech), and still and moving images, but also film and video excerpts.

In addition, material previously unsuitable for use on computers, such as video and audio material, may now form part of, and be simultaneously combined in a computer presentation. The development of computer techniques such as computer animation and morphing also allows the inclusion of exciting new images in a presentation.

Multimedia therefore has the potential to provide presentations never experienced before through the use of a computer.

### **Interactivity**

The most valuable and striking feature of multimedia is its "interactivity". Designed to respond to the will of its user, either by clicking on an icon with a mouse, by pressing a button on a touch screen, or by hitting a key on a key board, a multimedia presentation usually requires that there be some level of communication between the user and the presentation, i.e. interactivity.

The level of interaction required by multimedia varies widely from product to product

At its simplest, a multimedia product may require a user to select a linear sequence from a number of pre-defined options arranged in a non-linear fashion. The user may then be required to select from a further set of options. The most interactive multimedia product will require a user to actively participate in every step of the presentation, creating his or her own experience.

Other forms of media do allow some degree of interactivity. However, other forms of media are not designed to be used in a non-linear, interactive fashion, but are designed to be enjoyed as linear experiences. The level of interaction possible with other forms of media is therefore low, and provides little enjoyment or stimulation for the user.

### **Production of multimedia**

It is also worthwhile to consider briefly how multimedia is created.

Two key steps are involved in the production stage. First, all the media elements to be incorporated in the product, such as the music, graphics, video clips, film excerpts and text, must be produced or collected.

After production or collection of the proposed elements, they must be combined with a computer program in an interactive framework, using what are known as authoring tools or a traditional programming language.

A final product exists as digitised material consisting of a computer program incorporating the instructions as to how the presentation should proceed, i.e. its sequence and structure, and digitised elements.

### **Delivery platforms**

Multimedia products may be distributed to consumers in a wide variety of ways due to the digital nature of multimedia products and the many new delivery platforms which have recently developed (such as narrowband and broadband networks). It is indeed the form of **delivery** of a product to consumers rather than the nature of a product itself which is the source of great variation between products and perhaps the cause for confusion as to the meaning of multimedia.

Delivery platforms may be loosely divided into those for individual private use (such as CD-ROM), video game cartridges and virtual reality systems) and those for wider use (such as online systems). Products therefore vary from video games on CD-ROM to online shopping services and information kiosks.

The most common method of currently distributing multimedia products to consumers is on CD-ROM discs. The discs are played on personal computers with colour screens, sound cards and hard disk and CD-ROM drives.

It is anticipated that online services using narrowband, and eventually broadband networks, will gradually increase and overtake CD-ROM as the dominant delivery platform of multimedia. A digital media service is used in a multimedia network to store, process and transfer multimedia presentations to be accessed on a network. PC's, televisions and video game machines may all be suitable user interfaces for a multimedia network. However, current technological limitations and the prohibitive costs of establishing such networks will prevent such platforms becoming the mainstream delivery platforms in the near future.

### ***Applications of Multimedia in Law Libraries***

The question arises how multimedia will be used in law libraries and how its use will raise novel issues for each of you as law librarians?

### ***Current uses of multimedia***

There are currently very few examples of multimedia products used in law libraries throughout Australia. Whilst there is a wide array of legal resource material available on CD-ROM or across networks, very few of these products take the form of multimedia. For example, the following CD-ROM and online services are examples of electronic services currently used by law libraries:

#### **CD-ROMs**

- State and Federal legislation services;
- State and Federal law reports;
- Family, taxation and company and business law reporters;
- *The Australian Digest* and *The Laws of Australia*;
- Words and phrases judicially considered;
- Indexes to Australian and international periodicals and journals; and
- Encyclopaedias

#### **Additional Online Services**

- Newspaper and newswire services;
- Credit reports and other financial information;
- Industrial relations information; and
- Catalogue to Australian libraries.

Now consider which of these services may be regarded as a multimedia service. Of all of these services, my understanding is that only the *Grolier Multimedia Encyclopaedia* could be properly described as a multimedia product. Each of the other services is fundamentally text based and does not incorporate multiple forms

of media such as audio or video material. In addition, each only exhibits a limited degree of interactivity.

In contrast, the *Grolier Multimedia Encyclopaedia* incorporates many forms of media, including video and audio material, and exhibits an advanced degree of interactivity.

### ***Future uses of multimedia***

However, the use of multimedia in law libraries can be expected to dramatically increase over the next few years, as the full potential of multimedia is realised. Indeed, it is more than likely that you as legal librarians will be involved in not only the **use** of new multimedia products, but also the **creation** of such products for use by your clients.

The key areas in which multimedia is likely to be used in law libraries is in developing the following types of tools:

#### **Information Tools**

- multimedia catalogues and digests;
- multimedia packages concerning specific areas of the law and of legal practice; internal information services; and
- multimedia packages concerning case reports and legislation.

#### **Education Tools**

- multimedia training packages concerning use of library resources and facilities; and
- multimedia training packages targeting training of students or junior lawyers in areas of legal practice.

#### **Business Tools**

- multimedia packages for promotion of law libraries; and
- multimedia packages for the business development of library clients (such as a university or law firm).

Each of these tools would be noticeably different from current products as they would incorporate video and audio elements and would allow a high degree of interactivity. For example, the standard multimedia case reporter may not only provide a report of all judgments, but also details of the parties to proceedings, (such as photographs and other available information) and a video of the court proceeding.

Multimedia will be a particularly useful educational and information tool for individuals or groups in universities and the workplace, by maximising and improving the ability of individuals to locate information and learn. This is achieved through the use of interactivity, which enables students to proceed at their own pace and encourages and handles curiosity. This is possible through the use of hyperlinks which connect topics and enable users to explore any related topic.

In addition, the use of multiple inputs and entertainment enables illustration and heightens understanding, interest and retention. The use of multimedia as an educational or information tool also has the added advantage of enabling effective information dissemination and learning without the assistance of a librarian or teacher.

The additional use of multimedia as a business development tool will no doubt also become increasingly popular as offering an easy means of providing illustrative and up to date information about a firm, institution or university, as well as a library's services. As such, multimedia will clearly provide a dynamic addition to usual marketing tools.

Multimedia clearly opens up many new and exciting possibilities in law libraries. Given the significant role multimedia will play in law libraries in the future, it is obviously important for you as law librarians to have at least a broad understanding of the copyright issues it raises, although I suspect you will have no shortage of free legal advice in relation to these issues if and when they arise.

### ***Copyright Implications of Multimedia***

#### **General copyright regime**

You will perhaps find it surprising that the copyright issues raised by multimedia are fundamentally no different from those already confronted in libraries in their everyday operations. They are concerned with any use or creation of copyright materials, particularly where the resources in question are to be stored and used electronically. However, in the case of multimedia, the number and complexity of those issues is heightened given:

- (i) the enormous number, and different types of copyright materials included in services; and
- (ii) the diverse ways in which services may be used or distributed.

It is perhaps useful to explain the nature of copyright protection available to multimedia products under the existing *Copyright Act*.

At present each media element of a multimedia product may be subject to separate copyright protection. For example, in the *Grolier Encyclopaedia*, the text may be protected as a literary work, the graphics may be protected as artistic works and the music may be protected as a musical work. The person who owns such copyright is generally the person who created the specific components of the product in question.

Notably, there is currently no separate copyright protection available to multimedia products under the *Copyright Act*. Notwithstanding this, most multimedia developers ensure that the artists, authors and other contributors to their products specifically assign their copyright in the components of products to the developer so that the developer has complete rights to his or her products.

So how will you as librarians be affected by this regime?

I would first like to focus on the implications arising out of your use of multimedia products created by third parties, given that this is likely to be the key relevance of multimedia to you in the near future.

### ***Copyright implications - libraries as users of multimedia***

As users of multimedia products, it is critical that you ensure you have the right to use products in the desired manner. In this regard, it is not sufficient to simply presume that because you have a licence from the product owner, that that will be sufficient for all intended uses of the product. What is critical is that the terms of the licence clearly extend to the intended use of the product.

In order to ensure this, you should be aware of the types of rights which are generally available to copyright owners and which may or may not form part of a licence. Generally, copyright owners of a work are granted the exclusive right to:

- (i) reproduce or copy the work
- (ii) publish the work;
- (iii) perform the work in public;
- (iv) broadcast the work;
- (v) cause the work to be transmitted to subscribers to a diffusion service;
- (vi) make an adaptation of the work; and
- (vii) rent the work for commercial purposes.

The number and type of rights available vary depending upon the type of copyright material in question.

At the very least, you should ensure that you obtain the rights to perform those activities listed above which are relevant to the proposed use of the multimedia product in question.

For example, you may have recently purchased the latest version of *Encyclopaedia Britannica* and you may wish to provide access to the encyclopaedia across your internal network of computers. Reproduction of the product and the copyright therein would occur in sending the product over the internal network. In addition to a simple licence to use the encyclopaedia, you would therefore require the right to reproduce or copy the work for the purposes of transmitting the work across the internal network. Furthermore, if the encyclopaedia is to be made available online to persons external to your institution, firm or company, it is possible that a further licence may be required to transmit the product to subscribers to the service.

### Copyright implications - libraries as producers of multimedia

If a law library produces a multimedia product such as a user training package or a news and information service, one further issue arises.

In particular, you must ensure that you have the right to include the proposed content in your product, as well as to use the content in the proposed manner. This content will generally be subject to copyright protection.

If you already own the content, or create the content internally using employees, this will generally not be a problem. However, if third party content is to be used in a product, the requisite licences to include the content in the product must be obtained. If this is the case, you would be well advised to undertake the following steps when using third party content:

- (i) identify the third party content, the subject of copyright and the owner of that copyright;
- (ii) prioritise that content to ensure the availability of critical elements of the proposed product prior to commencing production; and
- (iii) obtain a suitable licence from the copyright owner of that content to incorporate the content in the product **and** to use that content in the proposed manner.

As discussed earlier, this last step is not simply a matter of ensuring a licence is in place. The terms of licences obtained must clearly extend to the intended use of the product. This is obviously a far more onerous exercise when you are creating multimedia as you will need to deal with many different copyright owners, rather than just the owner of a multimedia product.

Whilst it is preferable to obtain the right to perform each of the acts within the control of a copyright owner (if applicable) in relation to content to be used in a multimedia product, this may not be possible or appropriate. At a minimum, it is critical that you obtain the rights to perform those activities which are relevant for the proposed use of the multimedia product in question.

#### *Example*

Perhaps the best way to illustrate this is with another example of the possible rights required by a law librarian to create and use a multimedia product - say a training video on how to use the *Australian Digest*. You, as the librarian, may wish to incorporate the following elements in the video.

- (i) a script and pictures of the *Australian Digest* produced by its publisher;
- (ii) a cartoon lawyer produced by an animation house; and
- (iii) a sample of the song "I'm too sexy".

You may wish to show the video to first year law students or articled clerks, as well as make it available across your internal network.

Prior to production and distribution of such a product you would clearly require the right to:

- Reproduce each of the above elements.  
The mere digital storage of any of these elements on a disk or on a computer would generally constitute an act of reproduction and would constitute an infringement of the copyright owner's rights if done without permission. Reproduction of the elements would also occur in sending the product online to users.
- Perform the work in public.

This right would be required to display the product to a group of students or junior lawyers, as such display would be likely to constitute a performance of the work in public, which is a right exclusively limited to the owner of copyright.

The right to perform these acts must also clearly extend to the place in which the product will be accessed or distributed

### ***Defences available to law libraries***

In certain instances, the use of copyright material will be permitted despite the rights of a copyright owner, thus avoiding the need to obtain the permission of the relevant product or copyright owners. They include:

- (i) where there is only a reproduction of an insubstantial part of a work;
- (ii) where the reproduction or other use of material in question is a "fair dealing" for the purposes of research and study, the reporting of news or the giving of professional advice by a legal practitioner or a patent attorney;
- (iii) where a statutory licence has been granted to an educational institution for the multiple copying of copyright works for educational purposes.

The "fair dealing" and statutory licence exemptions are the defences most likely to be available to law libraries. However, as shown below, these defences are quite limited and would not be likely to be available in most instances where you, as librarians, would be using multimedia products or incorporating copyright material into multimedia products yourselves

### **Fair dealing defences**

As noted above, there may be no infringement of copyright if the reproduction or use of copyright material in question is considered to be a fair dealing with the material for the purposes of research and study. However, reproduction of material for the purposes of research and study will only be permitted on this basis where the person carrying out the copying does so for his or her own research and study. Given that librarians usually assist students undertaking research, rather than carrying out such research themselves, this defence will generally not be available to librarians in any use of multimedia products or copyright material for inclusion in multimedia products. This will be the case even in relation to the use of

material for inclusion in educational multimedia packages developed by libraries, given that the library or librarian will not be undertaking the study for which the package is designed, but rather the students using the multimedia packages

The only exception to this is that a non-profit law library may copy certain materials on behalf of a person requiring the material for the purpose of research and study, if the person furnishes a request and declaration concerning the material to the library in the form prescribed in the *Copyright Act*. A library may also make copies of materials on behalf of another library receiving and acting upon such a request.

You should also be aware that if research and study is carried out by a private organisation (such as a law firm), it is arguable that the fair dealing defence will not be available in respect of any copying carried out for the purpose of research and study by that organisation. The Copyright Agency Ltd currently adopts this position.

The fair dealing defence available in relation to the use of material for the purposes of the giving of professional advice by a legal practitioner or a patent attorney, is also narrowly construed, and is arguably limited to copying or use by the person actually giving the advice in question. It follows that this defence would only be available in respect of copying by law librarians in a limited number of cases

Finally, the fair dealing defence available in relation to the use of a work for the purposes of reporting news is generally limited to the reporting of news in a newspaper, magazine or similar periodical (and, in this case, a sufficient acknowledgement must be made) or by means of broadcasting, transmission to subscribers to a diffusion service or in a film. It follows that this defence would also have very limited application in law libraries. For example, the internal transmission of news updates by law libraries across their internal networks would not be likely to be caught by this defence.

Even if the requisite purpose can be established in respect of any of these fair dealing defences, it is important to note that the relevant dealing must still be "fair". Factors to be taken into account when determining whether a dealing with a work is fair include:

- (i) the purpose and character of the dealing;
- (ii) the nature of the work;
- (iii) the possibility of obtaining the work within a reasonable time at an ordinary commercial price;
- (iv) the effect of the dealing upon the potential market for, or value of, the work; and
- (v) in a case where only part of the work is copied, the amount and substantiality of the part copied in relation to the whole work

In certain circumstances, it is not necessary to show that the use of the material in question is a fair dealing. In this regard, there is also a general exemption from infringement of copyright which may be available to law libraries, which relates to certain acts done for the purposes of a judicial proceeding, or for the reporting of a judicial proceeding. In addition, a single copy of an Act of Parliament or judgment may be made without infringing copyright under the *Copyright Act*.

#### **Statutory schemes**

There are also provisions in the *Copyright Act* which specifically permit educational institutions to copy copyright material in certain circumstances for the purposes of education.

In particular, educational institutions are granted a statutory licence to make copies of certain literary and other works for the educational purpose of the institution. In order to obtain the benefit of this licence, the relevant educational institution must comply with the provisions in the *Copyright Act* concerning record keeping and the payment of remuneration in respect of that copying. This statutory licence scheme would appear to have limited application to the use of multimedia products and the creation and/or use of copyright material used in a multimedia product, as it only protects material used for "educational" purposes (which is construed narrowly) and has not been drafted with works such as multimedia in mind. In addition, the statutory scheme is only available to educational institutions (such as university law libraries) and does not extend to private law libraries.

There are also provisions in the *Copyright Act* which permit the multiple copying of insubstantial portions of works by educational institutions without any payment to the relevant copyright owners. However, once again, these provisions are only available to public law libraries in educational institutions and have very limited application.

What one can and cannot do with content in a multimedia product is not always clear and is highly dependent on the nature of the content and the uses to which the product will be put. I therefore suggest that anyone involved in the production and distribution of multimedia obtain legal advice, prior to embarking upon any production or distribution, to ensure that any third party rights will not be infringed by the proposed action. Librarians using multimedia products or third party material to develop multimedia products should generally assume that they need to obtain all requisite licences from copyright owners, unless a fair dealing defence or statutory licensing scheme clearly applies.

#### ***Copyright implications - libraries as owners of multimedia***

##### **Subsistence of copyright in multimedia**

A further issue arises if libraries are creating multimedia. As mentioned earlier, multimedia is not the subject of separate copyright protection under the *Copyright Act*. Accordingly, if a library producing multimedia wishes to obtain clear legal rights in a product as an entirety, it must be able to characterise a product under an existing category of copyright protection.

In this regard, it may be possible to characterise a multimedia product as one of the following under the *Copyright Act*:

- a computer game;
- a compilation;
- a cinematographic film; or
- a dramatic work

However, it is unlikely that any one of these categories will apply universally, if at all, to multimedia products, due to the definition of those terms under the *Copyright Act* and the way they have been, or are likely to be interpreted.

#### **Ownership of copyright**

Even if copyright subsists in a multimedia product under one of these categories, the library responsible for the development of the product is unlikely to be the owner of the copyright in the product, unless the library has obtained an assignment of all copyright in the underlying components of the product, or if the product is produced entirely by employees whose employment agreements do not negate the rights of the library.

#### **Exclusive rights**

Even if copyright subsists in a multimedia product as an entirety under one of the above categories and the library producing the product is the owner of that copyright, the exclusive rights provided to the library under the *Copyright Act* would fall well short of affording it with adequate protection against acts of copying and dissemination of concern.

For example, if a multimedia product is considered to be a film, the library would only have the right to prevent piracy and could not prevent recreation of the product by the creation of new images and sound. If a product is considered to be a computer program, reproduction of the "look and feel" of the product would arguably not constitute a reproduction of the computer program itself and thus would be beyond the control of the library. If a multimedia product is sent to consumers over narrowband or broadband networks without the permission of the library then the library may be unable to prevent such dissemination if the product is sent free of charge or is part of a two-way communication.

These gaps arise primarily because the rights provided to copyright owners under the *Copyright Act* are specifically suited to the forms of media contemplated under the *Copyright Act*, when drafted prior to 1968, and the means of copying and dissemination available at that time.

It follows that if you are producing multimedia products, it is important to remember that there is no separate copyright protection clearly available to multimedia products. It is critical that you therefore ensure that all persons who create material for use in a product, such as authors, artists, animators or book

companies either assign all rights in their contribution to you, or if this is not possible, licence or assign to you the maximum rights possible. Rights obtained should include the right to use the product as proposed and to take action against infringers of the product to ensure that, if necessary, you are in a position to quickly and effectively prosecute persons infringing your rights in the product you have created.

You should also ensure that if the opportunity arises to licence the products you have created, you strictly limit the rights of licensees to uses of the product specifically contemplated and no more, unless an appropriate fee is negotiated for future uses. You should be aware that it may be difficult to stop certain uses of your products once on the market.

### ***Conclusion***

In conclusion, multimedia clearly opens up many new and exciting possibilities. Multimedia clearly challenges the traditional barriers to our ability to gather, process, use and recall information, creating new limits to our capabilities. The cultural significance of multimedia in this context is well summarised in *Creative Nation* in which it was stated that multimedia "can provide us with an important new form of cultural expression. It will also provide new ways of accessing the storehouse of our intellectual and creative inheritance."

Libraries, and in particular law libraries, stand to benefit significantly from the introduction of multimedia, particularly given the role of libraries as information and service providers. Whilst the copyright implications of multimedia are significant and need to be carefully taken into account in any new multimedia venture embarked upon by you as librarians, it should not stop you seriously considering uses of this new technology, which will clearly add a new dimension to legal library services.

It has been said that multimedia will revolutionise the way we educate, entertain, conduct business and indeed live our daily lives. The impact that multimedia will have on law libraries can certainly be this significant.