

Wilson, C. “*Copyright on the Web: Looking for a Snap Answer to a Fundamental Conflict.*”

The copyright proprietor’s right to copy is legally (as reflected etymologically: ‘copy’ ‘right’) central to copyright law. Legal commentators were quick to, and continue to, recognise that there is an intrinsic conflict between this central legal basis of copyright law and the everyday and ordinary use of copyright works in a digital format, such as downloading and sharing of digital files (which, technically, involves copying and thus will constitute copyright infringement in the absence of prior authorisation by the copyright proprietor).

To date, the legal solutions to this intrinsic conflict in practice have been two-tier: namely, certain ordinary use of copyright works in a digital format has been ‘allowed’ by:

- (i) Copyright proprietors *via* contract law on an individual transactional basis (e.g. iTunes and [Creative Commons](#)), and;
- (ii) By national legislatures making selective reform of national copyright laws (e.g. s.50A and s.56 Copyright Designs and Patents Act 1988 (concerning back-up copies of computer programs and electronic copies of copyright works, respectively)).

This raises issues relating to free access to works, and whilst practical and economic solutions (supported by contract law) are being sought for this (e.g. [Spotify](#) for music and [data.gov.uk](#) for government data), it is the analysis and examples of the *legal* solutions and literature on the intrinsic conflict that will be the focus of this paper, with reference to the law of England and Wales. It is submitted in this paper that, to date, these legal ‘solutions’ are piecemeal, laborious, reactionary and in the context of the web and changing cultural norms, insufficient.

Would it be practical, or desirable, not to have copyright law at all? Or, is there a more elegant solution to this intrinsic conflict? Surprisingly there may be: *Graves’ Case* (1869) LR 4 QB 715 is an old English case concerning the copyright challenges of (analogue) photography, but it does provide an example of a principled legal solution to this intrinsic conflict: a solution that may better balance legal copyright norms, cultural expectations and norms, and the free flow of works. It is this legal solution that will be explored and considered in a general web context in this paper. Consideration of the *Graves* solution will also be briefly placed in the (less helpful) context of modern Anglo-American copyright law on photography on the web (e.g. *Antiquesportfolio.com v Rodney Fitch & Co. Ltd* [2001] F.S.R. 23 and *Bridgeman Art Gallery v. Corel Corp.*, 36F. Supp. 2d 191 (S.D.N.Y. 1999)).

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