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### Copyright Problems and Access Control in the Digital Environment

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NOTE: The information contained in this presentation is out of date and does not represent current community practice, nor should it be construed as legal advice.

# Copyright Problems and Access Control in the Digital Environment

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### Directions:

- Set arrow at correct date
- Read information in windows
- Mouse-over asterisks [\*] for clarifying information

# Is it Protected by Copyright?

For works first published in the U.S.A.\*

**Maybe\*** Permission Needed?

**Copyright Status/Term** Protected through 2047 or longer\*

Unpublished Works  
(date of creation)

## Date of First Publication

### Before 1923

#### Between 1923-1977

If published without © notice

#### Between 1923-1963

If published with © notice, but not renewed after 28 years

#### Between 1923-1963

If published with © notice & renewed after 28 years

#### Between 1964-1977

If published with © notice

#### Between 1979-January 1, 2003

Created (unpublished) before 1979, but published before January 1, 2003

#### Between 1978-March 1, 1989

If published without © notice & without subsequent registration

#### Between 1978-March 1, 1989

If published without © notice but renewed; or published with © notice

#### After March 1, 1989

Published with or without © notice

#### Published after 2002

Created before 1979 and author died more than 70 years ago

### Author living or died in the last 70 years

### Author died more than 70 years ago



# Copyright Dilemma 1

Q: We have a book from 1935. It has a copyright notice ©, but it's currently out of print. Can we digitize it?

A: Maybe.

# Copyright Dilemma 1

- Works published in the US between 1923 and 1963 were protected by copyright if they included a copyright notice. The copyright must have been renewed within 28 years to continue this protection.

# Copyright Dilemma 1

- Options:
- Research the renewal status of the work.
  - [Stanford Copyright Renewal Database](#)

If the work was not renewed, it is in the public domain.

If the work was renewed, you can attempt to contact the owner.

# Copyright Dilemma 1

- Orphaned works – copyrighted works for which it is difficult or impossible to locate the copyright holder.
- Current orphaned works legislation would limit remediation to copyright holders for use of their works, but is opposed by visual artists because the visual works registry database.

# Copyright Dilemma 2

Q: A recently acquired collection of personal papers contains a professional photograph from 1890. We have permission to digitized the papers – can we scan the photo too?

A: Maybe.



# Copyright Dilemma 2

- Copyright can only be transferred by the actual copyright owner, so the photograph is probably not part of the agreement.
- If the photograph is unpublished, the copyright lasts until 70 years after the creator's death.

# Copyright Dilemma 2

- Options:
  - Attempt to find a death date for the photographer.
  - If you are unable to determine the date of death, it is usually reasonable to assume that the work is in the public domain after 120 years.

# Copyright Dilemma 3

Q: We'd like to digitized a run of newspapers from the 1880s through the 1940s. We have permission from the publisher – is that enough?

A: Maybe.

# Copyright Dilemma 3

Work done by newspaper staffers is work for hire, and therefore copyrighted by the publisher.

Work from freelance writers and photographers or syndicated work may be copyrighted by others.

# Copyright Dilemma 3

Options:

Ask the publisher about previous policies – did they hire freelancers, and did they use a standard agreement for such work?

Check the papers closely for copyright notices from individual authors.

Contact syndicating agencies for additional permission.

# Copyright Dilemma 4

Q: We're starting a project digitize or theses and dissertations. Are pre-1923 works fair game? How about pre-1989 work w/o copyright registration?

A: Maybe.

# Copyright Dilemma 4

- If theses and dissertations are available for lending to the public, they might technically be considered published.
- However, most schools treat these works as unpublished and seek permission from authors.
- Distribution by Proquest is generally considered a form of publication.

# Copyright Dilemma 4

- Options:
  - Digitize while seeking permission – release those for which you get permission, embargo the rest.
  - Use alumni groups to get the word out.
  - Limiting access to the library or campus community is a safe option that approximates browsing and lending of paper copies.



# Copyright Dilemma 5

Q: We make back-up copies of CDs for preservation, but we don't distribute them. This is allowed under the Section 108 Library exceptions, right?

A: Maybe.

# Copyright Dilemma 5

- Section 108 allows libraries and archives to make up to 3 copies of a work for preservation purposes.
- However, the DMCA of 1998 prohibits the circumvention of access control measures except in certain circumstances.

# Copyright Dilemma 5

- Options:
  - Copy only those discs that don't have built-in access-control measures.
  - Make certain that the public is not able to access these files and that they are stored in a secure location.

# Independent Copyright Committee

- Charged with reviewing section 108 exceptions for libraries and archives.
- Committee has stakeholders from library, publishing, and authors groups.

# Independent Copyright Committee

- [Released recommendations in March 2008.](#)
  - Include museums in exceptions
  - Change 3 copies to a limited number of necessary copies
  - Add fragility to the list of reasons to create a replacement copy
  - Outlines qualifications for digital preservation environment
  - Limited lending of digital copy of unpublished works allowed if analog copy is lendable
  - Allow capture of online content
  - No recommendation on anti-circumvention

# Things is remember

- Whenever possible, get rights and permissions in accession agreements.
- Only the copyright holder can transfer or assign rights to someone else.
- Works published before 1989 may be in the public domain if not copyrighted upon publication or shortly after.
- If you digitize and display orphaned works or works of unknown status, be prepared to “take down” promptly. Have and post a policy for this.
- Publication means distributed to the general public by sale, rental, lease, or lending.

# Access and Control

Simultaneously providing access to and controlling access to collections in a digital networked environment is difficult.

Controlling unauthorized reuse is nearly impossible – what can be seen can be copied.

# Access and Control

- Managed access
- Informed access
- Physical controls



# Managed Access

- Use of roles, groups, and policies to control access to resources by patron category
- Limiting access by physical location or network location (IP address)

# Managed Access

- Authentication using policies works best in a larger institution with well defined member roles.
- Does not require users to be on the same network.
- Requires implementation of a sophisticated access management system (IT staff).

# Managed Access

- Limiting access by IP address works best in an institutional setting with a well defined geographic and network boundaries.
- Can be applied at the server level (requires some IT know how, but not a team)

# Managed Access

- Limiting digital access by physical location works well for a smaller institution's users who are willing to visit in person.
- Analogous to using physical collection, but with opportunities for search based retrieval and less handling of originals.
- Low tech requirement – can be done on a small network or even a single non-networked computer.

# Informed Access

- Displaying copyright status and access restrictions language alongside the digital object, such as in a metadata record or caption.

# Informed Access

- Clearly identifies the rights holder and provides a means of contact for permissions requests
- Educates users about their rights and responsibilities
- Legal language is readily available (Creative Commons)
- Will not deter unscrupulous users from using materials illegally

# Physical Controls

- Making download of images difficult or undesirable:
  - Disabling download features
  - Watermarking
  - Delivering low resolution images

# Physical Controls

- Disabling downloading (right clicking)
  - Works differently on different browsers
  - Only a mild deterrent – users can easily circumvent by taking a screenshot.



# Physical Controls

- Watermarking
  - Only a deterrent if the image is sufficiently defaced.
  - Prevents legitimate fair use of the image
  - Requires maintenance of an extra copy of the image.



Watermarking Example

# Physical Controls

- Delivering low resolution images
  - Only prevents some kinds of use
  - Best used in conjunction with rights metadata so that users can request higher resolution images for legitimate uses.

# Physical Controls

- Protected PDF documents
  - Doesn't prevent copying or exchanging documents
  - Does prevent copying or editing text within a document
  - A good choice for official documents

# Things to remember

- Preventing legitimate fair use is a dubious goal
- Pushing responsibility for determining copyright status to the user does not release the institution from liability
- If you allow users to request high resolution images, have a reliable mechanism for delivery

# Favorite Resources

- <http://copyright.cornell.edu/resources/publicdomain.cfm>
- <http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>
- <http://librarycopyright.net/digitalslider/>
- [http://fairuse.stanford.edu/Copyright and Fair Use Overview/](http://fairuse.stanford.edu/Copyright%20and%20Fair%20Use%20Overview/)
- [http://voirdire.stanford.edu/program/centers/cis/fairuse/  
Fair\(y\) Use Tale Stanford Cut-stream.mp4](http://voirdire.stanford.edu/program/centers/cis/fairuse/Fair(y)%20Use%20Tale%20Stanford%20Cut-stream.mp4)
- <http://copyright.columbia.edu/copyright/> NEW
- <http://ecommons.library.cornell.edu/handle/1813/14142> NEW

# Questions?

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