9-23-2009

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Unpublished Works (date of creation)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Created (unpublished) before 1979, but published before January 1, 2003   ◀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

- <u>Released recommendations in March 2008.</u>
  - 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 arrange 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 handing 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 coping or exchanging documents
  - Does prevent coping 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://voirdire.stanford.edu/program/centers/cis/fairuse/Fair(y)_Use_Tale_Stanford_Cut-stream.mp4
- http://copyright.columbia.edu/copyright/ NEW
- http://ecommons.library.cornell.edu/handle/1813/14142 NEW

Questions?

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