

That Thorny Issue: Copyright Basics and ILL

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12/9/2015

Presentation Focus

- School, public, and academic librarians
 - Interlibrary loan (ILL)
 - Copyright basics: print, analog, digital
 - Open-sourcing
 - Answers to questions as applicable

Discussion and Questions

- Questions will be answered in body of talk and/or at end of webinar.
- Please post questions in discussion area.
- Discussion with presenter and other participants will continue at the end of the webinar, as time permits.

Interlibrary Loan (ILL)

- Borrowing/copying of an item for use by an individual, library, etc., who does not own a work
- Way to obtain information that is:
 - Difficult to acquire
 - Expensive
 - Not needed often
- Yes, copyright affects ILL

ILL ...

- Materials can be obtained:
 - Electronically (common)
 - Delivery
 - Other (mail, paper copies, etc.)
- *ILL about *distributing* needed material, not copying, but...
- Digital/electronic ILL concerned with both

Electronic Interlibrary Loan...

- Transmitting scanned copies
- Requester could be liable
- Supplier can refuse to copy
- Electronic reserves?

Electronic/Digital Delivery

Positives

- Speed
- Ease of access to patron
 - Library electronic mail box
 - E-mail
 - Data-base
 - More ...

Electronic/Digital Delivery

Negatives

- Possibility of more copies than copyright law allows
- Example:
 - Copy at lending library
 - Scanned copy on lending library computer
 - Copy on receiving library's computer
 - Digitized copy that patron receives via Internet
 - Copy patron may print out for personal use
 - Copies patron may share with others

What to do???

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Adding the Issue of Copyright to the Mix

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To be copyright-protected, the item must be fixed in a particular “medium of expression.” (Wherry, 2002)

What Can Be Copyright-protected?

- Anything From the Creative Mind
 - Print
 - Software
 - Audio/music
 - Video
 - Internet
 - And More!!!!

A Law Open to Interpretation?

- controversial subject
- many interpretations
- individuals liable for own actions
- final decision = the court
- don't shoot the messenger!

Copyright

- Definition
- History
- Statutory Provisions
- Public Domain
- Asking Permission
- Licenses
- Guidelines

Copyright Defined

- right to reproduce or copy
- right to prepare derivative works
- right to distribute
- right to perform/display publicly

Main Focus

- Main focus of this presentation rests with the “right to reproduce or copy” a work for use by an individual/entity who may not normally have access to said work.

History

- 1790: US Constitution
- revisions: 1831, 1879, 1909, 1976
- Sonny Bono Copyright Extension Act (1998)
- Digital Millennium Copyright Act [DMCA] (1998)
- TEACH Act (2002)
- Family Entertainment and Copyright Act (2005)
- other bills and acts

What Usually Happens

- Users of works think law/guidelines are over-restrictive
- Works' owners think they are giving away too much

When You Want to Legally Borrow or Copy a Work...

- Use
 - Statutory exemptions
 - Guidelines
 - Your original work (not often a possibility with ILL)
- Obtain
 - Permission
 - License
- Find a work
 - In the public domain

First Sale Doctrine

- You have purchased the item in question; not the right to copy it indiscriminately.
- This can mean concern/confusion for libraries attempting to work with ILL.

Statutory Provisions

- Written into copyright law
- Provide us with ways to borrow works without copyright infringement
- And without needing to obtain permissions

...Fair Use

- **Most Important Statutory Exemption
- Fair use factors
 - character of use
 - nature of the work
 - how much?
 - affect of the market

Selected Fair Use URLs

- Fair Use Check List <
www.copyright.com/Services/copyrightoncampus/basics/fairuse_list.html>
- How do I know if my use is a fair use?
<http://copyrightconfusion.wikispaces.com/Reasoning>

Library Exemption

- Limitations on Exclusive Rights: Reproduction by Libraries and Archives
- Section 108
- “...exemptions...afforded libraries...to copy works without violating copyright law...provides that libraries may, within certain limits, make copies for preservation purposes, for private study, and for ILL.” (Butler, 2004, 50)

- Qualifying libraries may send portions of copyrighted works to other qualifying libraries, as long as the “aggregate quantity” doesn’t replace a purchase of or subscription to the work. (CCC, 2007, 2)
- Section 108 does not define “aggregate quantity,” leaving librarians to
- interpret the spirit of the law (CCC, 2007, 2)

Requirements of Library for Single Copies

- Library must be open to outside researchers
- Copies made must have no direct or indirect commercial advantage to the patron or library
- Copyright notice must be placed on each copy

Limits to the Library Exemption

- Except for preservation purposes, libraries should not copy: audiovisual works (such as videos, software, etc.), musical works, pictures, graphs, sculptures
- EXCEPT: “If you can copy the article, you can also copy the picture or chart that is in the article.” (Crews, 2000, 83)

...Public Domain

- Materials no longer under or have never been under copyright protection
- examples of public domain materials:
 - works never copyrighted
 - works that cannot be copyrighted
 - works with expired copyrights
 - works for which no one claims ownership

- Anyone can copy any amount
- 1/1/78 or after: life +70 years or (corporate authorship) 120 years from creation
- before 1923: in public domain
- 1923-1963: can be renewed for a total of 67 years
- 1964-1977: 28 years (first term) with automatic extension of 67 years
- Digital Copyright Slider
<http://www.librarycopyright.net/resources/digitalslider/>

DMCA

- The Digital Millennium Copyright Act (DMCA), an addendum to the 1976 copyright law, attempts to address some of the digital issues surrounding the base copyright law. For example:
 - Circumvention of antitheft devices = crime
 - DRM = Digital Rights Management (technological ways to stop piracy)
 - Liability of Internet service providers = limited
 - ILL

... Permission

- Ask owner of work
- Purchase license
- Use a clearinghouse
- Give credit where credit is due
- Important but peripheral to ILL

Licenses

- Legally binding contract between two parties
- Supersedes copyright law (Federal law)
- Owner grants certain exclusive rights to his/her product to others
- Normally part of media documentation (identifying/informational records of a media)
- Negotiate possible ILL and other issues when acquiring licenses, if possible.

Common Types of Software Licenses

- Click-wrap
- Browse-wrap
- Shrink-wrap

Guidelines

- Congressionally created
- Not law but helpful when trying to abide by law
- Not binding
- By following, users are considered to have acted in good faith
- Represent minimums rather than maximums

Fair Use Guidelines for Educational Multimedia

- The 10% “rule” ...
 - motion media: 10% or 3 min.
 - text: 10% or 1000 words
 - music/lyrics: 10% or 30 seconds
 - illustrations/photos: 5 or 10%
 - database: 10% or 2500 cells

Print Guidelines

- single copy may be made of the following
 - book chapter
 - magazine or newspaper article
 - short story, poem, chart, graph, cartoon (debatable)

- multiple copies
 - must meet three print tests
 - must include copyright notice
 - educators must also abide by

The Three Print Tests

- brevity
- spontaneity
- cumulative effect

DVDs, CDs, Videos

- Restrictions
 - pirated copies
 - copying the audio track only
 - changing formats
 - copying segments to create one new tape

Computer Software

- compliance procedures
 - available documentation
 - archival copies, locked/secured
 - software policy and ethics code
 - log of licenses, sites, etc.
 - warning notices

Internet

- You create it; you own it.
- Fair Use
- Acknowledge copyrights
- Public Domain
- Treat digital media as you would any other work

Digital Media

- Internet-based communication tools
- Social networking tools
- Video-streaming
- Web syndication
- Games
- And more ...
- *May fall under more than one heading*

Things to Consider

- The DMCA
- Digital Licenses (e.g., can be obtained through Open Sourcing sites)
- Copyright Policies
- And More...

DMCA

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Distance Learning

Digital Millennium Copyright Act

- rules of thumb
 - obtain licenses
 - include copyright notices
 - limit access
 - terminate at end of class term

Digital Licenses: Open Source

- Means that the owners/creators have given the public the right to use, share, and create a new work using their work, without fear of copyright violation. Open-source is really a type of license, but it operates similarly to public domain.
- Creative Commons
<http://creativecommons.org/>
- GNU <http://www.gnu.org/>

Copyright Policies

- May have a statement as to institution's ILL policies
- Examples:
 - Follow copyright law
 - Follow “rule of two”
 - Follow “rule of five”
 - Follow “Reproduction of Copyrighted Works by Educators and Librarians” (U.S. Copyright Office, 2014)

“Rule of Two”

- Per Section 108, libraries may provide one article, per issue, per patron without requesting copyright permission; the librarian must request copyright permission and pay royalties, if any, for the second and subsequent copies. (CCC, 2007,3)

“Rule of Five” for Periodical Articles

- Borrowing library may receive copies of up to five articles from a single periodical title (as opposed to a single issue) per calendar year. Starting with the sixth copy, copyright permission and royalty fees may be required and the librarian must evaluate whether the copies requested would substitute for a subscription to, or purchase of, the journal. (CCC, 2007, 3)

***IMPORTANT RULE OF FIVE ADDITION TO WEBINAR

- “...The lender is not allowed to send more than one copy of one article from a periodical issue. If more are sent, then the borrower must pay copyright fees. ...Under the CONTU Guidelines, borrowers may not receive more than five copies in one year from a single journal title published within the last five year.” (Butler. 2011, 47)

“Rule of Five” for Other Materials

- No more than five copies of articles, chapters or other small portions of a non-periodical work may be received by a library in a given calendar year, during the entire period of copyright of the book. Starting with the sixth copy, copyright permission and royalty fees may be required and the librarian must evaluate whether the copies requested would substitute for the purchase of the book.

(CCC, 2007, 3)

“Rule of Five” Exceptions

- If work is five years or older, lending library determines appropriate copying. (CCC, 2007, 2)

These “Rules” or
“Suggestions” should be
considered as *guidelines*.
They are not part of
copyright law.

More Things to Consider

- Include copyright notice on ILL forms
- Place copyright date of work on all works sent to requester
- ILL focuses on research, scholarship, private study
- ILL copies are for the patron; not a part of the requestor's library

- Retain all ILL records (5 years or amount required by your library)
- ILL requests exceeding limits may involve paying royalties, asking for permission from owner of work, etc.
- Lending and requesting libraries should have copyright compliance statement transmitted with all works and requests

International Copyright

- Universal Copyright Convention
- World Intellectual Property Organization
- Berne Convention = Benchmark
- Many other organizations...

United States Copyright Office

U.S. Copyright Office

<http://www.copyright.gov/>

Types of Infringement

- Direct
- Contributory
- Vicarious

Ways to Avoid Copyright Problems

- Obtain permission
- retain attorney
- encourage users to read documentation
- consult current articles, etc.
- cite what you quote
- DON'T copy!

Bottom Line

- We are liable for our own actions!

Questions? Discussion

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Sample Questions and Scenarios

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- Can an e-book be ILL?
 - Check your license/contract

- I have a book that is missing 3 pages. Can I obtain the book from another library via ILL, make copies of the missing pages, and insert them into my library's book?
- *If the three pages represent a very small part of the book, then such a use may come under fair use. If the three pages represent a large part of the book, then purchase a new book.*

- How can we legally use mass market entertainment movies obtained through ILL in the school?
- *For instructional purposes.*

- Are librarians responsible for how ILL material is used by patrons?
- *Because of the way that copyright law is often enforced, a librarian could be named in a “cease and desist” letter or law suit, if s/he provided the item or the equipment that the work was used on.*

- The library staff is working on a digitization project. How can they protect themselves, if they digitize any orphan works obtained through ILL?
- Answer:
 - Conduct a reasonable investigation to find the owner.
 - If not found, you may digitize the work, but....
 - If an owner is found after the work has been digitized, pay reasonable compensation to the owner.
 - OR stop using the work immediately. (Butler, 2011: 85)

- The school librarian and the Spanish teacher decide to collaborate on a literature unit where the students will read picture books in Spanish via voicethread. (Books were borrowed via ILL from a Spanish collection in a school library in a primarily Hispanic community). During this reading, they will hold up the book and show the pictures as they read. This activity is “in the Cloud,” i.e., on the web and accessible to the public. Is this legal?

- Can the principal show a DVD obtained via ILL over a closed-circuit system to the whole school? (Butler, 2011: 99, 101)

- Can the technology specialist legally stream an educational film he obtained through ILL to more than one science classroom at the same time? (Butler, 2011: 112, 115)

- You wish to place an electronic toolbox that you have created on graphic novels up on the school web site. Some of the materials found in the toolbox were obtained through ILL. Is doing this legal? (Butler, 2011: 87)

- I want to digitize a version of *Hamlet*, sent to us through ILL from another site, and put it on our English-class website. This way my students can access it at home. Can I legally do this, since I am essentially creating a derivative work? (Butler, 2011: 127, 128)

- I want to assign my students to make lip dub videos, using popular songs from a song book sent to us through ILL. Once the videos are created, I plan to put them up on the web to show the students' parents, friends, the surrounding community, etc. Is this legal? (Butler, 2001: 175, 177, 179)

Conclusion

- More Questions???
- Discussion?

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