"All Rights Reserved" to "No Rights Reserved":

An Overview of Copyright and Other Licenses

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Abstract

The basics of copyright are detailed and confusing to many. The introduction of Creative

Commons licenses and GNU Free Documentation Licenses has offered a middle ground between

"public domain" and "all rights reserved." As future information professionals, helping our

patrons find and use information appropriately is going to be increasingly important with the

advancement of digital mediums.

"All Rights Reserved" to "No Rights Reserved"

As new technologies emerge, what will the fate of current copyright look like?   As future library professionals, knowing what is copyright and how it can be used is vital to our dissemination of information. As Doug Johnson (2008) writes, "Few subjects spark more disagreement and confusion than copyright. As an information professional, I'm often not certain that I have a firm grasp of it. And I'm not alone."

What is copyright?

Watson (2006) defines it as this: "the right to copy. Copyright laws try to keep up with the constantly changing technology that is used to make copies of protected material – whether it's produced by a mimeograph machine, a photocopier, a computer, or an audio recorder." The history of copyright law has been a battle between authors, disseminators, and consumers for decades. Wu (2006) says, "Critics of copyright say that aggressive over-enforcement deters those who would borrow from others to create, such as music samplers, satirists, and filmmakers. Copyright's backers warn, conversely, that piracy threatens the very livelihood of the artist and creative industries."

Copyright law "grants authors exclusive control for a limited time over the use of their works…[including] the right to reproduce, distribute, adapt, perform, and display a work" (Klein, 2009). This limited time ranges from 70 years after the death of the author for personal works, to 95 years after publication date for corporate works (Klein, 2009). After the regulated time passes, the piece goes in the public domain. Once in public domain, also referred to as intellectual property, the work is available for anyone to use without need to ask for permission from the owner.

Copyright protects works that are in a fixed tangible form of expression (U.S. Copyright Office, 2008). But what constitutes tangible? The arrival and explosion of digital mediums has made defining this a bit confusing. The U.S. Copyright Office says that "the fixation need not be perceptible so long as it may be communicated with the aid of a machine or device" (2008, p. 3). The law does not protect the ideas, rather the way these ideas are expressed.

The role of copyright has needed to evolve with the invention of new technologies. In today's online environment and Digital Age, protecting intellectual property has had to make changes. "Copyrights, trademarks, patents and other legal mechanisms associated with the ownership of ideas (and not things) once had finite terms. Their purpose was to allow creators or owners (not always the same entity) to materially benefit from the work, not to provide perpetual income" (Pachter, 2009).

Creative Commons

In a response to the all or nothing protection, Lawrence Lessig created an alternative to the current copyright law. "In 2001, Lessig and a board of directors founded a non-profit organization called Creative Commons, to create legal licenses that expanded the options of traditional copyright laws, enabling users to selectively allow use of their works by others" (Safford, 2007). It is still copyright, but it gives the creators of the work the ability to let others use it and the creators still get credit; coining the phrase, "some rights reserved." Creative Commons has been embraced by many creators who believe that allowing others to build upon the ideas of other creative minds benefits everyone (Safford, 2007).

So what exactly is Creative Commons?

Creative Commons is a nonprofit organization that created a set of simple, easy-to-understand copyright licenses. These licenses do two things: They allow creators to share their work easily and they allow everyone to find work that is free to use without permission. The licenses come in three languages: Human Readable, which is a very brief and easy-to-understand summary of what is permitted and under what conditions; Lawyer Readable, which is a legally binding three-page deed; and Machine Readable, which is the metadata, a little snippet of code that makes it possible for search engines like Google to search by Creative Commons license, and return only those works that are free to reuse. (Kleinman, 2008).

The goal of Creative Commons licensing is to put "free tools in the hands of authors, scientists, artists and educators, allowing them to create work with the appropriate level of 'freedom,' ranging from full copyright (all rights reserved) to the public domain (no rights reserved)" (Yoshida, 2008). The idea is that this is a business tool that actually helps encourage creativity. It may seem paradoxical, "but free versions generally serve as promotional tools for paid iterations of the same work. Monty Python, for example, just posted most of their comedy sketches on YouTube and sales of their DVDs have skyrocketed" (Pachter, 2009). In an attempt to apply this idea to a real-world product, a group called Superflex opened a store that offered "the world's first open-source-beer" (O'Connell, 2005). O'Connell continues, "The recipe and brand are available under a Creative Commons license, which means that anyone can brew the beer, tinker with the ingredients, and distribute it as long as they publish their version of the recipe and give credit to the originators" (2005).

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Supporters of Creative Commons in mainstream markets includes: Google, Trent Reznor of the band Nine Inch Nails, Wikipedia, and the Obama Administration ("Who Uses CC?," n.d.). Google uses Creative Commons in lots of different ways. From Creative Commons searches on the search engine to allowing Picasa users to license their own content, Google utilizes the various licenses throughout their digital services. Trent Reznor released the Nine Inch Nails records, Ghosts I-IV, under a Creative Commons Attribution-NonCommercial-ShareAlike license. "While Reznor gave the first disc away for free digitally, NIN sold tiered offerings ranging from a $5 download of the full album to a $300 premium box set…NIN's next album, The Slip, was released for free under the same license, fueling a sold-out tour." ("Who Uses CC?, n.d.). Wikipedia, a project of the Wikimedia Foundation, was using the GNU Free Documentation License until this year, when it opted to switch to a Creative Commons Attribution-ShareAlike license ("Wikimedia Foundation," 2009). The Obama Administration utilizes the Creative Commons Attribution Only license for presidential campaign photos in addition "to requiring that third-party content posted on Whitehouse.org be made available via CC Attribution Only as well" ("Who Uses CC?, n.d.).

Full of information to help navigate the various licenses, the Creative Commons website "serves as a digital tour guide for intellectual property licenses" (Baumann, 2009). Creative Commons offers six main licenses comprised of a combination of four conditions. The four conditions are as follows:

- Attribution: Included in all six of the main licenses, attribution asks others to give you credit for your work.

- Share Alike: Your work can be edited, remixed, or built upon; however, when they decide to redistribute the derivative work they must use the same license as the original work.

- Non-Commercial: Others can use your work as long as it is not for commercial purposes.

- No Derivative Works: Your work can be distributed, performed or displayed but not edited or remixed.

Is Creative Commons the answer to balancing the protection of a creative work and allowing creative freedom? It is a shift in the philosophy of intellectual property rights, actually encouraging the sharing of works for the purpose of creating new pieces. In reference to illegal downloads of digital media, "80% of internet traffic is peer-to-peer and a significant proportion is illegal. But people are willing to pay and make it legal if it is priced right" (M2 Communications, 2009). Of course wanting something for nothing is still going to be an issue, and technology is at the forefront of this school of thought.

GNU Project, Copyleft, & GNU FDL

The GNU Project began in 1984 in an effort to create a free operating system and return to the cooperative roots of the computing community. As the GNU kernel is still being completed, it is paired with the kernel Linux and used by millions (Free Software Foundation, 2008b). The term "free" does not necessarily mean it has no monetary cost, but more of about freedom. In order to be considered "free" the work must meet all four of the following criteria:

1. You have the freedom to run the program, for any purpose.

2. You have the freedom to modify the program to suit your needs. (To make this freedom

   effective in practice, you must have access to the source code, since making changes in a

   program without having the source code is exceedingly difficult.)

3. You have the freedom to redistribute copies, either gratis or for a fee.

4. You have the freedom to distribute modified versions of the program, so that the

   community can benefit from your improvements. (Free Software Foundation, 2008b)

The goal of the GNU project is to fulfill the previous criteria to optimize free software; the

method to prevent GNU software from being turned into proprietary software used is called

copyleft. "Copyleft uses copyright law, but flips it over to serve the opposite of its usual

purpose: instead of a means of privatizing software, it becomes a means of keeping software

free" (Free Software Foundation, 2008a).   According to the GNU website, copyleft gives

everyone permission to run, modify, and distribute modified versions, but they are not to add any

restrictions. For text, creators use the GNU Free Documentation License; free software needed

free manuals. "This License is not limited to software manuals; it can be used for any textual

work, regardless of subject matter or whether it is published as a printed book. We recommend

this License principally for works whose purpose is instruction or reference" (Free Software

Foundation, 2008a).

Public Domain

Intellectual property that is not protected by copyright, trademark or patent laws falls into

public domain. This means that the public can use these creative works without obtaining

permission. How does a piece end up in public domain? There are four common routes to

public domain: expiration of copyright, failure to renew copyright, intentionally placed in public

domain, no copyright protection available. Most works end up in public domain due to expiration of copyright.

Copyright Infringement

In February of 2007, Stephanie Lenz videotaped her 18-month-old son dancing on the kitchen floor for 29 seconds as the Prince song Let's Go Crazy played on a radio in the background. Lenz wanted her parents to see the hilarious clip, so she uploaded it to YouTube and e-mailed them the link. No big deal, right? Wrong! Universal Music Group, which owns or administers the copyright of the song, fired off a letter to the video-sharing site, demanding that it remove the unauthorized performance of Prince's music. (It did.) What's more, Universal's lawyers let Lenz know that she had engaged in willful copyright infringement--and could be risking a fine of $150,000. (Ante, 2008).

In an effort to protect its property, the media industry has been at the front of the copyright war. In this internet age, misuse is just a click away (Partridge, 2008). Keep in mind, that

the rights to works created by an independent contractor belong to the contractor, even though she was paid to create the work. This often leads to unexpected results. When a trainer hires an independent photographer to document a training session, for example, the photographer owns the copyright to the photos, even though the photos were paid for by the trainer. The same principle applies to independent contractors hired to develop web sites, create training materials or design logos. (Partridge, 2008)

As future informational professionals we need to know how to avoid committing copyright infringement and be able to inform our patrons about the legal ramifications.

Our Job as Information Professionals

As students, plagiarism is rigorously talked about in regards to academic integrity and moral values. However, plagiarism and copyright do intersect. "Copyright infringement should not be confused with plagiarism. The two concepts overlap: Actions that constitute plagiarism may sometimes also be infringement, but not always. Plagiarism is an ethical concept that involves taking credit for something that is not yours. It applies to ideas as well as expressions and depends on context" (Partridge, 2008). "Verbatim copying is not required. Infringement is not avoided simply by changing around or paraphrasing some of the words. It is sufficient that the challenged work is 'substantially similar' to the protected expression in the original. The question to ask is 'would the ordinary observer think that the second work was copied or derived from the first?'" (Partridge, 2008).

Copyright isn't as much of an issue for students working on a research project, as they are entitled use to the resources as long as they are properly cited. Making sure students and teachers have a healthy respect for copyrighted works needs to be emphasized by turning attention to what's permitted rather than on the negative "what you can't do" aspect of copyright.

We need to let our students and colleagues know that it's perfectly legal to use copyrighted materials in research, if they're properly cited and supplement, rather than supplant, one's own work. The question we should be asking is not "What percentage of another's work did you use?" but "What percentage of your work is of your own making?" We also need to teach others how to understand and apply the principle of fair use, a provision that allows educators to use copyrighted materials under certain conditions without seeking permission from the rights holder. According to the Copyright

Act of 1976, educators are sometimes allowed to use copyrighted materials "for purposes

such as criticism, comment, news reporting, teaching (including multiple copies for

classroom use), scholarship, or research…." (Johnson, 2008).

Fair use is copying copyrighted works for a transformative purpose, i.e. comment and

criticize, or parody and can be done without permission from the copyright owner. So one could

quote a few lines from a book, song, etc and use it to review or critique the work. Keeping these

ideas in mind, students and teachers should not be afraid to use copyrighted works. Some say it

is better to ask forgiveness than permission, where others argue that erring on the safe side is the

best route to go.

When copyright or use warnings are implicitly stated, teachers often disregard uses that

fall under the fair-use provision. Most books contain the following warning: "All rights

reserved. No part of this book may be reproduced, transmitted, or stored in an

information retrieval system in any form or by any means, graphic, electronic, or

mechanical, including photocopying, taping, and recording, without prior written

permission from the publisher." Yet as a researcher and teacher, one has the right to do

all of these expressly forbidden things provided that fair-use guidelines are followed.

(Johnson, 2008)

We need to know our limits as information professionals as we assist those searching for

materials. We also need to allow our patrons to explore these same limits. Johnson (2008) says

in regard to educators, "It really is better to ask forgiveness than permission. An educator's

automatic assumption should be: unless it's specifically forbidden and legally established in a

case law, the use of copyrighted materials should be allowed." He says that this facilitates

effective teaching techniques so that educators don't fall into "hyper-compliance." Johnson

(2008) continues:

> We must allow the fair use of copyrighted material in student work, but expect them to be
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> able to articulate why they believe it constitutes fair use. Only when students begin to
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> think about copyright and other intellectual property guidelines from the point of view of
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> the producer as well as the consumer, can they form mature attitudes and act in
>
> responsible ways when questions about these issues arise. And as an increasing number
>
> of students become content creators, this should be an easier concept to help them grasp.

Helping instruct new, practical stances on copyright is only going to aid the patron and the

professional in understanding the complications of copyright.

Conclusion

As new mediums continue to emerge, these strides have stretched the current copyright

laws and forced the implementation of new laws. "In today's 'cut-and-paste' online

environment, knowing what isn't copyrighted is just as important as knowing what is" (Klein,

2009.) The waters of copyright are vast and seemingly murky. Our job as information

professionals is to make sure our patrons are given all the available resources without fear of

legal violation. Reminding patrons that digital media is still held under the same regard as print

material, it needs to be respected as such.

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