

Culture and Copyright, Coexisting: Preserving Culture in a Digital World

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ABSTRACT

From music to literature to film, an increasing amount of culturally significant information is being published in digital formats. Vendors like, the iTunes Store or Audible, are already specializing in digital only information. With copyrights restricting libraries' usage and thus collection of digital material, there exists the potential of culturally relevant information (i.e. songs, works of fiction, visual content) to remain under-archived by libraries globally. The paper shows that legal constraints prevent libraries from pursuing a collection of new digital content as exhaustively as would be preferred, thus obscuring the library from various cultural elements being published today. This paper also details ways in which libraries are attempting to enter new digital formats within their collections and offers new perspectives on Creative Commons as an alternative means to collect cultural material in their digital collections.

KEYWORDS: Digital Dark Age, Culture, Media, Copyright, Born-Digital, Creative Commons, Digital Licensing,

INTRODUCTION

"You used to be alright
What happened?"
– from "15 Steps" by Radiohead.

These words were taken from the first song off of Radiohead's latest album *In Rainbows*, an album that was released exclusively over the internet in digital format. This release was ground breaking in that it marked one of the first times a major music entity forwent signing with a record label and released an album in born-digital format. It would seem that as information professionals, we should be excited about the prospects of broadening the proliferation of culturally significant media through the use of technology. However, upon further examination this release could be perceived as an

off-putting sign of a future that contains a less relevant library. Globally, copyright laws are constricting the use and access of certain digital-born materials, which in turn is resulting in the under-collecting of those materials by libraries. Without consistent deliberation and conversation, these lyrics might come to reflect the view of many regarding the effectiveness of the library to collect, preserve, and provide access to culturally significant items. This paper will attempt to define the current status of the copyright laws governing born-digital materials in relation to the library, show some ways in which libraries are attempting to remedy this situation, and present potential future scenarios involving the relationship between copyright laws, the library, and cultural content.

COPYRIGHT LAWS GOVERNING BORN-DIGITAL CONTENT

The philosophical underpinnings for copyright law are well stated in the United States Constitution, Article I, Section 8, Clause 8(US Constitution); "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Many other world governments seem to reflect this sentiment that social, scientific, and cultural progress is best achieved by protecting individuals who create. Copyright laws make works the intellectual property of the creator. Endowed as owners of their works, the creators can demand monetary payment or proper recognition. Copyright law's main intention is to protect the impetuses of creation within society and fear that without this sort of legal protection societal, scientific, and cultural progress might ultimately be halted. This perspective has recently come under some scrutiny. Michael Seadle has challenged the notion that the vehement uniform protection of intellectual content is the optimal means by which to promote discovery and innovation. He explains that the many creative elements of society have varying goals and ways to benefit from their content. "Best Sellers," which are explained to be the minority, have the most to gain from the current

uniform 70 year copyright format in the United States. Authors whose works will be purchased in high volumes over long periods of time will see great monetary benefit from restricting the proliferation of their work, while those who stand to benefit primarily through the prestige of their work (i.e. scholars) do not see their interests represented as well in the uniform copyright laws. Authors of these types of works would benefit from increased proliferation of their work, which is limited by the publisher's application of copyright law. In these cases copyright is serving as an obstacle to artistic and scientific expression and could limit the level of innovation in these fields. Seadle shows how the dangers of lumping integrity and monetary concerns in to one uniform copyright code (Copyright Cultures, 2007).

Seadle explains that some entities have more to gain from the copyright ideology purported in the copyright laws similar to those in the United States. Those entities have controlled much of the discourse regarding copyright issues around the globe. Digital content provides unique opportunities for information producers to distribute their content, opening up new markets for their content. However, digital formats also provide the capability for increased redistribution by consumers that could ultimately undermine their creative efforts. Groups like the Recording Industry Association of America (RIAA), that seek to protect the integrity of artists and their rights over their created content, have gone a long way in shaping the discourse regarding copyright laws in the digital world. In the early 2000s, the RIAA and many other organizations involved with the entertainment industry filed a suit against Napster claiming the peer-to-peer network was facilitating the unauthorized redistribution of copyrighted content by its users. Their prolific legal battle with Napster set many precedents for the way American copyright laws deal with digital content (Gillespie, 2007). However, for the library, one of the most important precedents set was the way the public came to view this debate. The RIAA and others set the notions that the owners and creators of information have the right to distribute their content, but the buyers of that content do not have the right to redistribute it. Tarleton Gillespie explains in his book *Wired Shut* that each advancement in communication technology requires reworking of what he terms the "balance of copyright" to accommodate the new ways cultural material is exchanged (Gillespie, 2007). The resulting discourse from the entertainment industry vs. Napster battle shifted the "balance of copyright" and placed the "distributors" against the "redistributors." Libraries have ultimately been placed in with other redistribution elements and have as a result had to incur limitations to their ability to provide access to digital information.

What does this all mean for cultural content? Without a clearly defined means to provide access under the distribution/redistribution copyright paradigm, many libraries cannot afford to collect materials that will not be able to circulate, thus creating a gap of digital content in

their collection. This gap would not present significant concerns to a library's collection if the amount of digital content was relatively small. However, according to the RIAA, digital music sales were up 43.2% in 2007 versus the previous year and also accounted for 1.2 billion dollars worth of revenue which is a little over 10 % of the entire music industry (Recording Industry Association of America, 2007). It is already a large portion of digital music and is growing rapidly with the advent of new portable media technologies. It is not hard to imagine a world in which digital music becomes a consumer's preferred media format. With more media being converted to uncollectable formats, the library could potentially be left out of the cultural transfer equation. By not coming up with a sustainable solution for copyright concerns, libraries could become culturally irrelevant institutions in the digital age.

ATTEMPTED SOLUTIONS TO DIGITAL COPYRIGHT LAWS

Recognizing that the current model leaves libraries out of the digital loop, many institutions are attempting various tactics to incorporate culturally significant content into their collections. These approaches include attempting to work around the current legal interpretation by using a licensing model, arguing for exceptions to current legal interpretations, or shifting the current copyright discourse to incorporate more understanding about the free flow of information. Each of these potential solutions attempt to involve the library in the exchange and preservation of cultural content to prevent lapse over both space and time in the collection.

The first way that libraries are attempting to incorporate digital content into their collections involves licensing digital content from third party media distributors. These services began at the University of Indiana in 1996 as a home-grown program named *Variations* (The Promise of Online Music, 2005). It was a way for their library to provide easier access to audio course reserves. The technology has since evolved into many subscription-based services that are now commercially available to libraries. Services like Classical Music Library and Naxos Music Libraries provide genre- or label-specific collections that can be streamed to library patrons (The Promise of Online Music, 2005). Depending on a library's subscription, the service can be accessed in the library or at home through a password and provides streaming audio of thousands of songs directly to the desktop.

Still in its infancy, this licensing solution does allow for some access to digital content; however, there are some shortcomings to this solution. The gaps in these digital collection services are enormous. Most of the services provide primarily classical music and have not found ways to incorporate popular songs. There exist very few streaming video services, and the major music labels and distributors have yet to release much of their content to any of these types of service. The digital music giant iTunes still operates exclusively on a transaction-

based service and still maintains strict anti-sharing copyright policy. These services at this point would be nice supplements to a collection but could not serve as the basis for a strong media collection. Additionally, this streaming of audio eliminates many of the attractive elements of digital formats, specifically portability. Being able to take digital content with you on your portable media player is one of the main perks of the digital format. Leasing any content relinquishes autonomy of the library's collection (Access to knowledge in the digital era., 2008). Libraries must now rely on private companies, whose profit-oriented goals do not always align with the libraries', to provide their content. Technological issues could render a collection temporarily or even permanently absent from the collection. This potential for volatility in a collection does not provide a sound basis for access and community service. While licensing streaming media does provide access to content that might otherwise be incorporated into the collection, this solution does present its share of problems.

Where the previous solution accepts and attempts to work around the anti-redistribution copyright model, the second solution attempts to seek an exemption from aspects of copyright laws. While the asking for legal leniency from copyright restrictions is not a new phenomena, the granting of special privileges has recently begun to gain some traction in United States courts. In November 2006, Peter Decherney, an assistant professor of cinema studies at the University of Pennsylvania, was instrumental in getting a group of fellow professors and archivists exemptions from digital copyright laws. Decherney's exemption allowed professors to break copy protection on digital video to better serve the needs of the class. The rest of the exemptions allotted professors and archivist special privileges to better execute preservation and access initiatives.

While seemingly insignificant these exemptions can serve as an example of how libraries can assert their historic position as preservers and access providers and as a way to distance themselves from piracy. Acquiring special conditions under the law might allow the library to legally work with digital content in a more autonomous way. The voice of the library is not one that has been heard often in the discussion of digital copyright issues. Asking for these sorts of exemptions can provide libraries with some legal backing to assert their place in the culture. However, this solution would take years, perhaps decades, of diligence and small victories, if at all, before any real tangible change would occur, and the amount of digital content that is not being collected would continue to grow.

These two approaches are not mutually exclusive. Libraries can attempt to work around the law using licensing services in the short term, while they ask for legal exemptions to copyright law for the long term. Unfortunately, neither of these approaches provides an immediate solution to the culturally significant content

that is being left out of libraries. Because the current digital copyright model restricts the library's ability to provide access, there is a need for alternatives to copyrighting materials so that libraries can more effectively collect culturally significant digital content.

FUTURES OF DIGITAL BORN CONTENT

The Creative Commons, a Massachusetts-based non-profit organization, exposes the gray area between the copyright's "All Rights Reserved" and the non-existent rights of the public domain. By offering various licensing plans, the Creative Commons is able to meet the needs of creators who wish to distribute their content globally while still safeguarding its intellectual integrity. The Creative Commons licenses appeal to forms of cultural expression in that they provide the opportunity to disseminate creative content with certain but not absolute restrictions. These licenses allow creators to "choose a set of conditions they wish to apply to their work," including attribution rights and derivative works restrictions (Creative Commons, 2008). With licensing digital content or negotiating legal reprieves as the library's current ways of dealing with copyright issues, the Creative Commons has possibly provided a third alternative to incorporate culturally significant born-digital content into its collections. In this way, the Creative Commons has left the library with a choice to make. Should libraries collect cultural content under the Creative Commons licenses? Or should libraries allow others to manage this content on their own?

If libraries choose to collect digital-born content under Creative Commons licensing, they will be able to provide permanent storage for this content on their servers. In addition to storage, libraries are able to provide a database of digital content with detailed bibliographic records to facilitate access and use of the collection. Libraries must be selective in what they choose to collect, and must, therefore, create criteria and justification for this new collection. For example, a library may choose to collect digital photographs, videos, and audio materials that are created within its community for the purpose of preserving its cultural identity. This is one way in which the Creative Commons has allowed libraries to be free from copyright restrictions when trying to integrate cultural materials into its digital collection.

However, not all libraries have the time or resources for such large endeavours. Building a database, securing server space, and hiring specialized staff to collect and catalogue new materials requires more money than most libraries are willing to invest. Additionally, even with the most precise collection criteria, it would be difficult to discern those items that should enter the collection from those that should not. Even though libraries have come to be known as community centers in many parts, it may not be the role of the library to collect such materials if there is not a desire to do so in the community.

CONCLUSION

Digital formats are becoming one of the main forms of information transfer globally and are thus becoming a primary instrument of cultural transfer. Failure to address digital content effectively could result in missed opportunities of cultural transfer over both space and time. Licensing digital content from subscription-based service providers can offer libraries limited access to some culturally significant digital content, but remains an inefficient and incomplete way to build a digital collection. Negotiating legal exemptions to increase our capabilities to collect and preserve digital content may be a temporary solution for some, but it is not a holistic approach to building an exhaustive digital collection of cultural media. Libraries may also choose to collect digital content licensed by the Creative Commons, but this solution is costly and extends the library beyond its traditional role. The only way to adequately address digital copyright issues and incorporate culturally significant media in the library's collection is to challenge the existing copyright laws. These laws have been set primarily in the interests of the distributors of media. By adding the library's voice to the discourse, the public and lawmakers may begin to reconsider the purpose of copyrights so that libraries can better meet the needs of their patrons by collecting and preserving digital content that is culturally relevant.

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