

Copyright Fails in Libraries in Digital Era

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Abstract

The article addresses activities that involve some of the exclusive rights of copyright holders; the right to make copies, to display or perform copyright works, and in some cases to distribute works; and the copyright law's exemptions from liability for fair use and for certain library copying. Copyright is legally complicated, controversial, subject to a number of misunderstandings and generally not fully understood even by the librarians whose daily tasks include administering it. To better understand the current status of copyright and its impact on libraries the notion of copyright is briefly outlines, along with what exactly copyright is. Libraries and academic institutions can also influence publishers to adjust their present copyright policies with regard to the reuse of published articles. The expectation is that there will be many digital libraries, most of which will have specialized collections and will be internet worked together in a way loosely resembling today's Internet. Most digital library project planners are aware there are intellectual property issues that must be resolved in order to successfully deploy their libraries. Some proposals for digital library projects express intent to resolve intellectual property issues as part of the overall plan for the library.

Keywords : Copyright, Digital Rights Management

1. Copyright Basics

Copyright arose from the idea that anything we create should be protected from use by someone else, reflecting the fact that the creator has exclusive rights over the thing created. Copyright law protects these rights, including the copying or lending of material and ensures that some access to copyright work is allowed. Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of the rights including, inter alia rights of reproduction, communication to the public, adaptation and translation of the work.

Copyright law provides protection for the following classes of works:

- ◆ **Literary Work** refers to written or printed matter (song, lyrics, manuscripts, computer programs, web page, articles, etc.).
- ◆ **Dramatic Work** includes any piece of recitation, choreographic work or entertainment in dumb.
- ◆ **Artistic Work** means a painting, a sculpture, a drawing (including a diagram, map, chart, or plan).
- ◆ **Cinematograph Film** means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means.

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- ◆ **Sound recordings** means a recording of sound from which such sounds may be produced regardless of the medium on which such recording is made.

Copyright is a part of a wider group of rights known as intellectual property, which also includes designs, trademarks and patents. Its definition as a property right is significant source of information? Because, as with other property, copyright can be bought, sold or transferred to another.

Copyright is thus the legal protection extended to the owner of the rights in an original. It comprises two main sets of rights: The Economic rights and the moral rights.

The Economic right issues involve the Economic rights of creator. These rights are the rights of reproduction, broadcasting, public recitation, public display, distribution and so on of the creator's original work. Whereas Moral rights includes the Authors right to object to any distortion, mutilation or other modifications of his work that might be prejudicial to his honor or reputation.

2. Copyright Issues in Libraries

In libraries some of the operations where Copyright issues get involved are:

- ◆ **Print Copies:** Often Libraries have to make their own copies of the documents for their wider use, when their reprints are not available. The permission of authors desired.
- ◆ **Electronic Copies:** In the present era of electronic publishing and on-line delivery of Information, users are requesting Electronic copies. Here, also, there is chance of infringement.
- ◆ **Audio, Image and Audio-Visual Copies:** Most of the images and Audio-Visual works, when reproduced, and then the perpetrator could be accused of infringing the authors' moral rights.
- ◆ **Electro Copying, Electronic Copyrights and Networking:** Electro copying involves the conservation of printed material into Machine Readable Form using documents images processing and Optical Character Recognition (OCR) Technology.
- ◆ **Multimedia Products:** Earlier copyright law has been split between different media like law for written text, law for still images, for sound recording, for Musical works etc. But in Multimedia, all of these have been bundle together to a single product, so, there are some provisions for protecting the rights of Multimedia products but no clear-cut policy had been designed yet.
- ◆ **Archiving:** It includes archiving both published and unpublished material. Archiving right is designed to allow Libraries to make copies of printed books and of out of print books, manuscripts and periodicals.
- ◆ **Digital Libraries:** Present Copyright laws inhibit the complete realization of the idea of digital libraries.

3. Digital Rights Management and Copyright Laws

Digital Rights Management (DRM) denotes technologies that control digital content. While copyright holders have exclusive rights of copyright such as the right to make a copy or the right to distribute work to the public, they do not have the rights to control how the works are used.

Content owners are looking to DRM technologies as a means to control the use of their content. Many public interest organizations however fear that DRM technologies will be used by copyright owners to erode capabilities that had previously been permitted to the public by copyright law under the "Fair Use" doctrine.¹ Source in the support of the statement? For Libraries, DRM technologies can additionally impact first-sale preservation activities, and institute pay-per-use pricing.

- ◆ The unimpeded flow of information is fundamental to the mission and activities of both higher education and libraries, making Digital Rights Management a complex and challenging activity in these domains. In the higher education and library areas, DRM is interpreted broadly as encompassing more than restricting access to content. It is recognized that a varieties of DRM solutions are needed. These solutions need to be implemented in more comprehensive and sophisticated ways for intellectual property management. Following points also need to be implemented: Supporting libraries not just as users but also as creators and owners of copyright-protected content
- ◆ Supporting "fair use", while expecting library and education especially not applying ex ante enforcements that disables the use of the content;
- ◆ Supporting rights and permissions throughout the life cycle of a resource;
- ◆ Supporting the heterogeneous applications and users of the digital content in higher education: e-learning, digital libraries, online collaboration, and institutional repositories, for example;
- ◆ Supporting the preservation and archival roles of libraries; and
- ◆ Accommodating the interactive and dynamic nature of e-learning and digital content.

4. Library Reproduction Rights

Section 108(c): permits reproductions of published works for replacing a damaged, deteriorated, lost, or stolen copy, but only if "an unused replacement cannot be obtained at a fair price."

Section 108(d): permits reproductions of articles, A second source of user rights of particular significance to libraries is "Section 108" of the 1976 Act, which permits copying of materials by libraries pursuant to relatively specific standards. Unlike the fair use statute, Section 108 does not inherently depend on analysis and interpretation for every application. Much of the language of Section 108 can instead have practical meaning for many libraries without resorting to substantial

external guidance or elaborate interpretations. Some of the principal activities allowed under Section 108 include the following:

Section 108(b): permits reproductions of unpublished works for preservation or security or for deposit at another library.

or contributions to collections or small parts of larger work for a patron's private study, scholarship, or research.

Section 108(e): permits reproductions of entire works for a patron's private study, scholarship, or research, if "a copy cannot be obtained at a fair price."

Section 108(f) (1): exempts libraries and their employees from liability for copying made by patrons on unsupervised machines where appropriate notices are posted.

- ◆ Section 108 does not apply to every activity in every library. Its provisions apply only to libraries that are open to the public, or at least open to researchers not affiliated with the institution. Most university libraries probably meet that standard. The rights of Section 108 also apply only if "the reproduction or distribution is made without any purpose of direct or indirect commercial advantage. . . ." The legislative history to the 1976 Act, however, indicates that Section 108 can have some application even in libraries operated by for-profit institutions.² The rights of reproduction also do not extend to all types of copyrighted works. Many of the rights do not apply to "a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news. . . ." (See Section 108(h)).
- ◆ Section 108 is generally not regarded as the source of rights for reserve operations. Reserve room copies are made pursuant to fair use law; reserve rooms may be located in libraries, but they function as an extension of classroom teaching. The distinction between Section 108 and 107 for reserve rooms is important. Section 108 provides only for single copies of items, while the fair use statute specifically permits some multiple copies for classroom use, although subject to the four factors of fair use. Multiple copies are often essential for effective reserves.
- ◆ Librarians are no doubt familiar with the "Five-Year Reports" that Section 108 originally required. The U.S. Copyright Office sponsored the studies in order to report every five years to Congress on the effects of Section 108. Congress received reports in 1983 and 1988, and in 1992 it repealed the requirement of further studies.³

5. Copyright Fails in the Digital Era

The digital era in which libraries operate has radically altered the word copyright. Essentially, copyright material has become much more vulnerable to unauthorised copying and new technologies have overcome the restrictions upon the dissemination of material that existed in the copyright era. This has resulted in copyright fails in the digital era because:

- ◆ The notion that copyright provides a guaranteed income for the creator of a work has been shown in at least on experiment to be false. Making a work free and copyright free and posting on a website generated more print sales than had the work solely been available in a print, copyright version.
- ◆ Copying something digital is almost without cost. Although there are associated costs such as having a PC; access to the web; purchasing CD or DVD, there are not viewed by consumers in the same way as purchasing a pre-recorded CD.
- ◆ Copyright fails because of distributed ownership and rights. The position is often too complicated to fathom out when determining copyright status especially in relation to music where there may be lyrics, music, creator, performer, recorder etc.
- ◆ Access to an almost unlimited amount of information is much easier than if the information were in print format, thus the temptation to make unauthorised use of it is much greater.
- ◆ The technology that allows digital data to be transmitted is the same technology that is used to control access to information such as articles in database.

The other issues confronted in the libraries with regard to the failure of copyright are:

- ◆ The notion of "fair use" allows copying, yet the general public does not understand the distinction between "infringement" and "fair use".
- ◆ The argument that the copyright broadens access but more a work is copied, the more it is seen.
- ◆ Once the term of copyright has expired, a work falls into the public domain. The public will have free access eventually, so why create such a fuss when it is only a matter of time before access and use is uninhibited.

6. Copyright Fails in the Libraries

The other challenges contributing to the failure of copyright in libraries are ⁴:

- ◆ With so much information no longer held in the library building, but being accessed remotely, it is impossible to monitor or control from a copyright perspective. A consequence of this is that the law is practically unenforceable.
- ◆ Many users with some understanding of copyright laws regard it as being overly protective of publishers or business and choose to ignore it as a form of conscious or unconscious protest.
- ◆ As more and more users ignore copyright, libraries put greater effort into upholding it, as if they had something to gain from it. Libraries have no direct gain and are simply pandering to the monopolistic practices of data owners.

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- ◆ Library's work is to provide huge aggregate of information in the form of databases. These databases present information in a manner that appears to obviate the need for and existence of copyright protection.
 - ◆ Some Libraries will and do circumvent the legislation. For example, the extreme high cost of the some DVDs purchased for educational establishments is due to a license fee as a result of copyright. Libraries may circumvent this by purchasing from Amazon, or purchasing by faculty who then lend the item to the Library. It is rather hypocritical for a library to be acting as upholder of copyright.
 - ◆ There is widespread practice to make back-up of expensive videos or DVDs without permission, so that if the original becomes damaged or worn out; the copy can be placed for use in the stack.

7. Copyright- Indian Scenario

In India, the development of copyright law was closely aligned to the British Copyright law in 1911. India passed the first copyright act in 1914. A number of amendments to this act were affected in 1983 to avail benefits arising from the revision of Berne Convention and Universal Copyright Convention to which India is an adherent. Recent amendments of 1992 extended the term of copyright protection from the lifetime of the authorship plus 50 years to the lifetime of the authorship plus 60 years. The Copyright act of 1957 was passed by both the Houses of Parliament and the last amendment was on 13th May, 1994. The result was the enactment of Indian Copyright Act of 1957 replaced the act 1914. Act 1957 came into force on 21st January 1958 ⁵.

In 2006, Copyright office in India posted proposals to amend the Copyright Act, 1957 on its website. One of the proposed amendments seeks to introduce the Digital Rights Management (DRM) in the Indian copyright law ⁶. The purpose for such introduction in the Indian copyright laws has been to "keep pace with national and international developments and advance in technologies," a purpose which is over simplified and undermines the complex debate which surrounds the introduction of these measures in the most developed countries. A technological measure which is not only still in the evolutionary stages but the policy itself is being reviewed by various countries, particularly USA, which spearheaded the introduction of such rights in the realm of international law. The proposed introduction of such provisions in the Indian copyright in spite of the fact that India not being a signatory to the World Copyright treaties, is not under any obligation to introduce such changes, particularly, at this stage of Indian socio-economic development when digital technology can play a vital role in the developmental process. The rationale behind the introduction of these provisions in Indian law is rather obscure but if it intends to tackle the escalating problem of piracy then such introduction requires a better analysis in the light of the manner in which these provisions came into existence in the realm of international as well as other national legislations and what has been the

consequent development following adoption of such provisions⁷.

8. Copyright – Other Countries Scenario

In the meantime, the issue of "Choice of court" terms in license agreements was the subject of intense negotiations on the international scene. The Hague Convention on Choice of court agreements is a multilateral agreement that creates rules for determining jurisdiction in international lawsuits.

A U.S. Library agrees to non-negotiated contract that requires that any litigation about the contract/license must be brought in or defended in a court halfway around the world.

The CLA is the UK's reprographic rights agency, representing a large number of UK publishers and other right holders. Librarians are often familiar with this organization because it issues paper-to-paper licenses that if purchased by an organization permit multiple copying to be undertaken beyond the scope of fair dealing. Currently the CLA is reviewing the Higher Education Digitization License in particular the transactional nature of this license.

The Berne Copyright Convention was established in 1886 and has been revised a few times: Berlin in 1908, Rome in 1928, Brussels in 1948, Stockholm in 1967 and Paris in 1971.

Australia also provides a useful example of where a blanket license approach to digitization is working. In 2001, following an amendment to the copyright law, core readings could be scanned for educational use. <http://copyright.gov.in/logan>

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