Copyright Programming for Public and Academic Libraries: Educating to Support Creators & Enhance Access

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1. copyright in 5 minutes (or less)
(almost*)

everything you create** is copyrighted

* “Copyright subsists…in original works of authorship fixed in any tangible medium of expression…” Such as, literary works, graphics, photos, videos, recordings. 17 USC § 102

** or find on the Internet
• Literary works
• Musical works
• Dramatic works
• Pantomimes & choreographic works
• Pictorial, graphic & sculptural works
• Motion pictures & other audiovisual works
• Sound recordings
• Architectural works

17 USC § 102
... but not everything created is copyrighted
• ideas, facts, methods, processes, etc. (17 USC § 102)
• short phrases & titles
• expired copyrights (§§ 302-305)
• works not by people (chimps, accidents)
• federal government works (§ 105)
• works dedicated to the public domain
• works that are not fixed in a tangible form
• mere typeface
• blank forms
• familiar symbols & designs
• layout, design, format

See Copyright Office, Circular 33: “Works Not Protected by Copyright”
Copyright is the right to control copies & derivative works.

- 17 USC § 106: Exclusive rights to control reproductions, distributions of copies, prepare derivative works, plus control public performances and displays.
... but not all other uses (not even all other copies)
Many limitations, exceptions, and defenses!

- Fair Use (17 USC § 107)
- Library Uses (§ 108)
- First Sale (§ 109)
- Classroom & other performances (§ 110)
- Various other exceptions (§§ 111-121)
- Accessibility (§ 121)
- Statute of limitations
- Good faith belief use was fair (§ 504(c)(2))
- \textit{De Minimis}
- Statute of limitations & laches
- Unclean hands, copyright misuse
3 fun facts

- term: copyrights expire 70 years after your death
- Works are automatically copyrighted upon fixation: no © symbol needed & no registration. You own thousands of copyrights!
- Penalties can be high ($150K for willful infringement), but libraries & educational institutions have a get-out-of-statutory-damages free card
2. why libraries?
creators need help!

- **Drauglis v. Kappa Map Group, LLC, 128 F.Supp. 3d 46 (D.D.C. 2015)** - Creative Commons!
- Publishing contracts: Case in point, academic authors.
- Evidence: Vast volume of self-help books for authors, musicians, etc.
but why libraries?
Libraries are creatures of copyright

Libraries are creatures of copyright

- Purchase copyrighted works
  - Many works designed primarily for library market
  - Deeds of gift / acquisitions for special collections
  - Licensing
  - Supporting entire industries

We are one of the major customers for copyright industries & creators.
Libraries are creatures of copyright

- Provide access to copyrighted works
  - Lend & display materials under First Sale
  - Library provisions for ILL, preservation, research copies, access to older materials, video archiving, exemptions for reproduction equipment, exemptions for good faith fair use, displays & imports, etc
  - Public domain investigations

*We are already elbow-deep in copyright!*
Libraries are creatures of copyright

- Support creation of new works
- By providing existing works ("shoulders of giants")
- Internet access
- Authoring tools & maker spaces
- Workshops
- Research
- Space to write

Every library is already a maker-space. We facilitate creation routinely.
We are already doing copyright education. (Just not very well.)

Posted to Flickr by tracie7779 at https://flickr.com/photos/54597574@N00/38229159976, CC-BY-SA 2.0. Available at Wikimedia Commons.
This is our domain, and we are uniquely suited to educate users & creators.
“What is ‘fair use’?”

This cartoon by Bion Smalley was published in American Libraries in May 1977 -- more than 40 years ago. Libraries and librarians have been involved in copyright for decades!

- Institutional knowledge for decades
- A statutory role in user education
- Unique home for creators
- Trusted source for information

“What is ‘fair use’?”

Bion Smalley
Enhancing access

- Good metadata & licensing info
- Working with creators to get library rights built in from the beginning, or as a quid pro quo in recovery
- Helps us think more broadly about our local creators & collection development.
- Broadening perspective of creators about copyright
3. how?
three points to remember

• Lots of models for user education
• Skip the “scared straight” lectures
• Don't worry (too much) about the “legal advice” anxiety
Existing models for user education

**Legal Education**
- Street law programs & Know-Your-Right workshops
- Copyright officers in universities
- Law librarians
- Entrepreneurial services & clinics
- Volunteer Lawyers for the Arts
- Student legal services
- Legal clinics
- Lawyer in the library

**Consumer Education**
- Information literacy & research
- Software (MS Word, authoring, Internet, etc)
- Art
- Cartooning
- Journaling & zine-making
- Digital citizenship / privacy
- Home ownership
What’s wrong with ‘scared straight’?

- Lots of © education is fear-based: IT depts, MPAA film warnings.
- Unbalanced picture of copyright
- Magnifies risk & minimizes rights
- Shifts behavior & changes norms of copyright
Legal advice?

- Key distinction between legal advice & legal information: Legal advice is tied to person’s specific concerns, and comes with various promises.
- Avoid confusion with clear distinctions.
- Distinguish situations that trigger benefit from personalized legal advice -- e.g., in copyright & publishing,
  - Potential legal liability (especially criminal)
  - Lots of money at stake
  - Compare: Low-stakes and low-risk
5 hot topics
5 key topics of broad interest & utility

- Creative Commons [out-licensing: connections w/pseudonyms & privacy!] & locating CC-based content
  - YouTube publishing: ContentID & © takedowns
- Public domain
- Fair use
- Difference between patent, trade secret, copyright, & trademark
- Asking permission & negotiating rights
partner brainstorming: topics, audiences, partners
5 audiences & partners
Local businesses, would-be businesses, inventors, designers, solo business professionals. (Can easily cross-over into creative economies. Also, don’t forget about consultants, stay-at-home parents, retirees, and others who are partly in the workforce.)

Topic: Basic info about distinguishing between patents (inventions), trade secrets (business information & inventions you don’t want to patent), trademarks (logos & slogans), and copyright (creative works)

Partners: Local business organizations, incubator programs, Tech Transfer Office, Patent & Trademark Resource Center, business library or business school, local community college programs
Audience: Seniors & Emeritus faculty; retirees.

Topic: Ensuring their legacy. Terminating copyright assignments; archiving & metadata; deeds of gift.

Partners: Special collections, archives, & museums; Provost or Alumni Office (services for emeritus faculty); Friends of the library; senior centers; local retirement communities; oral history programs; scholarly communication programs.
Audience: Creators. (Writers of all sorts, zinesters, cartoonists & artists, musicians, sculptors, videographers, photographers)

Topic: How to create & how to share your creation. Fair use; public domain content; and Creative Commons licensing (out-licensing & locating openly licensed content). Attribution & how to get it. How to enforce your copyrights.

Audience: Youth

Audience: Youth. They’re doing all the stuff other creators are doing, but with even fewer resources and help they can understand.

Topic: How to create & how to share your creation. Fair use; public domain content; and Creative Commons licensing (out-licensing, & locating openly licensed music & images & video). Attribution & how to get it. Privacy & anonymity.

Partners: School libraries, scouting & other clubs, local maker spaces, after school programs, summer & vacation camps. College of Education.
Audience: Teachers & Librarians. Educators of all sorts, from youth to adult, to support staff, to allied communities (children’s book writers & programmers, publishers, etc).

Topic: Open education, Creative Commons, locating openly licensed content, fair use.

Partners: School libraries, local school district, College of Education.
2 ways to get started now

1. Develop in-house librarian expertise.
   - Harvard X; Copyright Advisory Network (ALA); Creative Commons certificate program; New England Copyright Education.

2. Contact potential partners that already exist & bat around some programming ideas. Tech Transfer, General Counsel’s Office, Volunteer Lawyers for the Arts, local law clinics.

As with any library programming, be ready to experiment, & to fail, and to try again!
thanks!

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