



Whose Stuff is it, Anyway?

a study of copyright statements on DLF-member digital library collections

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Vague disclaimer: I am a metadata librarian, not a lawyer.



A (very) brief introduction to copyright



A (very) brief introduction to copyright

- What is copyright?
 - A limited monopoly granted by the federal government
 - Promotes the progress of ‘science and useful arts’ by allowing creators to profit from their works
 - Provides exemptions for beneficial uses of copyright work (scholarship, satire, etc)



A (very) brief introduction to copyright

- What does it cover?
 - “Original works of authorship” that are “fixed in a tangible medium of expression” (US Copyright Act, 17 U.S.C, sec. 102(a))
 - Books, articles, music, movies, photographs, maps, screenplays, etc.



A (very) brief introduction to copyright

- What doesn't it cover?
 - Facts and ideas
 - Databases and simple arrangements of data (the Yellow Pages is protected, the White Pages is not)
 - Your idea for a screenplay
 - Works of the U.S. Government
 - Works already in the public domain
 - Bridgeman Art Library v. Corel Corp (1999)



A (very) brief introduction to copyright

- How long does it last?
 - Life of the author plus 70 years
 - 120 years from creation or 95 years from publication (corporate works)
- What do you have to do to copyright your screenplay?
 - Absolutely nothing
 - (although you can register it for extra protection)



A (very) brief introduction to copyright

- What can you do with your screenplay?
(exclusive rights of authors)
 - Copy it
 - Distribute it
 - Write a sequel (derivative work)
 - Display it in public
 - Perform it in public



A (very) brief introduction to copyright

- What can I do with your screenplay?
(exemptions to copyright)
 - Fair use (I can quote your screenplay in my review)
 - First sale (I can loan it to my friend, or sell it on eBay)
 - Library copying (I can copy it for a patron)
 - And many, many, many more



About the study



The study – why do it?

- The intersection of copyright law and metadata
- Concern with current direction of copyright law
- Libraries' role in promoting the rights of users - particularly fair use and the public domain
- Find out how common 'copyfraud'* is in digital libraries

* Coined by Jason Mazzone in "Copyfraud," 81 N.Y.U. L. Rev. 1026 (2006)



The study – research questions

- Are libraries putting copyright statements on their digital library collections?
- Are they more likely to place statements on collections of copyrighted materials or public domain materials?
- Are there common elements among statements?
- Do they acknowledge the existence of the public domain and fair use?



The study – sample and methodology

- 29 DLF-member institutions (no international, no US Gov't institutions)
- Determined copyright status of collections
- Looked at statements at the institution, collection, and item level
- Examined them for mentions of fair use and/or public domain, then performed content analysis



The study – definitions

- 'Digital collection': organized collection of digitized items such as books, etc, freely available on the WWW
- 'Copyright statement': statements regarding ownership of the items that explicitly mention copyright or provisions of copyright law (such as fair use). No prescribed label or location.



The study – copyright status

- Determining copyright status is tricky
- Used conservative rules of thumb:
 - Public domain includes works published pre-1923 or created pre-1867
 - Digitized public domain works are still in the public domain
 - A collection with at least one public domain work and one copyrighted work is ‘mixed’



Results



Results - numbers

- 29 institutions
 - 12 had an institutional copyright statement
 - 7 of those mentioned fair use
 - 3 mentioned the public domain



Results - numbers

- 786 collections
 - 28% copyright, 28% mixed, 41% public domain
 - approximately half had statements at the item or collection level
 - Copyrighted, mixed, and public domain collections were about equal
- No institution was entirely consistent (each had at least one collection with and one without)



Results – content of statements

- 8% of statements on copyrighted collections mentioned fair use
- 8% of statements on public domain collections mentioned the public domain
- ‘Personal and educational use’ mentioned by 67% of statements
 - 53% of copyrighted and mixed collections
 - 86% of public domain collections



Results – content of statements

- Identified four basic ‘memes’:
 - The specific ownership statement
 - The vague ownership statement
 - What you can and can’t do
 - Protecting ourselves and you



Results – content of statements

Meme: The specific ownership statement

- Identifies the copyright holder, or provides enough information that the user can easily request permission or make use of the object.
- Used when library owns the copyright, or they know who does.
- Alerts the user that the item is protected, and allows them to request permission for use



Results – content of statements

Meme: The specific ownership statement

- “© [personal name]”
- “To obtain permission from the copyright holder for commercial use of any of these images, contact:...”
- “Copyright has been assigned to the [name of institution].”
- “Public domain”
- “This database only includes images that are not currently under copyright restrictions.”



Results – content of statements

Meme: The vague ownership statement

- Warns that copyright applies or may apply to the object(s) in question, but does not provide any specific information about the copyright holder.
- Claims of ‘digital copyright’ on scanned images have been included in this section, as have specific ownership statements with qualifications.
- Reminds the user about copyright law
- Indemnifies the library to an extent



Results – content of statements

Meme: The vague ownership statement

- *“Copyright is retained by the original copyright holder”*
- *“[Institution] owns digital rights only”*
- *“Copyright has not been assigned to the [institution].”*
- *“All images of artwork in the [collection] are copyrighted.”*
- *“Where applicable, subject to copyright. Other restrictions on distribution may apply.”*



Results – content of statements

Meme: What you can and can't do

- Sets terms for acceptable use.
- It can take the form of a license (including Creative Commons licenses) that lists specific conditions and uses, or it may categorically allow or prohibit certain types of use, such as educational or commercial.
- Often the stated terms of use include citing the source or paying a usage fee.
- Controls use of the item, usually to protect the library's investment or limit liability for misuse



Results – content of statements

Meme: What you can and can't do

- *“Acknowledgement of the [collection] as a source for borrowed images is requested.”*
- *“[Repository] encourages the fair use of copyrighted material, and you are free to link to content here without asking for permission.”*
- *“As the physical rights holder of this material, most of which is in the public domain for copyright purposes, the Library charges a usage fee to license an image for commercial use (defined above).”*



Results – content of statements

Meme: What you can and can't do

- *“This edition is the property of the editors. It may be copied freely by individuals for personal use, research, and teaching (including distribution to classes) as long as this statement of availability is included in the text...”*
- *“The [institution] hereby grants you a nonexclusive, limited license to use the articles and other materials in the [collection] (the "Content") in accordance with these Terms and Conditions (the "License")...”*



Results – content of statements

Meme: Protecting ourselves and you

- About the legality of the library's use of the object(s)
- and/or the need for the user to comply with the law when reusing them.



Results – content of statements

Meme: Protecting ourselves and you

- *“The Library has no information on the status of literary rights in the collection, and researchers are responsible for determining any question of copyright.”*
- *“Providing reproductions does not constitute permission to publish or reproduce images in print or electronic form.”*
- *“Note that only low-resolution scans (72 dpi with javascript protection) have been used on this site to discourage transmission or reproduction of items beyond that allowed by fair use.”*



Results – content of statements

- Each meme appears on all types of collections – copyrighted, mixed, and public domain
- Are often combined



Conclusions



Conclusions – research questions

- Are libraries putting copyright statements on their digital library collections?
 - Sometimes
- Are they more likely to place statements on collections of copyrighted materials or public domain materials?
 - No



Conclusions – research questions

- Are there common elements among statements?
 - Yes
 - Can be grouped, roughly, into four memes (see previous section).
 - “Personal, educational, or research use only” is the most common element.



Conclusions – research questions

- Do they acknowledge the existence of the public domain and fair use?
 - Rarely
 - Less than 10% of the statements examined mention either one



Further conclusions

- Placement and labeling of copyright statements
 - No consistent location for statements (item level, ‘about the collection’ page, etc.)
 - Statements not always labeled (e.g. can be buried in introductory text)
 - Labels vary widely (‘rights and permissions,’ ‘ownership statement,’ ‘terms of use,’ etc.)



The big picture

- Are we providing our users with accurate and helpful information about the copyright status of the items in our collection?
 - Not always
 - Often information is missing
 - Sometimes it is wrong or misleading
 - e.g. ‘digital copyright’
 - or ‘all items protected by copyright’ on public domain collections



The big picture

- We are using copyright statements for different purposes
 - Provide user with accurate and helpful information about copyright status
 - Indemnify ourselves against liability
 - Control the way our collections are used (terms of use)



Copyright v. Terms of Use

- Copyright statements
 - Who owns it, what is and isn't allowed
 - Based on copyright law
- Terms of use
 - What you can and can't do with it
 - Based on copyright law (e.g. Creative Commons), contract law, goodwill, etc.



Copyright v. Terms of Use

- Why is it bad to combine them?
 - Users are unable to determine their rights under copyright law,
 - or to make informed decisions when the two conflict (e.g. terms of use specify restrictions beyond those allowed by copyright law)
 - Undermines copyright education efforts and the rights of users



Clearly, something is wrong...

So what can we do about it?



Recommendations



Recommendations

I can't tell you what your statements should say

- As I mentioned, I'm not a lawyer
- Institutions have to develop their own practices based on risk tolerance, etc.
- I have an axe to grind (the rights of users!)



Recommendations

Instead, we need to develop **best practices** for

- What information belongs in a copyright statement
- How to distinguish between copyright statements and other restrictions on use
- Where to place copyright information and how to label it
- How to provide detailed information while minimizing risk



In the meantime...

Some general advice:

- Look at your copyright statements – Are they accurate? Are they consistent?
- Look at other people's copyright statements (Library of Congress, etc)
- Think about the legal basis of your statements
 - Copyright law, contract law, etc.
- Think about the purpose of your statements
 - help users, protect investments, avoid liability, etc.



Questions?

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