The Reuse Evangelist

Taking Ownership of Copyright Questions at Your Library

Daniel Hickey, Guest Columnist

*Correspondence concerning this column should be addressed to **Diane Zabel**, Schreyer Business Library, The Pennsylvania State University,309 Paterno Library, University Park, PA 16802; e-mail: dxz2@psu.edu.*

Daniel Hickey *is Business and Information Sciences Librarian, The Pennsylvania State University, University Park, Pennsylvania.*

A few months ago, my colleague Daniel Hickey participated in an in-house panel titled "The Dirt on Downloads: What You Should Know about Using Copyrighted Media." Since I learned so much from Daniel's presentation on helping students integrate preexisting media into their assignments, I invited him to develop his presentation into a broader article on copyright issues for public services librarians. This column reflects Daniel's passion for advocating for library users as well as his interest in digital media. His informative and provocative article will no doubt encourage lively discussion on this critically important issue.—*Editor*

A short time ago, after teaching a one-shot instruction session about locating free media for video projects to a class of undergraduates at Penn State, I received a perplexing follow-up question. The query itself was straightforward: some students had confused different types of intellectual property (patents and copyright) and were uncertain as to how to proceed with their assignment. The specifics of their question were easily explained and fears that the video's concept would have to be scratched allayed. What struck me, however, was the tone of their e-mail. These teenagers knew enough about copyright, and intellectual property in general, to worry that displaying a patented design in their video might incur the legal wrath of a major corporation.

The irony of the situation was that these students were participating in the Sparky Awards, an annual "contest to promote the open exchange of information" organized by SPARC, the Scholarly Publishing and Academic Resources Coalition, and hosted at a variety of North American universities.[1] A quick glance at sparkyawards.org clues any librarian in to the fact that the awards are a vehicle for educating and engaging students in discussions about copyright, and more specifically Open Access.

Advocacy for Open Access is an important initiative among librarians. Working to advance this ideal in the publishing industry, however, often happens at a much higher level than that of the average practitioner in a private, public, or academic library. This can be dispiriting. How can we, as on-the-ground information professionals with a decided stake in the proceedings, contribute? The answer can be found in the question: on the ground. Librarians have a unique insight into how copyright law and publishing terms of service directly impact our patrons. This rapport with our users can reveal what is at stake for the individual and why the librarian's role as a copyright educator and reuse evangelist is critical to the mission of libraries.

LIBRARIAN AS COPYRIGHT CONSULTANT?

Before discussing how librarians can take action, the question of whether or not we should must be broached. Copyright occupies a vexed place when it comes to reference work. There are two camps: some view answering copyright questions as an integrated part of everyday operations, while others classify them as untouchable legal questions.

Recently, while reading Dorothea Salo's blog, Book of Trogool, I came across a post that provided a fictional librarian's response to a copyright question: "I am not a lawyer; if you have a copyright question, go ask a lawyer."[2] What this response doesn't communicate is the deeper reason why the librarian is unwilling to answer a copyright question. That reason is, of course, that the individual or institution might be held liable in court or accused of practicing law without a license. These fears are certainly valid, but they should not be allowed to shut down reference interactions in which a librarian is qualified to provide information resources, advice, and opinions related to the reuse of intellectual property (with the proper caveats).

In December 2010 an ARL report titled *Fair Use Challenges in Academic and Research Libraries* found that there is a perception among academic librarians that decisions are sometimes made on the basis of avoiding copyright difficulties rather than fulfilling the library's mission."[3] The American Library Association's Code of Ethics states that librarians "respect intellectual property rights and advocate balance between the interests of information users and rights holders."[4] There is a tension in the profession between what is best for information users, as exemplified by the Code of Ethics, and what practices that are actually occurring in libraries.

COPYRIGHT'S LINK TO INFORMATION LITERACY

One of the concepts that librarians have internalized as a foundational aspect of the profession is that of information literacy, in which librarians assist researchers with recognizing the extent of an information need and the process for discovering, vetting, and ethically and effectively using information.

It is important to remember that when discussing "information," as above, we're not only discussing journal articles, books, and other text-based documents. Information compasses all multimedia and consequently the complex laws that protect these works. It is part of every reference and instruction librarian's charge and province to be able to assist and educate patrons about copyright. In short: every librarian with these duties should consider themselves a copyright librarian.

The steps of the information literacy process are readily comprehensible for any student who has received coaching in how to perform literature-based research. Similarly, librarians are already confident in how to teach these skills. It is the added complexity of copyright law, its very mutability, which flummoxes librarian and patron alike. However, we cannot allow this to manifest as missed "opportunities to educate both faculty and students on their own fair use rights, in the classroom" or during a reference interaction.[5]

Librarians now must be able to dispel copyright myths, clearly articulate what law and library policy allow, and provide context for the oft-conflicting copyright advice patrons have casually gleaned over the years. In James Neal's 2011 ACRL paper, "Fair Use is Not Civil Disobedience: Rethinking the Copyright Wars and the Role of the Academic Library," the author's first piece of advice for information professionals is to "be knowledgeable resources for their communities, sources of accurate and current information about copyright."[6] Librarians need this strong intellectual foundation to become reuse evangelists.

In a recent study, the University of Minnesota Libraries' Copyright Program surveyed individuals inside and outside their library system "to document their knowledge of key areas of copyright law that intersect with common academic practices. All respondents were found to have considerable weaknesses and gaps in knowledge around many key issues."[7] Nancy Sims's findings are interesting, as they reveal that librarians have an opportunity to develop expertise that cannot be found elsewhere in the University environ.

OF COURSE! COURSE RESERVES

Course reserves are one of the most visible instances of how reuse of copyrighted works is a priority in higher education. An example of a place where librarians can have a positive impact, course reserves affect stakeholders system-wide: students, faculty, and librarians.

Just before every semester begins it is not uncommon for librarians to answer a volley of questions about how instructors can connect students with required readings for their classes. Questions vary widely: How much of a book can be digitized for electronic reserves? Should articles be placed in the CMS (Course Management System) or in a centralized library reserves system? Is it possible to stream a copyrighted movie over the Internet to distance education students? Etc.

Thanks to their experience in collection development, librarians often have important insights into how the added layer of a vendor's Terms of Service agreement might affect what can and cannot be put on reserve. After having licensed content from a vendor under their terms of service, libraries are bound to those obligations, regardless of whether copyright law is more liberal. Carefully reviewing terms of service to ferret out diction that negatively impacts patrons is an essential step in the evaluation of product licenses. *The Harvard Business Review*, an essential business title, is notorious for its restrictive terms of service that prevent the publication being used as a course reserve.

What usually unites course reserves questions is the concept of legality. What is within an instructor's rights? To a teaching faculty's mind, there is often a disparity between what is expedient and effective and what is library or university policy. Libraries managing course reserves are increasingly

sensitive to copyright law after Cambridge University Press, Oxford University Press, and Sage Publications sued Georgia State in 2008 for how the University handled electronic reserves. Clearly, the University is no longer an ivory tower. Librarians must be able to strike a balance between reuse that directly benefits students and their ethical obligation to follow copyright law.

LIBRARY-GENERATED CONTENT

Librarians may seem like they are at the mercy of forces beyond their control when it comes to copyright. However, there are places where professionals have agency and can actively promote open access to research materials.

The most recent ACRL horizon report related that in the future, digitization "of unique library collections will increase and require a larger share of resources."[8] Libraries are generating huge amounts of digital content. Also, libraries' involvement with the traditional role of the university press and more recent institutional repositories ensures that we are stewarding and publishing content for our constituents.

Libraries and archives need to think seriously about how they approach copyright when acting as a rights-holder. Typically, copyright-holders tend to reserve all their rights, not clearly communicating if or how others can interact with the content they create beyond fair use. Many universities take this blanket approach.

An excellent example of a progressive institution is the Brooklyn Museum, which has affixed liberal Creative Commons licenses and/or detailed copyright information to every image in their online collection. At the Huffington Post, Jonathan Melber applauded them:

> Despite the common (though questionable) view that it's more lucrative for museums to assert as much control over their 'intellectual property' as copyright law allows, the Brooklyn Museum apparently understands that its mission is more effectively fulfilled, and the public better served, when the museum allows its collection to be reproduced, remixed and disseminated in as many (non-commercial) ways as possible.[9]

Try removing "Brooklyn" and "museum" from the above quote and replacing them with "libraries." Isn't the prospect of a library taking this stance exciting?

Visit any of the University of Michigan's Library websites and in the low-right hand corner you will find this same Creative Commons license. (University of Michigan has also been recently in the news for spearheading an initiative to identify orphan works among the Hathi Trust books.) While few libraries have adopted this measure, it's a good symbolic first step. Libraries also need not limit their efforts to websites and text. Cataloging records, digitized archival material, software developed in-house, and anything that uniquely belongs to the library is ripe for licensing so others can reuse it.

It might be difficult to shepherd a Creative Commons-style intellectual change through a bureaucracy, especially if that bureaucracy doesn't end at the head of the library. Happily, librarians now have clear success stories they can use to illuminate the benefits of liberating content for reuse.

WALKING THE WALK

Recently I had the pleasure of hearing Dr. Anurag Acharya, a computer scientist at Google and co-creator of Google Scholar, discuss his personal philosophy. In a presentation that included strong themes of social responsibility, he stressed that most scholarly content is restricted and that Google Scholar's ultimate goal is to facilitate scientific progress.

At the time I was too wrapped up in the logistics of how Acharya had collaborated with libraries and publishers to make Scholar a success. Now, however, I struck by his idealistic goal and the large-scale impact a small group of computer scientists have had on the contemporary information landscape.

If libraries want to encourage dramatic strides forward in the reuse and opening of copyrighted content, we need to "actively promote open models of information access and the creation of a commons for scholarly, educational and creative works."[10] What better place to begin than at our home institutions, using the library's most valuable resource: our professionals.

References

1. SPARC, "The Sparky Awards," www.sparkyawards.org/index.shtml (accessed June 15, 2011).
2. Dorothea Salo, "Link, Don't Pass around Files," online posting, Book of Trogool, Jan. 25, 2011, http://scientopia.org/blogs/bookoftrogool/2011/01/25/link-dont-pass-around-files (accessed June 9, 2011).
3. Prudence Adler et al., *Fair Use Challenges in Academic and Research Libraries* (Washington, D.C.: Association of Research Libraries, 2010), www.arl.org/bm~doc/arl_csm_fairusereport.pdf (accessed June 15, 2011).
4. American Library Association, "Code of Ethics (January 22, 2008)," www.ala.org/ala/issuesadvocacy/proethics/codeofethics/codeethics.cfm (accessed June 2, 2011).
5. Adler et al., *Fair Use Challenges in Academic and Research Libraries*.
6. James G. Neal, "Fair Use is Not Civil Disobedience: Rethinking the Copyright Wars and the Role of the Academic Library" (paper presented at the ACRL 2011 Conference, Philadelphia, Mar. 30, 2011), www.ala.org/ala/mgrps/divs/acrl/events/national/2011/papers/fair_use.pdf (accessed June 15, 2011).
7. Nancy Sims, "Lies, Damned Lies, and Copyright (Mis)Information: Empowering Faculty by Addressing Key Points of Confusion" (paper presented at the ACRL 2011 Conference, Philadelphia, Mar. 30, 2011), www.ala.org/ala/mgrps/divs/acrl/events/national/2011/papers/lies_damned_lies.pdf (accessed June 15, 2011).
8. ACRL Research Planning and Review Committee, "2010 Top Ten Trends in Academic Libraries," *College & Research Libraries News* 71, no. 6 (June 2010): 286–92.
9. Jonathan Melber, "The Brooklyn Museum's Copyright Project," online posting, Huffington Post, Jan. 21, 2010, www.huffingtonpost.com/jonathan-melber/the-brooklyn-museums-copy_b_430966.html (accessed June 15, 2011).
10. Neal, "Fair Use is Not Civil Disobedience."