

# Copyright and the Special Librarian



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Copyright is an issue “near and dear” to the hearts of many special librarians--those individuals who are often designated “Guardians of Copyright” within their companies. They must regularly educate not only clients or end-users, but also themselves. We hope this article will assist in this regard.

With the explosion of digital content over the last few decades, copyright issues and concerns have grown exponentially. Digital content often serves to further complicate the already complex issue of managing copyright compliance.

This article focuses on raising awareness about the types of digital content that may require a closer look from a copyright perspective by special librarians. We also identify current views about digital copyright and share examples and sources that may help today’s special librarians navigate their way through the copyright maze.

## **Complexities of Copyright**

Copyright issues can be confusing even at the best of times due to the complexity of U.S. and international laws. Material that is long out of copyright in one country may still be protected in another part of the world. Under current U.S. law, for example, works published before 1923 have fallen into the public domain;<sup>1</sup> items published between 1923 and 1977 may or may not be in the public domain, depending on the U.S. copyright language in force at the time of publication. For works that were created (i.e., fixed for the first time in tangible form) on or after January 1, 1978, copyright normally lasts for the rest of the author’s life, plus an additional 70 years.<sup>2</sup> In New Zealand, on the other hand, copyright protection of literary, dramatic, musical, or artistic works lasts for 50 years after the death of the author.<sup>3</sup>

Issues of copyright can be particularly confusing with regard to electronic content, for which the rules are still being developed—and litigated. One important development is that licensing arrangements are being put in place for new types of digital material. For example, Massachusetts-based Copyright Clearance Center, Inc. (CCC) ([www.copyright.com](http://www.copyright.com)), a leading provider of licensing services, announced that it would begin licensing rights to more than 1,000 top weblogs (blogs), via an agreement with Newstex ([www.newstex.com](http://www.newstex.com)).<sup>4</sup>

Not unlike copyright as it applies to non-digital content, intent of use adds another layer of complexity to understanding and applying the copyright laws correctly. Copyright status varies depending on the kind of electronic information—e.g., books (and other textual material), photographs or other still images, sound recordings, and video recordings. But regardless of the type or format, intent is a key element to understanding

<sup>1</sup> *Information Circular 15t. Extension of Copyright Terms.* Revised December 2004. U.S. Copyright Office. Viewed 28 November 2007. <http://www.copyright.gov/circs/circ15t.html>.

<sup>2</sup> *Ibid.*, section “How Long Copyright Protection Endures.”

<sup>3</sup> “How Long Does Protection Last?” in Copyright Protection in New Zealand. 29 November 2005. New Zealand Ministry of Economic Development, Intellectual Property Policy Group, Regulatory and Competition Policy Branch. Viewed 29 November 07. [http://www.med.govt.nz/templates/Page\\_7290.aspx#P48\\_5553](http://www.med.govt.nz/templates/Page_7290.aspx#P48_5553)

<sup>4</sup> “Copyright Clearance Center Adds Blogs to its Licensing Programs.” Press Release (19 November 2007. Copyright Clearance Center. Viewed 29 November 2007. <http://www.copyright.com/cc/viewPage.do?pageCode=au147>

how to apply the copyright laws. In general, if one is using material for a commercial purpose, then the material is protected by the copyright laws.

## **Copyright and Types of Digital Content**

### ***Online Reports, Studies, and Articles***

If purchasing material such as a multi-client study from an online vendor, it is important to be aware of the usage restrictions. It is also important to keep in mind how much of the material one can incorporate into a derivative work, such as an executive summary, without infringing on intellectual property rights. The vendor may have instituted a Digital Rights Management (DRM) system, to prevent unauthorized copying. An example of this type of protection can be seen in PDFs that prohibit selecting and copying text from the PDF.

In support of a market due diligence project, for example, Cipher might purchase a multi-client study which provides financial figures and trend analysis for the European telecommunications industry. Such information, however, is simply one source among many that we use for our own analysis. Information from the multi-client study might provide background for questions that we ask in interviews we conduct with industry experts. Even though Cipher may not directly quote the multi-client study, we do make sure that all such sources are properly cited.

Cipher also makes use of reports provided by leading research institutes, which often make their material available online in HTML, Microsoft Word, or PDF format. The RAND Corp ([www.rand.org](http://www.rand.org)) makes many of its publications available online at no charge, as a public service. The scope of RAND's research—which includes areas as diverse as energy, health care, education and child welfare, international affairs and security, public safety, and even the arts—is immense, and RAND is known for its qualitative approach.

Even when, as in the Rand case, the content is freely available for use, we continue to provide full citations to the specific reports as part of our method of handling digital content.

Digital content that is downloaded from database aggregator vendors like Dialog and Lexis/Nexis present another type of copyright challenge - determining who is the copyright holder. In this case, the special librarian needs to understand the database vendor's licensing agreement.

If there is a need to quote the article extensively, or use the article as an appendix item, then permission must be obtained from the original copyright holder. Let's say Cipher was preparing a report about trends in the mobile communications sector over the past 25 years, and wanted to quote extensively from articles in several 1982 issues of *Time Magazine* that we found using a database vendor. In addition, we also wanted to include the full text of an article itself in print for all attendees of the meeting in which the report would be presented. First we would need to identify who holds the copyright on the article. It could be the database aggregator, it could be the individual database provider, it could be the magazine publisher or it could be the article author. How do we know which one to choose? In cases like this, Cipher staff have gone directly to the magazine publisher and requested permission and paid for the specific number of official reprints needed for the specific situation. Your solution might be different, depending on your source and your intent of usage.

### ***E-Text Archives***

An increasing number of books and other textual material are becoming available online in a variety of formats. Some initiatives, such as U.S.-based Project Gutenberg ([www.gutenberg.org](http://www.gutenberg.org)), post a majority of content which has been confirmed to be in the public domain. Most of Project Gutenberg's material, therefore, is from before 1923 (confirming with U.S. copyright law). In a few cases, Project Gutenberg includes copyrighted material (clearly marked as such). In these cases, the copyright holder has given permission to Project Gutenberg for the

material to be put online; this does not, however, give automatic rights to use that material for commercial purposes or to make a derivative work.<sup>5</sup>

Other initiatives, such as the Internet Archive ([www.archive.org](http://www.archive.org)) incorporate both copyrighted and public-domain material, but posts copyright status and usage restrictions (if any). Terms of use are available on the website.<sup>6</sup> Some material is released under a “creative commons” license, which allows a variety of usage levels depending on the wishes of the author. In May 2007, the state of California officially recognized the Internet Archive as a library, which means that the organization can now receive federal grants administered by the state.<sup>7</sup>

An increasing number of universities and colleges are making academic work available online, too. “Electronic Theses and Dissertations” (ETDs) are an important segment of this, because they often represent cutting-edge research in their respective fields. Usage restrictions vary, depending on the respective authors’ wishes and the policy of the particular degree-granting institution. A main source of ETDs is the Networked Digital Library of Theses and Dissertations (NDLTD) (<http://www.ndltd.org/>), an international organization which seeks to develop and promote best practices for adoption, creation, use, and dissemination, and preservation of these electronic documents.

### **Web Logs (Blogs)**

Blogs can be a key source of information about organizations, people, and products that are otherwise hard to find. Blogs are increasingly being recognized, however, as a form of intellectual property—one that is being licensed by organizations such as the Copyright Clearance Center. If planning to use blog content for a project, be sure that the intended usage is within “fair use,” or a copyright release will be required.

Anne Holland, President of MarketingSherpa.com, wrote about this precise issue in her July 18, 2005 blog entry. She noticed a worrying trend of bloggers stealing the entire text of an article or blog for her post, and not citing the reference properly. She writes, “...just because a product is an article rather than a shirt or widget, doesn’t mean you can take it and give it away without the owner’s permission.” Be careful to understand the copyright laws as they apply to type of content you might want to use. When in doubt, check with a qualified attorney. (See “Blog Copyright Theft on the Rise.” 18 July 2005. Anne Holland, President, MarketingSherpa.com. Viewed 29 November 2007. <http://www.marketingsherpa.com/sample.cfm?contentID=3032>)

A large directory of blogs is available at Technorati (<http://technorati.com>), which at the end of November 2007 said it was tracking 112.8 million blogs.<sup>8</sup> A search on 29 November 2007 turned up a list of 1,270 copyright-related blogs.<sup>9</sup>

## **“Gray Areas”: Situations When Copyright May Apply**

### ***Unique Digital Uses of Content***

Sometimes there is a need to convert “analog” content into “digital” content. For example, a company might be looking for opportunities in a country or an industry that doesn’t have an extensive online presence. But somewhere in the stacks someone finds a business directory that lists the points of contact for each major firm, by industry. The company would like to simply scan all 400 pages of this document, and start cross-referencing with online sources to see if any of these companies have websites, or whether any of their personnel are listed on

<sup>5</sup> Project Gutenberg: The Project Gutenberg License. Last modified 21:27, 31 October 2006. Project Gutenberg. Viewed 30 November 2007.

[http://www.gutenberg.org/wiki/Gutenberg:The\\_Project\\_Gutenberg\\_License](http://www.gutenberg.org/wiki/Gutenberg:The_Project_Gutenberg_License)

<sup>6</sup> *Terms of Use*. 10 March 2001. Internet Archive. 30 November 2007. Viewed <http://www.archive.org/about/terms.php>

<sup>7</sup> Internet Archive officially a library. 25 June 2007. Forum thread, category “Announcements”. Posted by user: Brewster. Modified by brewster on 25 June 2007, 16:07:27. Internet Archive. Viewed 30 November 2007. <http://www.archive.org/iathreads/post-view.php?id=121377>. See also: Adrian McCoy, “The Internet gives birth to an ‘official’ online library.” Pittsburgh Post-Gazette (24 June 2007). Online. Post-Gazette.com. Viewed 30 November 2007. <http://www.post-gazette.com/pg/07175/796164-96.stm>

<sup>8</sup> *Welcome to Technorati*. Technorati.com. Viewed 29 November 2007. <http://technorati.com/about/>

<sup>9</sup> *1,270 blogs about copyright*. Technorati.com. Viewed 29 November 2007. <http://technorati.com/blogs/copyright>

Monster.com, or in professional networking databases such as ZoomInfo or LinkedIn. However, this document may still be covered by copyright. The company needs to find out from the publisher whether they will allow scanning and what the company must do to not infringe on the directory publisher's copyright.

### ***Online Linking***

Linking to another website may need to get permission from a copyright owner to provide a hyperlink from your website to another website. This is a somewhat unclear area. Many copyright owners do not care, others do. The ability to link may depend on whether a copyright owner would be upset at seeing his or her ideas/thoughts/etc. associated with those of another organization or client/end-user. It's always best practice to **ask permission**.

### ***Use of Third-Party Data Found on the Web***

It really depends on the type of third-party data and what for what purpose its being used. Some third-party data is not copyrighted - such as material created by the U.S. government. Material created under a "creative commons" license might be used depending on the licensing.

Sometimes, it may be enough to reference the third-party data in passing—especially if the data can be cited through multiple sources; i.e., Company X might have used certain data, such as market trends in the hybrid car industry, in a copyrighted report. However, the data used in the copyrighted report was originally sourced from U.S. Government data which is not copyrighted, and probably is not copyrighted since the data is public domain data from the U.S. Government.

### ***It Doesn't Have a Copyright Mark***

Just because it doesn't have a copyright mark, doesn't mean it isn't copyrighted. Under U.S. copyright law, an item is copyrighted once it has been put into a fixed medium, such as being written down or made into a visual or audio recording. So it's best to assume that the information is copyrighted and proceed from there.

This also is true for most graphics and images and for company logos which are considered trademarked or copyrighted and probably should not be used without obtaining the legal permission.

### **Moving Forward – New Types of Copyright Models**

To make information more accessible, various organizations are working out innovative licensing arrangements that provide more flexibility than traditional copyright models, while giving authors more protection than they would have under the "open source" model.

For example, the non-profit organizations Creative Commons (CC), based in San Francisco, California, has developed a flexible system by which an author can specify which conditions apply to a work, relating to attribution, whether the material is for non-commercial use only, and whether (and under what conditions) derivative works are permitted.<sup>10</sup>

### ***What the Special Librarian Can Do***

Given the increasingly complex nature of copyright in the digital age, Cipher has found that the best advice is often just common sense:

- Have a clear internal policy about copyright as it applies to paper and digital content
- Be aware of the changing copyright status of various kinds of materials (articles on aggregated databases; blogs; websites, e-texts)
- Be aware of innovative solutions such as "Creative Commons" licenses

<sup>10</sup> License Your Work. Creative Commons. Viewed 29 November 2007. <http://creativecommons.org/about/license/>

- Read, read, read...and read some more. Read what top legal scholars and business analysts are saying about copyright. A useful reference is "Copyright on the Internet" by Professor Thomas G. Field Jr. at the Franklin Pierce Law Center ("Pierce Law") (Concord, New Hampshire) at <http://www.piercelaw.edu/tfield/copynet.htm>

As the 21<sup>st</sup> century progresses, it is likely that new forms of digital content will be created—such as new types of multimedia that combine text, audio, and visuals in previously unknown ways. The special librarian can play a major role in helping clients tread carefully through the ever-changing world of copyright.

### Sidebar: Some Global Resources on Copyright

#### Global

- Directory of Intellectual Property Offices, World Intellectual Property Organization (WIPO), <http://www.wipo.int/directory/en/urls.jsp>

#### Americas

- U.S.: U.S. Copyright Office, <http://www.copyright.gov>
- Canada: Canadian Intellectual Property Office (CIPO), [http://strategis.ic.gc.ca/sc\\_mrksv/cipo/](http://strategis.ic.gc.ca/sc_mrksv/cipo/)
- Mexico: Secretariat of Public Education National Institute of Copyright [Secretaría de Educación Pública Instituto Nacional del Derecho de Autor (INDAUTOR) [in Spanish] [http://www.sep.gob.mx/wb2/sep/sep\\_459\\_indautor](http://www.sep.gob.mx/wb2/sep/sep_459_indautor)
- National Law Center for Inter-American Free Trade, <http://www.natlaw.com/>, a non-profit organization affiliated with the James E. Rogers College of Law, University of Arizona)

#### Europe

- Great Britain: UK Intellectual Property Office (an operating name of the UK Patent Office) <http://www.ipo.gov.uk/copy.htm>
- European Union: The EU Single Market: Copyright and Neighbouring Rights, [http://ec.europa.eu/internal\\_market/copyright/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/index_en.htm)

#### Africa

- African Regional Industrial Property Organization (ARIPO), <http://www.aripo.wipo.net/>

#### Asia

- China: National Copyright Administration of China (NCAC), <http://www.ncac.gov.cn/>

#### Australia-New Zealand

- Australia: Attorney-General's Department, Australian Government, <http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright>
- Australian Copyright Council (non-profit organization): Copyright Basics, <http://www.copyright.org.au/information/basics.htm>
- New Zealand: Ministry of Economic Development: [http://www.med.govt.nz/templates/StandardSummary\\_172.aspx](http://www.med.govt.nz/templates/StandardSummary_172.aspx)