

Libraries in the Creative Commons: Rights, Roles, and Responsibilities

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We live in an age of information networks. While information has existed for all of human history, it is only at this unique moment in time that technological advancements have connected all corners of the Earth through computer networks and made the exchange of information easy and virtually instantaneous. The popularity of blogs, social networks such as Facebook, content sharing sites such as YouTube, and myriad other Web sites and online communities are a testament to the fact that in today's world, people love to connect and share information with one another.

However, to their own detriment, many people go about their daily business blissfully unaware of the legal implications of the ways in which they create, use, modify, and share information. In a time when most popular blogs and Web sites prominently feature social sharing buttons, and copying and pasting text or photos can be done with a couple of clicks of a mouse, it is hard to believe that anything so simple and easy could put one on the wrong side of the law. Many people have heard about the legal battles that played out in court in the wake of Napster, but they don't necessarily understand how that relates to their use of an image in a blog post that only their mother will read or to the Facebook status they copied word for word from a friend. While there are some people who deliberately infringe upon the intellectual property rights of others for personal gain, many people don't even realize that they are infringing, and their intentions are good.

Remixing, re-tweeting, re-posting and mashing up are forms of expression that have become deeply entrenched in our culture; in fact, today many content creators *want* their works to be shared, remixed, mashed up, and redistributed. In his book *Viral Spiral: How the Commoners Built a Digital Republic of Their Own* (2008), David Bollier uses the words of Creative Commons founder Lawrence Lessig to describe this phenomenon:

In Lessig's words, Internet users are overthrowing the "read only" culture that characterized the "weirdly totalitarian" communications of the twentieth century. In its place they are installing the "read/write" culture that invites everyone to be a creator, as well as a consumer and sharer, of culture. (p. 11)

Organizations such as Lessig's Creative Commons are making it possible for these Internet users to license their works so that this creative sharing can more easily occur. Unfortunately, many people today simply don't understand the ins and outs of licensing and copyright law and remain unaware of solutions such as Creative Commons licensing. And their ignorance about the law and options for staying within it can be dangerous.

Libraries and their staffs are in a unique position, with content creators on one side and content consumers on the other—and the line between creation and consumption has never been less distinct than it is in today's networked, read/write world. Libraries provide information, and this information is often protected by copyright. In order to maintain positive relationships with authors, publishers, and other content creators and avoid the risk of litigation, libraries need to abide by copyright law. Some people think that this is where the responsibilities of libraries, at least where copyright is concerned, end. They would argue that it is enough for libraries to post the requisite signs next to the photocopiers and to include disclaimers on their Interlibrary Loan request forms, and that each patron is responsible for his or her own use or abuse of copyrighted materials. However, as providers of information, libraries are in a position to educate their users about the ways in which that information, as well as new information that their users create, is protected by law. Libraries and their staffs are in a position to recognize and protect the rights of both content creators and content consumers.

In this paper, I will argue that libraries and librarians should take an active role in educating their users about copyright issues and solutions. Libraries already provide instruction in many areas, including information literacy, research, online searching, and computer skills. Librarians teach their patrons how to find and evaluate information and how to use that information in various ways, so teaching them about the legal issues concerning their use of information and their options for staying within the law is a natural extension of what they already do. This will, of course, require that librarians themselves be educated about copyright issues and solutions, and that they lead by example in their own use of copyrighted materials on library-generated content such as Web sites, social media profiles, blogs, pathfinders, and reading lists. Furthermore, I will argue that libraries should utilize solutions offered by organizations such as Creative Commons and Gluejar, which seek to balance the rights of content creators and content consumers, in order to provide better copyright instruction and solutions to their patrons. Finally, I will argue that individual librarians and libraries need to engage and join forces with library organizations such as the American Library Association (ALA) and the International Federation of Library Associations and Institutions (IFLA), which are leading the way in defining the profession's values around intellectual property and advocating for user rights and access to information. Greater engagement and advocacy at all levels will ultimately strengthen the ability of libraries to effect change, fulfill their missions, and remain vital and relevant institutions in our society.

Background

Copyright law in the United States finds its basis in the U.S. Constitution, which provides Congress with the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and

Discoveries” (U.S. Const. art I, § 8). It is important to note that this statement, upon which all of U.S. copyright law is based, aims primarily at promoting the progress of science and useful arts, which, according to Peter B. Hirtle, broadly means “all learning and...all the inventions and practical devices now protected by patents” (2009, p. 2). In order to promote progress and learning, the Constitution empowers Congress to grant to authors, inventors, and other creators “a set of exclusive rights for a limited period of time, after which the work becomes free for everyone to use (i.e., it enters the ‘public domain’)” (Hirtle, 2009, p. 4). In this way, creators can benefit economically from their work while their work simultaneously advances the public welfare. While benefits to creators are an important aspect of copyright, its central aim is advancing the public good.

U.S. copyright law is codified in Title 17 of the U.S. Code. In the lengthy and complex legal text of Title 17, there are three sections that are particularly relevant to libraries: Section 107, which provides for fair use exemptions to the exclusive rights granted to copyright holders, Section 108, which provides libraries and archives with exemptions to exclusive rights, and Section 109, which provides exemptions for distribution of a particular, legally obtained copy of a work (also known as “First Sale Doctrine”) (U.S. Copyright Act, 17 U.S.C.). All of these exemptions are particularly important in allowing libraries to carry out their mission of providing their users with access to information. For example, fair use and the library and archives exemptions can come into play when libraries undertake digitization projects, supply copies of journal articles or book chapters through interlibrary loan, or offer electronic course reserves. First sale doctrine allows libraries to carry out one of their core activities, the lending out of materials they purchase to individuals and other institutions. By providing these services,

libraries help to advance the same public good—progress and learning—that lies at the heart of the copyright system.

As libraries go about the business of providing services and information to their users, and as users go about the business of utilizing the library's services and access to information, the potential for copyright infringement is ever-present. Although each of the sections of Title 17 mentioned above contains its own guidelines or general requirements (e.g. the four factors for fair use and the eligibility requirements for Section 108), there are still many possibilities for misunderstandings, misinterpretations, and downright ignorance among both library staff and users. For example, a library patron may check out several CDs of popular music each week and add them to her permanent iTunes collection. Another patron might systematically request photocopies of the entire contents of a copyrighted book, chapter by chapter, over a period of time. A staff member might use a copyrighted image found through a Google image search in a post on the library's blog. A high school student might copy a paragraph from an article accessed through her school library's online database collection and paste it into her status on Facebook. A college student might use a library computer to share a recent episode of a TV program on YouTube. The list of examples of potential infringements goes on and on.

While it may seem like libraries have a larger stake in advancing the public good than in protecting the interests of copyright holders, in fact, libraries need to abide by copyright law in order to maintain positive relationships with authors, publishers, and other content creators. Positive relations with these groups allow libraries to negotiate feasible and affordable purchasing and licensing agreements for books and other resources and to maintain their good reputations in the community. In addition, any failure to abide by copyright law opens the door to possible litigation. The case of *Cambridge University Press v. Patton, et al.* is just one

example of a case in which litigation for perceived infringements was brought against a group which included library staff members. Clearly, without the goodwill of the creative rights holders whose works fill their shelves (both physical and virtual), libraries would be in a precarious position. On the other hand, libraries serve as a major source of access to information for the communities they serve, and they generally pride themselves on protecting the public interest. Thus, libraries and librarians perform a complicated balancing act in protecting the rights of both content creators and content consumers.

Organizations have begun to spring up which recognize the need to balance the interests of both content creators and content consumers and attempt to offer solutions which keep these competing interests in equilibrium. Two examples of such organizations are Creative Commons and Gluejar. According to the organization's "About" Web page, Creative Commons' mission is to "[develop], [support], and [steward] legal and technical infrastructure that maximizes digital creativity, sharing, and innovation." The infrastructure provided by Creative Commons "consists of a set of copyright licenses and tools that create a balance inside the traditional 'all rights reserved' setting that copyright law creates" (Creative Commons, n.d.). Various search engines and Web sites, including Google, Yahoo, Weebly, and Flickr, allow users to search specifically for Creative Commons-licensed materials for their own use.

Gluejar is a relatively new organization which, according to its Web site, "is building a place for individuals and institutions to join together to liberate specific ebooks and other types of digital content by paying rights holders to relicense their works under Creative Commons licenses" (Gluejar, n.d.). According to the transcript of an online presentation by Gluejar employee Andromeda Yelton (Minow, 2011), Gluejar's model for making ebooks more available through the use of Creative Commons licenses "strikes the best balance between what

authors and publishers are going to be interested in and what is going to make it possible for readers and libraries to freely read stuff on the device of their choice in the format of their choice, to preserve, to copy and share with their friends.”

Arguments from the LIS literature

Libraries and librarians clearly have a large stake in balancing the interests of both content creators and content consumers. Many prominent thinkers in the field of Library and Information Science have argued that librarians should therefore take an active role in educating their users about copyright issues and solutions, and I agree. In a 2003 article discussing the implications of U.S. intellectual property law for American libraries, Rebecca P. Butler poses the question, “What should we do when confronted with Internet copyright infringement by our colleagues and/or clientele?” (p. 315). Butler goes on to argue that there are some ways for librarians, as copyright “experts,” to “make such instances win/win or, at least, learn/learn situations.” She suggests the following:

- Educate our audience through such venues as copyright workshops, inservices, classes, DVDs, videos, and teleconferences;
- Keep abreast of the most current changes in the law;
- Be available for consultation by patrons and colleagues;
- Obtain support from those in our organization’s administration;
- Be calm and understanding when confronting an infringement;
- Encourage correct action;
- Give examples of libelous actions and responses by the law to such actions;
- Cite law;
- Encourage users to read documentation;

- Encourage citing of information obtained from another source;
- Retain an intellectual properties attorney;
- Use original sources;
- Demonstrate ethical behavior;
- Remind our colleagues and clientele that we are all liable for our own actions. (p. 315)

Cushla Kapitzke (2009) picks up on Butler's suggestions, particularly her first suggestion, to "educate our audience," and discusses "possibilities for this positive and proactive approach to copyright practice for school library media centers." Kapitzke's discussion includes both theoretical and practical suggestions, including "awareness and support of alternate copyright frameworks that provide simple tools for licensing artistic and textual works." Kapitzke mentions Creative Commons in this context, arguing that

"thick" copyright protection impedes creativity because innovation depends on cultural experimentation and the free exchange of ideas. Freedom to be curious about culture and to fiddle with meaning in text is fundamental to being human. This is especially the case for young people who need room to push the boundaries of language, sound, and image for literacy learning. (2009)

Kapitzke concludes with an exhortation to librarians, particularly school librarians, to lead the movement and start critical conversations about copyright.

Kathy Fredrick (2011) picks up Kapitzke's discussion of copyright instruction in the school library with her article "Creative Commons Goes to School." Fredrick asserts that "it has become the responsibility of school librarians to help students—and colleagues—understand the nuances of copyright and intellectual freedom" (p. 25). She points out that we live in a time when librarians can make their lessons relevant to students:

If Brittany and Malik borrow from someone online and blend it into their video project and post their work online, chances are that someone will borrow a bit from them. What? Use MY STUFF? What a great opportunity to teach the meaning of intellectual property and the value of attribution. (p. 25)

After discussing the various Creative Commons licenses, Fredrick discusses how school librarians should lead by example and “label our work with CC attribution as a model for our students” (p. 27).

Rachel Bridgewater (2010) continues the dialogue about copyright challenges and solutions in a library context, asking “What’s a librarian to do?” Her suggestions include learning copyright basics, offering alternatives by directing users “to licensed materials as alternatives to ‘all rights reserved’ ones,” socializing with other community members “who share a passion for free culture issues,” and being fearless “in our defense of and advocacy for reasonable copyright.”

Daniel Hickey, an academic librarian at The Pennsylvania State University, considers the question of how the average practitioner in an academic, public, or private library can contribute to advocacy efforts for open access (Zabel & Hickey, 2011). He argues that “the librarian’s role as a copyright educator and reuse evangelist is critical to the mission of libraries” (p. 9). Hickey rejects the notion that librarians should refuse to answer copyright questions out of fear of being held legally liable or being accused of practicing law without a license. He points out that the ALA’s Code of Ethics calls on librarians to “respect intellectual property rights and advocate balance between the interests of information users and rights holders” and that educating patrons about copyright falls within the scope of information literacy instruction (p. 10). Hickey concludes by asserting that “Libraries and archives need to think seriously about how they

approach copyright when acting as a rights-holder,” and calls on librarians to adopt Creative Commons licensing on their own creative output (p. 11).

Libraries leading the way

Some libraries are already taking proactive steps to educate their users about copyright. Concordia University Libraries in Quebec, Canada have published an online Copyright Guide “to assist faculty and students in making their own decisions based on a better understanding of their rights and responsibilities” (Concordia University, 2011). While Concordia’s guide deals with Canadian copyright, its basic features touch on the same topics that are relevant to a consideration of copyright education in the United States, such as a consideration of what copyright is and how it works, duration of copyright, the public domain, using copyrighted works, exceptions for libraries, museums and archives, and licenses. Concordia’s guide links to various helpful resources on the Web for library users to further explore the various issues related to copyright.

An example of an American university library system that has taken similar measures to educate users about copyright is that of Louisiana State University (LSU). On their Web page entitled “Do You Know Your Copy Rights?”, the LSU libraries assert their commitment “to helping members of our community navigate the increasingly complex and evolving world of copyright” and also acknowledge that “the library is but one place on campus where copyright issues arise, but it is a logical place for faculty, students and staff to look for direction when confronted with copyright questions” (Louisiana State University, 2011). Like that of Concordia, LSU’s guide provides links to helpful and relevant online resources.

Besides offering copyright information and resources on the Web, some libraries are offering more hands-on copyright instruction to their users. Michigan Technological University

librarian Nora Allred offered two copyright workshops to students and faculty in April 2011, exploring questions such as “Do you need permission every time you use someone else’s work? Can you show an entire movie in your class? What is Educational Fair Use?” (Michigan Technological University, 2011, April 8). The University of Missouri-Kansas City libraries offered a copyright workshop for teaching faculty in October 2011 on the topics of linking and licensed resources, the fair use checklist, streaming content, and library help with posting and getting permissions (University of Missouri-Kansas City, 2011). Even public libraries are getting in on the action; in April 2011 the Detroit Public Library in Michigan hosted a copyright seminar and workshop as part of the Black Literary Expo (Dobrusin Thennisch PC, 2011). Clearly, many libraries are taking proactive steps to educate their users about copyright issues.

Another area in which libraries are leading the way for their patrons is in putting Creative Commons licenses on the content they produce. One example of a library employing this approach is the Hood River County Library District in Oregon. According to the library’s Web site,

the Hood River County Library District is sharing in a whole new way by encouraging people to reuse, distribute, and adapt works created by the Library District. Rather than having a restrictive “all rights reserved” mindset regarding copyright on its works, Hood River County Library District has adopted a Creative Commons Attribution license as the default for District-created content. (Hood River County Library District, 2011b)

According to Hood River’s Intellectual Property Policy (2011a), “all content created by District staff or its Board of Directors in the course of their work for the District shall be licensed under a Creative Commons Attribution 3.0 license.” The University of Michigan Library is another library that is employing Creative Commons licensing; its Web site is made available under the

Creative Commons Attribution 3.0 license, allowing the library to “act on its commitment to the public good. By marking our copyrighted content as available for reuse, we offer the University community and the public a rich set of educational resources free from traditional permissions barriers” (University of Michigan, 2011). According to the Creative Commons Wiki, the University of Florida Smathers Library has even “dedicated all of its original cataloging records to the public domain using the CC0 public domain dedication” (Creative Commons, 2011).

Some libraries are even utilizing Creative Commons-licensed works in their own creations. For example, the Burbank Public Library in California credits several different sources with providing images licensed under Creative Commons that can be found on the library’s Web site (Burbank Public Library, n.d.). The Newton Free Library in Massachusetts maintains a blog for its Retirement Planning Club which utilizes images republished under Creative Commons licenses (Newton Free Library, 2010). The Seattle Public Library in Washington State also uses Creative Commons-licensed images from Flickr on its blog for adult readers, *Shelf Talk* (Seattle Public Library, 2011). By utilizing Creative Commons-licensed materials in their own creative works, these libraries are acting as role models for their users, demonstrating how solutions to copyright problems can be effectively employed.

Advocacy

Libraries clearly have a fundamental role to play when it comes to balancing the interests of copyright holders and the users of copyrighted materials. However, some leaders within the profession are going beyond educating themselves, their colleagues and their patrons about copyright issues and solutions, and are actually working to effect changes in the law that will benefit the general public. These efforts are particularly visible through the efforts of organizations such as ALA and IFLA. ALA’s Web site features a broad range of information

related to copyright issues and advocacy, including policy statements, articles and tools, summaries of legislation, and more (American Library Association, 2011). In partnership with other related organizations, ALA even takes stances on international intellectual property law, as it did in 2004 when it “endorsed a call for change in the agenda of the World Intellectual Property Organization” (American Library Association, 2004). IFLA, an international library association, has recently taken a very strong stand on copyright and related issues. According to the organization’s Web site, “IFLA holds the position that the current system of copyright limitations and exceptions for libraries is not fit for the digital age” and “has been advocating in support of an updated framework that meets the needs of libraries in the 21st century” (International Federation of Library Associations and Institutions, 2011). The work that these organizations are doing to advance the interests of libraries and their users is invaluable, but in order for it to take hold, it requires engagement from library professionals from all areas and at all levels. Many librarians are already doing great work in educating their users about copyright issues and solutions and leading by example, and by getting involved in the advocacy efforts of organizations such as ALA and IFLA, their efforts can effect even greater change and help libraries to fulfill their mission of advancing the public welfare.

Conclusion

Copyright has perhaps never been a more relevant issue in the world of libraries than it is today. In a time when information can be instantly and easily shared, copied, and reused, an awareness of copyright law among both librarians and library users is vitally important. Because of their unique position and obligation to balance the interests of both content creators and content consumers, libraries and librarians can play an important role in raising awareness of copyright issues and solutions. As multiple scholars and practitioners have argued, educating

patrons about copyright is a natural extension of the instructional role that librarians already play, and it should be embraced. Many resources exist for librarians to raise their own awareness of copyright issues and solutions, and by educating themselves, they will be well equipped to pass on their knowledge to their users. Utilizing solutions offered by organizations such as Creative Commons and Gluejar can help libraries fulfill their missions and serve as role models for their users. And by joining forces and engaging with advocacy organizations such as ALA and IFLA, librarians can help effect change that will ensure that the interests of the public are preserved not only now but also in the future.

References

American Library Association. (2004). Library associations endorse declaration on WIPO.

Retrieved from

<http://www.ala.org/ala/online/currentnews/newsarchive/alnews2004/october2004ab/wipo.cfm>.

American Library Association. (2011). Copyright. Retrieved from

<http://www.ala.org/ala/issuesadvocacy/copyright/index.cfm>.

Bollier, D. (2008). *Viral spiral: How the commoners built a digital republic of their own*. New York, NY: The New Press.

Bridgewater, R. (2010). Tipping the scales: How free culture helps restore balance in the age of copyright maximalism. *OLA Quarterly*, 16(3), 18-22.

Burbank Public Library. (n.d.) Site credits. Retrieved from <http://www.burbank.lib.ca.us/site-credits>.

Butler, R. P. (2003). Copyright law and organizing the Internet. *Library Trends*, 52(2), 307-317.

Concordia University. (2011). Copyright guide. Retrieved from

<http://library.concordia.ca/help/copyright/>.

Creative Commons. (n.d.). About. Retrieved from <http://creativecommons.org/about>.

Creative Commons. (2011). Case studies: University of Florida Library. Retrieved from

http://wiki.creativecommons.org/Case_Studies/University_of_Florida_Library.

Dobrusin Thennisch PC. (2011). Copyright seminar & workshop presented as part of Black Literary Expo in Detroit. Retrieved from <http://patentco.com/?p=710>.

Fredrick, K. (2011). Creative Commons goes to school. *School Library Monthly*, 28(1), 25-27.

Gluejar. (n.d.). Vision. Retrieved from <http://gluejar.com/vision>.

Hirtle, P. B. (2009). *Copyright & cultural institutions: Guidelines for digitization for U.S. libraries, archives, & museums*. Ithaca, NY: Cornell University Library.

Hood River County Library District. (2011a). Intellectual property policy. Retrieved from <http://www.hoodriverlibrary.org/files/policies/Intellectual%20property%20policy.pdf>.

Hood River County Library District. (2011b). Reuse, resend, and remix? Hood River County Library District says yes! Retrieved from <http://www.hoodriverlibrary.org/lib-news/reuse-resend-and-remix-hood-river-county-library-district-says-yes>.

International Federation of Library Associations and Institutions. (2011). What is IFLA doing? Retrieved from <http://www.ifla.org/en/node/5860>.

Kapitzke, C. (2009). Rethinking copyrights for the library through Creative Commons licensing. *Library Trends*, 58(1), 95-108.

Louisiana State University. (2011). Do you know your copy rights? Retrieved from <http://www.lib.lsu.edu/admin/copyright/>.

Michigan Technological University. (2011, April 8). Graduate school newsblog: Library offers copyright workshop [Web log]. Retrieved from <http://blogs.mtu.edu/gradschool/2011/04/08/library-offers-copyright-workshop/>.

Minow, M. (2011). *MinowDigitalCopyright110111*. [Text document]. Retrieved from D2L online course site: <https://sjsu.desire2learn.com/d2l/lms/discussions/messageLists/frame.d2l?isShared=False&fid=57476&tid=100692&ou=63722>.

Newton Free Library. (2010, September 18). New financial literacy program [Web log]. Retrieved from <http://retirementclub.wordpress.com/2010/09/18/new-financial-literacy-program/>.

Seattle Public Library. (2011, November 21). Finding a hit man at your public library. Retrieved from <http://shelftalk.spl.org/2011/11/21/finding-a-hit-man-at-your-public-library/>.

University of Michigan. (2011). License. Retrieved from <http://www.lib.umich.edu/license>.

University of Missouri-Kansas City. (2011). Copyright workshop – Oct. 21. Retrieved from <http://library.umkc.edu/node/3089>.

U.S. Const. art. I, § 8.

U.S. Copyright Act, 17 U.S.C

Zabel, D., & Hickey, D. (2011). The reuse evangelist: Taking ownership of copyright questions at your library. *Reference & User Services Quarterly*, 51(1), 9-11.