November 2013

Biz of Acq -- Acquiring Pictures in the Digital Age: Licensing Issues in the Acquisition of Slides, Digital Images, and Digital Reproduction Rights for Two Digital Image Projects at Western Michigan University

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Recommended Citation
DOI: https://doi.org/10.7771/2380-176X.4049

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COMMUTER PHYSICS
by Pamela M. Rose (University at Buffalo)
Cartoons and physics definitely mix on Massachusetts city buses! Retired Amherst college physics professor Robert Romer and artist Bruce Aller teamed up to post physics problems on buses to stimulate the public mind. Problems include such puzzles as whether the water level will go up or down if a weight is thrown out of a boat, or if a box of flying bees weighs less than one with the bees at rest. Suggestions for home experiments can be found at www.amherst.edu/physicsand. The program is so successful that readers are offering their own puzzles such as whether jumping up and down will reduce your chances of injury in a falling elevator.


VIRTUAL PHOENIX
by Pamela M. Rose (University at Buffalo)
Will the dream of instant access to every book in the world be realized? That’s the ambition of the Alexandria Library Scholars Collective, who hope to replicate the ancient wonder in a digital world by making virtually all of the world’s books available at a click of a mouse. The ambitious initiative has scanned about 100,000 pages of the Alexandria Library’s collections, and has been promised access to one million books now being scanned at Carnegie Mellon as well as a whole library of crumbling medieval manuscripts in a monastery in Timbuktu in Mali, Africa. The CyberBook Plus software, designed by an American artist, “includes colorful virtual auditoriums, classrooms and offices with lamps where scholars can exchange information, teach classes or hold office hours. The rooms and lecture halls can easily be customized for the universities that choose to use the library’s software for remote learning.”


SEMANTICS OF SCIENCE
by Pamela M. Rose (University at Buffalo)
Although preprint archives and search engines like Google have allowed scientists unprecedented connectivity and ability to locate research areas, the Web is severely limited when it comes to the integration of information from multiple sites or non-textual information. The future of “e-Science” will depend on new Web technologies like the “Semantic Web” which is being designed to improve communications between different field terminology, to extend the interoperability of databases, to provide tools for interacting with multimedia collections, and to provide support of “agent-based” computing in which people and machines work more interactively. Essentially, it unites information across disciplines through meta-description to connect disparate research areas. The success of the Semantic Web will depend heavily on open and unrestricted access to both scientific research and computer science programming.


UPSIDE HAS NO DOWNSIDE
by Pamela M. Rose (University at Buffalo)
Leaders in the life sciences have issued a set of rules for the sharing of data and research material in a report issued by the National Academy of Sciences. Their “Universal Principle of Sharing Integral Data Expediently,” or UPSIDE, is designed to get “universal adherence” so that any scientist has ready access to data and materials needed to “verify or replicate” a published claim. Questions about enforcement still remain, however, editors of key journals might have the best leverage.

mass electronic image distribution in the 1990s.

Copying an image from a 35mm slide or an image from a printed source is almost as easy as purchasing the equipment and setting it up properly. Digital images and electronic distribution of images is a boon to education and the manner in which instructors at all levels use images. When using 35mm slides for teaching purposes, one slide containing a specific image can only be used by one person at any given moment to project in front of a classroom. With digital technology this same image can be distributed electronically to many viewers, in or outside of the classroom, at one time. One of the major changes in image acquisition brought about by this new technology is that now image vendors and the educational community are much more attuned to the regulations of copyright and image ownership, thus changing the ways institutions are acquiring images for their visual collections. What comes to acquiring digital images for Web-based image databases and image intensive institutional Websites, librarians must consider copyright, image ownership, and the licensing of digital images. With fair use being reconsidered, license agreements between the image owner and the educational institution require negotiation. Digital image license agreements come in almost as many sizes, shapes, and colors as the images themselves.

This paper focuses on two case studies involving projects that required the acquisition of actual images and the ways in which the images were purchased and licensed for use for electronic media delivery. In both cases, digital imaging technology was used for image distribution within an educational community. Both projects represented by these case studies originated with Teaching and Learning with Technology grants made available to faculty at Western Michigan University in Kalamazoo, Michigan. Several possible licensing scenarios are seen in these two studies. Information contained in this paper can be augmented by two writings published in the 1990s about the licensing of library materials. Tricia L. Davis and John J. Reilly published an article in 1998 entitled “Understanding License Agreements for Electronic Products” outlining what acquisition librarians need to know about licensing agreements. That paper is an excellent complement to Meta Nissley’s 1990 publication entitled “Taking License: Librarians, Publishers, and the New Media” where the basic language of license agreements is examined.

The Case Studies

Case Study Number One (hereinafter called CS1) involves the digitizing of slide images from two purchased slide sets published by a publisher of instructional slide sets. The two slide sets are Architecture, Interiors, and Furniture and The History of Costume: in Slides, Notes, and Commentaries. The project involved scanning a total of 3,383 slides from these sets and transferring the images to CD-ROM. The CD-ROMs can be checked out and circulated in the same manner as slides by faculty and students for classroom use or individual study. The CD-ROMs remain the property of the Visual Resources Library with circulation limited to the WMU community.

Case Study Number Two (hereinafter called CS2) involves purchasing slides and digital images from several vendors, the rights to take images with a digital camera at specific architectural sites, and the licensing of images scanned in-house from purchased hard copy materials in order to create virtual tours and online pictorial libraries of Canterbury Cathedral in England and St. Denis Cathedral and Monastery in France. When these virtual tours of these cathedrals will be available to WMU faculty, staff, and students via campus intranet.

Comparisons can be drawn between both case studies. First, images were purchased. Second, permission to copy the images and other licensing agreements of the digital surrogate images were negotiated to meet our specific project goals. Third, digital images were desirable for these two projects as the images were for distribution to the campus community to more than one user at one time.

Acquiring Slides and Digital Images

Securing images was the first action taken to complete the projects. Fortunately, the slides sets for the images used in CS1 were already part of the library’s collection—slides had been purchased through our acquisitions department from the publisher. No copy photography was required nor were any other vendors contacted for CS1. The only copying of images necessary was the scanning of 35 mm slides.

In CS2 more decisions concerning the acquisition of images had to be made. Since at the outset of this project, it was known that images were going to have to be purchased, a selection of vendors was sought out. Slide and digital image suppliers listing images of Canterbury Cathedral and St. Denis in their catalogs were located. Since the end product of this project was a virtual tour and online image collection for the WMU community to travel via the campus intranet, it was essential to have the ability to either purchase the image in digital format or be able to scan a slide or document in-house to create the digital image. Of the five vendors contacted, four would be able to meet our needs. The fifth vendor could supply beautiful slides of these edifices but would not allow us to purchase scanning rights for digital copies, which eliminated this vendor from consideration. Purchase orders were placed with the vendors through the library’s acquisitions department.

After selecting vendors and images, another factor was thrown into the acquisition process. Images of CS2. It became apparent that not all of the images the co-investigators of this grant wanted to use on their site would be available from vendors. The grantees were going to have to go to Canterbury and Paris themselves to take digital photographs of specific elements of the structures not available through a vendor. It is acceptable for tourists to take pictures of the structures for their own use. However, since the end product of this project would be redistribution of the photographs, the co-investigators sought permission from the appropriate parties to photograph the structures. Since Can-

terbury was the first structure to be worked on, a letter to the leading official of Canterbury Cathedral was drafted describing the project and the kinds of pictures that were needed. The official responded positively by letter granting permission to take the images and redistribute them electronically to the WMU community. Acceptance of this letter was in sense the licensing agreement.

As the project got underway and the framework for the virtual tour of the cathedral was laid-out, we discovered a need to add a floor plan and an aerial view. One of the investigators had a floor plan published by an exclusive distributor of materials on Canterbury Cathedral filling that need. Another had a slide of an aerial view from of the Cathedral precinct also distributed by the same company. The general manager of the company was contacted. For a fee, permission to make one digital copy of each image was granted.

License and Use Agreements

Licensing and use agreements for images differ from licenses for electronic journals and indexes. First, they are usually not as long and involved, often containing the minimum of legal issues, when compared to print material agreements. Second, there may be more technical terms included in the agreement than those for journals and indexes. Since we are dealing with digital pictures, pixel size, digital file size, and other digital image components and often are spelled out in an agreement between the vendor and the purchasing party. Thirdly, an image owner may require a copyright statement or watermark appear within the image before it is posted to a Website or image database.

In some instances, an institution will be purchasing an actual slide then license the right to make a digital copy. In other instances, a digital file containing the image will be purchased. It is important for the license agreement to spell out exactly what the library is receiving and the library’s responsibility for use of the material. CS1 required only two license agreements from the same publisher, one for each set of slides signed by representatives of the publisher and the University. The publisher for CS2 formalized the agreement, in plain language stating that permission was granted to Western Michigan University to transfer the specific slide sets to CD-ROM for a given price. Each agreement was short, to the point, and identical, with the exception of the fees and title of the image collections involved. No specific responsibilities for University Libraries were spelled out in the agreement. At first glance this agreement appears to be non-restrictive; nonetheless, what appears to be opened ended often is not. Even though there was no limit regarding the number of copies allowed or a restriction put on the file or pixel size of the digital image, the agreement does clearly state that the slides may be transferred to the CD-ROM format. No other format is mentioned; therefore, there are implied restrictions to this agreement. Since one format is explicitly stated in the agreement, the images cannot be used in any other visual electronic format such as a Web-based image library. If the library decided to use these electronic images.

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images in another format, a new contract would have to be negotiated with the publisher. In the world of digital imaging licenses, this was an easy transaction meeting project needs.

On the other hand, CS2 required several license agreements from different vendors. Each license agreement moved us toward the same end goal. However, since each vendor had its own way of handling images and use agreements, there was a wide range of products and services from vendors requiring responsibilities for the library to carry out for this project.

One vendor for CS2 prepared a brief agreement to be signed by both parties. The language is clear and free of legalese. The one page document is titled “Digital Use Agreement.” It states that our institution will abide to a copyright statement as provided in the agreement. It also states that the use of the materials is limited to classroom educational use and for individual study on a campus intranet. Redistribution of the materials in publication and public website is forbidden. Like the agreement in CS1, no limits on the file size or the number of copies were set. Since the product associated with CS2 is a Web page delivered via the campus intranet, this contract suited the needs of the visual resources library with no revisions. This agreement does differ from the agreements in CS1 in that it does not specify which images from the vendor are covered by this agreement. There was no appendix listing selected images attached to the document, nor were any fees paid. It can be interpreted that this agreement covers all images from the vendor. Again, compared to many licenses, this was an easy agreement to take into account, even though long term goals and changes may need to be renegotiated between both parties in the future.

The agreement made with the distributor of materials on Canterbury Cathedral for the use of the printed floor plan and one slide was also rather straightforward. There was no agreement to be signed, a letter stating the responsibilities of the user was attached to the invoice for the one-time use fees of these documents. This letter states that WMU could use these two images on a course Website as long as a copyright statement for Canterbury Cathedral Enterprises appeared on the site and that the images were also watermarked. An agreement of this brevity only takes immediate needs for the institution into consideration. As in the previous examples, future use of the images and the addition of more images would have to be renegotiated.

License agreements for CS2 also involved what could be considered the middle ground agreements. One vendor submitted an agreement that was somewhat longer than the previously mentioned documents. Ownership of the images and responsibilities of both parties were so neatly spelled out in ten points, that there was no question in either parties’ mind as to what is expected from the contract. The first five points stated specifics regarding who owned the images, who could use the images, and for what purposes the images could be used. Limits on maximum file sizes for images used on the intranet and on a departmental image database were also set. Four points concentrated on restrictions for University Libraries, specifically stating that images couldn’t be redistributed on public access Websites, used for commercial purposes, or altered. A copyright statement presented by the publisher had to accompany each image. A fee schedule was listed at the end of the document. Unlike the previously mentioned agreement, this contract was limited to specific images with an appendix listing the catalog numbers and titles covered by this agreement. If the library wished to include more images from this vendor in the project, another appendix would need to be appended to the document and agreed upon by both parties. Additional fees would also have to be paid. Future needs of the institution were addressed with the additional appendix and fees.

Another vendor also submitted what this author considers a mid-level license agreement. The agreement began with the basics of the parties involved in the agreement and established the vendor as the owner of the images. The agreement was very similar to that of the vendor mentioned in the above paragraph with two exceptions. The first exception was that the agreement stated the University was responsible for informing the WMU community of permissible and non-permissible uses of the materials. The second exception permitted the downloading of an image into a presentation software or onto a disk and modifications as long as the images were used solely for educational purposes. Images could be added to the agreement in the future with an additional appendix listing the images and the appropriate fees.

So far, only agreements allowing slides and printed matter to be scanned have been discussed. There are image vendors who will directly sell digital files so that the purchaser does not have to go through the scanning process. This is convenient and time saving for the purchaser as scanning does have to be carried out, but compared to other transactions taking place for CS2, the license for these images was more complex.

A major, well-established slide vendor makes digital images on CD-ROMs available to clients. An order for specific images was placed with the vendor then these images were burned onto a CD. The license agreement from this vendor was the lengthiest and most involved. The license agreement covers ownership of the images, parties included in the contract, definitions, permitted and prohibited uses, obligations of the licensee, length of the agreement, warranty, limitations of liability, general provisions, and dispute resolution. This was the most comprehensive agreement of this project. There are no questions regarding what is being delivered by the vendor, how the purchaser can use the images, and what will happen in the case of a dispute. This is the only agreement that contains a warranty protecting the purchaser from a third party claiming to own the images. Prohibitions are similar to those in the previously mentioned CS2 agreements with the exception of adding digital watermarks. Adding another watermark or altering the watermark placed on the image by the supplier is forbidden. This agreement does call for notifying image users of all use responsibilities. Since the digital image file is being provided directly by the vendor, there is no need to include maximum file and pixel size in the agreement. The use of derivative images is covered in an appendix limiting the size and use of thumbnail images. All points were covered and the needs of both parties met with this agreement. Attached to this agreement was an appendix listing the catalog numbers of the actual images licensed. When WMU purchased more images from this vendor, the catalog numbers will be added to the appendix and fees paid. Even though this vendor’s license agreement is more complex than the others, it is also the most inclusive, saving time and sparing trouble in the future.

No further agreement had to be signed between Canterbury Cathedral and the University in order for the co-investigators to take digital photographs of the cathedral. The only requirement was that the person taking the pictures must check in with an office of the precinct and wear a badge while taking the pictures. This type of agreement is very open ended with no fees required. The appropriate office at Canterbury Cathedral can be contacted for permission whenever a grant co-investigator wishes to take more pictures.

Conclusion
So what does all this mean in the acquisition of image collections? It means building image collections has become more complex than it ever has been. Images not only have to be located, but use rights need to be negotiated as well. Not only are there more options in image formats, there are many other issues to be taken into consideration. The negotiation of license agreements requires not only knowledge of the library and patron needs, but an understanding of digitization and image redistribution as well. All the changes in developing image collections should not discourage institutions from building these important pedagogical collections. What is required is careful planning and consideration of how the images are going to be used.

Agreements requiring the purchaser to notify users of their permitted uses do add another layer to the everyday jobs of the visual resources librarians or curators. Notices should be placed on library Websites, in circulation areas, and on registration materials stating permitted and prohibited uses of the images. It may be necessary for the librarian to contact the institutions’ legal counsel for assistance in this area. In the long run, these notices serve two functions. First, they inform the image users of their obligations. Secondly, these notices contribute to the user’s education in copyright.

Going through the examples given in this paper, the reader can see that there are as many different types of license agreements as there are vendors, as many formats as there are ways to use a digital image. Each of the examples is considered reasonable by WMU University Library. In all cases, the needs of both parties were met and the projects moved toward completion.

Based on the experience gained from these two case studies, the following questions have

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Desperately Seeking Copyright —
Paper vs. Digital: Paper Still Reigns in the Digital Decade

by Edward Colleran (Director, Publisher Relations, Copyright Clearance Center, Inc.) <ecolleran@copyright.com>

Personally, I read many more articles from the printed page than my computer screen. I'll bet you do, too. While the Internet has fueled an enormous boom in the accessibility, consumption and redistribution of information, according to a recent study sponsored by Copyright Clearance Center, most workers still consume the bulk of their on-the-job reading information from paper sources rather than from their desktop computer screens. Whether this is due to long-entrenched habit or other reasons, our survey results are clear — and somewhat surprising: U.S. knowledge workers today obtain three quarters of their daily intake of information from paper documents and only one quarter from e-mail, Web sites, document delivery services or other digital sources.

For publishers and librarians who share an interest in knowing what workers are reading and their primary method of access, the growth of Internet content use appears to be at the expense of print media, rather than print consumption. In other words, the Internet is impacting distribution, making it easier to distribute content, and, in turn, making it more difficult to enforce copyright compliance.

As a result, print rightsholders need effective ways to protect their intellectual property in the digital age, and to do it well. Instead of rushing to clamp an indiscriminate lockdown on copyrighted content, publishers are exploring new digital rights management tools that offer a range of access and pricing options for different end-user requirements. The result: improved publisher control and wider consumer access, a win/win all around. Publishers who overreact to the threat of copyright infringement and shy away from the Internet arena may, in so doing, bypass a rich source of potential new readers and new revenues, stuntting their future growth as a result.

Now for the details from our recent survey:

According to the Bureau of Labor Statistics, the U.S. has 141 million full-time workers. **One third — 48 million** — are classified as "knowledge workers," or white-collar workers who read printed material regularly in the course of their jobs.

**Sixteen million** U.S. employees work for corporations with licensing agreements through Copyright Clearance Center, the only U.S. reproduction rights organization (RRO) for processing text-based rightsholder authorizations for copyrighted works. Like the U.S. workforce overall, approximately **one third** of employees at CCC-licensed corporations are classified as knowledge workers, or approximately 5 million.

The above statistics about the U.S. workforce at large were compiled for Copyright Clearance Center by an independent research group and summarized in CCC’s 2002 Corporate Information Consumption Survey. The research firm, Cahners In-Stat Group, solicited participants for the online survey via e-mail and telephone, tallying responses from 350 employees from 300 corporations in 18 industries and 10 job classifications. Respondents worked for a range of small, medium and large corporations, collectively providing sufficient volume and diversity to project the results on an aggregate level.

With many knowledge workers employed by corporations without copyright licensing agreements, it’s reasonable to deduce that a considerable quantity of unauthorized reproduction of copyrighted materials is occurring. How much and how frequently, however, is anyone’s guess.

So what are these knowledge workers reading and how much are they reading each day?

CCC’s survey revealed that knowledge workers:

- **Read an average of 26 pages** a day of copyrighted information. For example, a typical knowledge worker might skim one or two newspapers, read an article from a technical publication and look up reference materials in the course of a given day. Collectively, that tallies up to **1.2 billion pages** a day and **284 billion pages** a year for knowledge workers nationwide.

- **Consume primarily original paper documents** (63 percent of total) and **photocopies** (14 percent), with the remaining 23 percent from all other sources (e-mail, publisher Web sites, online services, CD-ROM, document delivery, PDA, etc.).
- **Peruse primarily periodicals** (57 percent of copyrighted materials), followed by scientific, technical and medical (STM) publications (23 percent) and books, directories and reference materials (20 percent).
- **Purchase online content** in impressive numbers: 14 million knowledge workers (30 percent of the 48 million U.S. knowledge workers) have made one or more online purchases and nearly 2 million are “power consumers” with online purchases from six or more sources; and

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Endnotes


3. Images were purchased from Slide Presentations, Publishers; Saskia Cultural Documentation; Davis Art Slides; Hartill Art Associates; Archives, and Canterbury Enterprises, Ltd.

4. Davis and Reilly point out in “Understanding License Agreements for Electronic Products” on page 249 that the license agreement, being a contract between the parties, “should include all the elements needed to satisfy both parties.”

5. It is advisable for the institution to contact the vendor if other images from the vendor were to be used for a digital imaging project.

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