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Questions & Answers -- Copyright Column

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Questions & Answers  Copyright Column

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www.unc.edu/~unchlg/gasaway.htm

QUESTION: May public libraries use tutorials created under a Creative Commons license on their library Websites without worry about infringement? What would happen if the owner decided to sue for infringement?

ANSWER: The Creative Commons (CC) offers a variety of voluntary licenses that a copyright owner may adopt which work along with copyright. So, the answer to the question depends on the type of CC license and the rights that it grants to users. For example, if the CC license for the tutorial is an attribution license, then the library may post the tutorial on its Website but must give credit to the owner of the tutorial. The licenses are detailed on the CC Website at: http://creativecommons.org/about/licenses/.

Should a copyright owner wish to sue someone who violates the terms of CC license, it would be filed in state court since it is a contract matter rather than a copyright one. However, the owner still has a U.S. copyright and could withdraw the CC license at anytime and then sue anyone who subsequently infringes the copyright, even if the defendant is doing something that would have been permitted under the prior CC license. Copyright infringement is a federal matter.

QUESTION: A college dance teacher has a personal use license from iTunes. She has loaded 100 songs on her laptop for her personal use but also wants to play the songs in her dance classes. Is this permitted?

ANSWER: The question will be answered by the iTunes license agreement. Typically, a “personal use license” does not allow use even in nonprofit educational institutions because this is not a personal use. Apple does offer educational licenses, however, as well as licenses for a number of other organizations. See http://developer.apple.com/softwarelicensing/agreements/itunes.html. Thus, the individual teacher as well as the school could be liable for using the recordings from her personal use license for a dance class.

QUESTION: A university library is interested in digitizing handbooks that the university published in order to make them available to the general public. A chapter in one of the handbooks has the following footnote: “Reprinted and adapted from Group Leadership by Robert D. Leigh, by permission of W.W. Norton and Company, Inc. Copyright 1936 by the publishers.” It is unclear whether the copyright for Group Leadership was renewed. Assuming the copyright in this publication has not yet expired, does the University have a duty to contact the copyright owner of the work in order to digitize the handbook?

ANSWER: Yes, the university should try to contact the publisher or its successor. The original rights granted did not include the digital rights. But this depends on whether the copyright was renewed and the question “are not the same” indicates that renewal information was not available. It further depends on the university’s willingness to accept the risk that a 1936 work may not have been renewed or that, even if it was renewed, the publisher will not complain where the university library digitizes the handbooks and makes them available on the Web.

QUESTION: A faculty member has a DVD of a Disney movie that was originally produced in 1957. He wants to take a freeze frame from the movie and make a poster from the image and is concerned about whether the work is still under the copyright.

ANSWER: It is still under copyright. Disney studios has always been very careful about renewing its copyrights. The copyright in the original movie would have been 28 years, so it was protected without renewal until 1985. In 1991 the Copyright Act was amended to eliminate copyright renewals and to give works published between 1964 and 1978 automatic 75 years of protection with no need to renew the copyright. In 1998 the term of copyright was extended by an additional 20 years, so the work produced in 1957 will remain under copyright until 2025. Disney Studios also is very vigorous in enforcing its copyrights.

QUESTION: A university library received a photography archive of a famous woman photographer upon her death in 1990. One of her more famous photographs is a portrait of an author that was used on the book jacket of his most popular book. When the author died, the library was asked repeatedly for permission to use this portrait in news stories to announce the author’s death. Is it a copyrighted photograph? Does the university own the copyright?

ANSWER: The copyright status of her photographs is likely to be unclear. If they were published with notice, then they were protected by copyright from the date of publication. If the photos were published without a copyright notice, they entered the public domain. The term of copyright depends on whether they were published with notice. See www.unc.edu/~unchlg/publicd.htm to determine the term.

Another question for this particular issue is whether the photographer transferred the copyright to the publisher of the book or to the author or whether she retained the copyright in this particular photographic. This will take some research in order to determine the publication arrangement between the publisher and the
R2: Converting Librarians to Cybrarians

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Kindle 1: Snap, oh brother of mine…publishers just love Stevie J and all he can do for them…why it’s the rebirth of high-priced magazine subscriptions and high-margin book prices!

Kindle 2: Jobs doesn’t read. You read about this all of the time.

Kindle 1: SJ — he’s more than reading, he’s….visual. They say you don’t read the iPad you touch, its tactile information.

Kindle 2: Oh, yeah, the new reading…you think with your fingers…

Kindle 1: And more…apps.

Kindle 2: Apps? What are apps?

Kindle 1: OMG — you are so last year…apps do what you can’t, they are hyperbole aside, what the Secret alluded to but could not deliver…

Kindle 2: There’s an app for that?

Kindle 1: Yes, there is an app for everything…

Kindle 2: Tell me more…

Kindle 1: Apple figured out that the Web — meaning everything — was too much for us especially if we wanted it on little MP3 players and cell phones. Web big, device small — no one was happy.

Kindle 2: Not happy?

Kindle 1: Well, all thumbs…and bored…always connected but nothing happening.

Kindle 2: So Apple created apps?

Kindle 1: Well, we created apps or people like us. We sell them through the Apple App Store.

Kindle 2: So there is an app for Kindle books on the iPad?

Kindle 1: Yep, just like the apps for the iPhone, Blackberry, MAC, even the PC. We read everywhere…

Kindle 2: I’m down with that — the more the merrier…

Crowd parts…iPad approaches…

Kindle 1: He cometh…

**iPad** (leading a throng of early purchasers, talking to reporters on the steps of the famous library)

**iPad:** Flash isn’t good enough for the iGuys…Droid, puh-leeze…me, a laptop killer — fugedaboudit — at least for now…

Kindle 2: (urgently)…Don’t forget, older brother, we are a lean, mean, reading machine. — Evelyn Wood-optimized and priced right — new books cheaper than paperbacks!

Kindle 1: Shish — here he comes. He’s so bright, so cool…

**iPad** (to Kindles): Hey.

Kindles: Hey.

**iPad:** What’s up?

Kindles: Nice day.

**iPad:** Yeah, nice day.

Kindles are silent…

**iPad:** Would talk — late for a reception in the main reading room…something about “the book” and yours truly then…got to roll — Justin Bieber concert…the “Just” is waiting for his “comped” **iPad**…

**iPad** disappears into the future…

Kindle 1: iThink, therefore iAm…

Kindle 2: I hope Jeff knows his Bezos…

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author. Also, outside of copyright, the right of publicity might apply, and some authors claim that all rights belong to them.

Purely on the copyright question, while the university is the legal owner of these photographs, it likely does not own the copyrights in them unless the deed of transfer actually transfers the copyright to the institution. So, the library owns the physical copies but probably not the rights. The library can display the copies locally, but not reproduce them, etc., unless the library owns the copyrights. On the other hand, if the photographer has no heirs or if the heirs agree to reproduction and display more broadly, then the library can do that.