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Copyright Issues & Principles in the Digital Environment

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As you are likely aware, copyright issues in the burgeoning digital environment have not been easy to navigate. Users and owners of copyrighted works have experienced what can be a complex process in using or protecting works. Fundamentally, the rule is that the basic principles of copyright law apply, no matter the content format — print, electronic or whatever may come in the future.

This article touches on the issues I face in the digital environment as a manager of copyright for a non-profit, Scientific, Technical, and Medical publisher: principles you can employ when dealing with these issues; and lists recent court cases and copyright legislation.

The Internet is Not a “Free for All”

Some general misconceptions about copyrighting and the Internet include “it’s on the net, it’s free,” or “if there’s no copyright notice, it must be in the public domain,” or “photographs of old artwork are in the public domain, therefore it’s not necessary to obtain copyright permission.” These statements couldn’t be further from the truth.

Under United States Copyright Law, copyright extends to works of original authorship posted on the Internet because it is fixed in a tangible medium of expression. Essentially, copyright protection automatically attaches to electronic documents, just as it does to print. If there’s no copyright notice, it is protected. It is, however, recommended that a copyright notice be placed along with documents, advising a particular material is copyrighted. Registering with the US Copyright Office, while not mandated, is suggested because it affords greater protection to the copyright owner.

The statement concerning photographs of old artwork can be tricky. While old artwork itself is considered public domain and would
Protecting Unauthorized Use Isn’t Easy

When users subscribe to print material, there is an inherent knowledge that when re-using material, copyright permission is necessary. This principle seems to vanish when it comes to electronic site licenses or subscriptions. Many users assume the license extends to copyright permissions and do not seek the publisher’s “official” permission when re-using content. This has become evident as publishers see their content used in creative ways, such as library and/or university electronic reserves use. Publisher groups are seeking to create guidelines for electronic reserve use. The problem is content appearing on publicly accessible Websites, which conflicts with many publishers’ policies of prohibiting electronic posting of content.

Under the TEACH Act (http://www.copyright.gov/legislation/pl107-273.html), some use is permissible; however, certain conditions must be met, including posting content on restricted access sites. The TEACH Act does not expand fair use, but there are a number of interpretations of how far it can go. This is likely a matter for the courts.

Publishers, whose goal is to protect their intellectual property from unauthorized uses, often require users to indicate up-front how material will be used, e.g., context, formats, etc. Publishers rarely issue “blanket permission.” While this is true for content publisher-owned copyright, U.S. Government works under Section 105 of the Copyright Act are not subject to copyright, thus publishers’ policies take this into consideration regarding access. While the government works classification would seem straightforward, wrinkles such as the proposed Sabo legislation (Public Access to Science bill http://www.house.gov/sabo/pr030423.htm) could wreak havoc with publishers’ policies. The recent Supreme Court ruling in Eldred v. Ashcroft (http://www.supremecourts.org/opinions/02pdf/01-618.pdf) has weakened the pro-public domain camp; the Sabo bill and Public Domain Enhancement Act (http://www.house.gov/apps/list/press/ca_16_jofgren/pr_030625_PublicDomain.htm) are arguably end-runs around Eldred.

In short, between recent legislation and the ease of access to content via the Internet, protecting unauthorized use of works is not easy.

Constituencies Need to Join Forces to Solve Issues

While there is no space for detailed discussion on the issues covered, the point is, conflicts exist: users want convenient, easy access to content, and publishers, while wanting to control content available, need to protect their intellectual property. The challenge is how both parties can work together to develop mutually beneficial solutions. The solution: education and enforcement.

To educate users, organizations such as the Association of American Publishers (AAP) and Society for Scholarly Publishing (SSP) have developed programs on copyright law and issues. In addition, many companies are actively educating their employees and academic institutions their staff and student populations, so as not to run afoul of the law.

At the same time, publishers have begun to step-up enforcement of copyright. Over the past year or so, publishers both independent and collective have successfully litigated settlements against unauthorized use. These successes include settlements with companies engaging in unauthorized document delivery (usually electronic), and with copy shops.

The hope is that this combination of education and enforcement will ultimately lead to compliance. Cooperation among all constituencies is crucial to making this work.

Cases/Legislative Update

Below are recent court cases and copyright-related bills introduced during the current congressional session (108th Congress) that address some of these issues.

Cases

1. RIAA v. Verizon — On April 24, 2003, the U.S. District Court for the District of Columbia held that Verizon must provide the RIAA with the name and contact information of an individual Internet subscriber who illegally downloaded hundreds of music files. Verizon in this case is an Internet Service Provider (ISP).


2. MGM v. Grokster — On April 25, 2003, the U.S. District Court for the Central District of California held that two peer-to-peer software providers (Grokster and Morpheus) were not liable for contributory copyright infringement. The plaintiffs are the movie studios, record labels and music publishers. This is very similar to Napster, but with the opposite result. The plaintiffs have appealed to the Ninth Circuit Court of Appeals, which also ruled in the Napster litigation.

   See: http://news.findlaw.com/hdloc/docs/mgm_v_grokster-42532nd.pdf

3. In Re Aseritis Litigation — On June 30, 2003, the U.S. Court of Appeals for the Seventh Circuit affirmed the lower court’s ruling that Aseritis infringed on music copyrights, much in the same fashion as Napster. In a previous separate ruling, a court ruled that Aseritis could not do business under that name because of a trademark infringement on AOL’s Instant Messaging service (AIM). Aseritis subsequently changed its name to Madster.


Legislation

For the actual text of these and other copyright-related bills, see http://www.copyright.gov/legislation.

1. Digital Media Consumers’ Rights Act of 2003 (H.R. 107) — Introduced 1/7/03. Purpose — To allow digital media users to bypass copyright-protection schemes for legitimate “fair use” purposes. Boucher states that this legislation “will assure that consumers who purchase digital media can enjoy a broad range of uses for their own convenience in a way which does not infringe the copyright in the work.”

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<http://www.against-the-grain.com>
7. Public Access to Science Act (H.R. 2613) — Introduced 6/26/03. Purpose — To allow free public access to scientific research that has "substantial" federal funding. This is an expansion of sorts of public domain, which applies to all works authored by employees of the United States Government.

See: http://www.house.gov/sabo/pr/03-20.htm

8. Author, Consumer, and Computer Owner Protection and Security (ACOPS) Act of 2003 (H.R. 2752) — Introduced 7/16/03. Purpose — To provide authors, consumers, and computer owners with much-needed protection against several online threats. Law enforcement authorities would be given additional tools to effectively deal with online scams, crimes, and illegalities.


Other

1. In May 2003, the RIAA settled separate lawsuits with four university students for running services that searched computers connected to their college networks for MP3 song files. The students also shared copyrighted music from their own computers. The settlements range from $12,000-$17,000 per student, payable to the RIAA.


2. In June 2003, the RIAA issued a release stating it will actively pursue individuals who illegally download music on the Internet. Presumably, this is based on the RIAA's success in the Verzun case. As of mid-September, the RIAA had brought 261 copyright infringement lawsuits against individuals who downloaded music on the Internet.


3. In June 2003, Rep. Orrin Hatch stated that he favors developing technology to remotely destroy computers used for illegal downloads, with a "three strikes and you're out" approach to deal with individuals who illegally download copyrighted music on the Internet.


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DRM and Research Libraries: Common Ground?

by Bill Rosenblatt (President of GiantSteps Media Technology Strategies and Publisher of DRM Watch newsletters) <bill@giantstepsmta.com>

There’s a lot of hype and misconception surrounding digital rights management (DRM) these days. Most media attention involves the music industry and Hollywood, where DRM is a core technology in legitimate online content services, like RealNetworks’ Rhapsody and the Hollywood studio joint venture Movielink, which compete with pirate activities on peer-to-peer networks, like Kazaa and LimeWire. DRM’s influence on the publishing industry is just as profound, although it has yet to infiltrate the research library world to any great degree.

In this article, we’ll examine how DRM is gaining traction in publishing and look at ways that it could bring value to the world of research libraries.

Defining DRM

Before we explore DRM’s impact on our industry, let’s look at its various definitions. The narrower definition applies to systems that use encryption for controlling access to digital content, where the primary purpose is to prevent abuse of copyright or licensing terms. A broader definition refers to any system that tracks and/or controls rights to content that are acquired and made available. Systems that fit the broader definition may include encryption-based copy protection schemes, but not necessarily, such as an academic publisher’s internal system for granting permission requests.

Acceptance in the Content Administration World is Limited

Since its birth in the mid-1990s, DRM technology has been in an early adopter phase, with most implementations pilot projects. But over the past few years, DRM has taken hold in niche markets such as eBooks, which should become popular as textbooks in secondary and higher education. Another promising application is e-periodicals, which are digital facsimiles of print newspapers and magazines.

Yet DRM adoption in the world of site-licensed serials and reference content has been limited. Aside from general objections, one reason is research content tends to be embedded in publishers’ and vendors’ proprietary delivery systems and interfaces (e.g., password-protected Websites); it would be expensive to re-engineer these systems to include DRM functionality. Another reason is many vendors’ proprietary environments already contain some of the functionality associated with DRM, such...