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Copyright Issues & Principles in the Digital Environment

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I tell you what, Norm Desmarais <normnd@providence.edu> is something else. Besides keeping up with innovations (see Hyperbolic Browsers: From GUI to KUI, this issue, p.95), he recently participated in the reenactment of the Battle of Rhode Island (250th anniversary commemoration). The battle was fought as a running battle over 3/4 of a mile. Norm’s group kept ambushing the Crown forces as they advanced from field to field. What can I say? I’m speechless.

Did you read Mark Funk’s and Barbara Schader’s <bschader@library.ucla.edu> article in the September ATG on “Simultaneous Users vs. FTE Pricing Model — Stairway to Heaven or Jail House Blues?” yet? Barbara will be in Charleston for the Conference and presenting a paper. FYI, recently, there was discussion on Licensen about usage-based pricing and its perhaps negative implications for research intensive universities.

Communication Abstracts, published by SAGE Publications, is now available on the Internet Database Service (IDS) from CSA (Cambridge Scientific Abstracts). The IDS platform is the only online service offering the complete Communication Abstracts database. Communication Abstracts, edited by Tom Gordon at Temple University, is a comprehensive source of information about communication-related publications on a world-wide scale. www.csa.com

I tell you, computers are wonderful, there’s no getting around it, BUT, boy, can they be a pain sometimes. For example, downloading and printing ATG image files has gotten so much more complicated in the online world than it ever was in the print world. Accordingly, this caught my eye. ScholarOne, Inc. has announced that it will integrate DigitalExpertTM, the digital image preflighting tool from The Sheridan Group, with Manuscript CentralTM, the application for online submission, review, and tracking of scholarly content, with more than 425 systems. DigitalExpert checks whether image files meet print specifications. If a file does not pass inspection, the system creates a report with detailed suggestions for improving the image. Because DigitalExpert will be accessible from within the Manuscript Central user interface, ScholarOne’s customers will not need to download any software or be required to upload additional files to preflight images. ScholarOne, Inc. based in Charlottesville, Virginia, provides comprehensive workflow management systems for scholarly journals, books, and conferences. www.ScholarOne.com

It is very rare for a week to pass without someone wanting to have access to a paper that was given in Charleston at one of the Conferences. The Charleston Conference Proceedings for 2001 and 2002 — both edited by Rosann Bazirjian and Vicky Speck — are available from Greenwood Press. The 2000 Proceedings are available from yours truly. www.info.greenwood.com

Alexander Street Press has announced the expansion of its business and the creation of a new marketing department. Jennifer Heefling has joined the company as Manager of Marketing and Public Relations. A graduate of Medieval Studies from the University of Victoria in Canada, Jennifer brings a deep passion for the humanities to the position, as well as nearly ten years of marketing and public relations experience in the academic and educational worlds. Jennifer is also the founder of Thomas Press, a scholarly publisher in the fields of history, history in art, literature, religion, and social sciences. http://alexanderstreet.com

Was talking to Steve Johnson <johnso@CLEMSON.EDU> the fantastic — the other day. As usual, Steve is doing yeoman’s work in Charleston at the Conference helping out with the beer and wine tasting. He was telling me that he just got back from NASIG where he climbed Mt. Hood.

Speaking of refreshments, time to take a break. See you in Charleston. — Yr, Ed.

Copyright Issues & Principles in the Digital Environment

by Eric S. Slater, Esq. (Manager, Copyright, Publications Division, American Chemical Society) <slater@acs.org>

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 have been the case in the past, the original artwork would have been transformed to a new work of art by the photographer. This new work of art is copyrighted. These statements are continued on page 20.

<http://www.against-the-grain.com>
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 materials will be used, e.g., context, formats, etc. Publishers rarely issue “blanket permissions.” 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/pr03-20.htm) could wreak havoc with publishers’ policies. The recent Supreme Court ruling in Eldred v. Ashcroft (http://www.supremecourts.gov/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/ca16_legis/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 not 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 make content available, need to protect their intellectual property. The challenge is how both parties can work together to develop mutually beneficial solutions. The solutions: education and enforcement.

To educate users, organizations such as the 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 make 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.

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 appealed to the Ninth Circuit Court of Appeals, which also ruled in the Napster litigation.

   See: http://www.findlaw.com/hd/docs/docs/mgmvngrokster-42530nd.pdf

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

   continued on page 22

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 (ACCOPS) 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 Verizon case. As of mid-September, the RIAA had brought 261 copyright infringement lawsuits against individuals who downloaded music from 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@giantstepsmedia.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 poplar 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 those systems to include DRM functionality. Another reason is many vendors’ proprietary environments already contain some of the functionality associated with DRM, such as...

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