Copyright issues in a digital library environment

By
Fe Angela M. Verzosa

What do we talk about today?

1. Digital is not different from traditional
2. Digital is more difficult to control
3. The digital environment - challenges
4. Limitations to Copyright, or what can be copied
5. IFLA position on Copyright in a digital environment
6. SAA position on Copyright in a digital environment
What we will not talk about?

1. What is copyright?
2. What is covered by copyright?
3. Who owns the copyright?
4. What are the rights of copyright?
5. What are the related rights of Copyright?

(Please refer to Atty. Cruz’s lecture…)
Let’s look at celebrated cases of Copyright infringement
Salinger vs. Random House (1987)

- Although people could read J.D. Salinger's unpublished letters at a university library, he had never authorized their reproduction.
- The Second Circuit Court of Appeals ruled that quoting or paraphrasing from unpublished materials (Salinger's letters) in an unauthorized biography was not fair use.
- The book of Salinger's unauthorized biographer, Ian Hamilton, was never published by Random House.

Playboy Enterprises vs. Frena (1993)

- Frena, an electronic bulletin board operator, had violated Playboy's copyright when one of their photographs was digitized and placed on the bulletin board system by one subscriber and downloaded by another subscriber.
- According to the decision of Florida Northern District Court, "it does not matter that Defendant Frena may have been unaware of the copyright infringement. Intent to infringe is not needed to find copyright infringement. Intent or knowledge is not an element of infringement, and thus even an innocent infringer is liable for infringement."

- A professor supplied the course material and Michigan Document services, a photocopying organization, took photocopies of the material and converted it into coursepacks for sale to students at the University.
- The court considered that it was not "fair use" and penalized the photocopying company.
- MDS appealed the case in January 1997; however, the U.S. Supreme Court refused to hear the case.

Register.com vs. Verio (2000)

- Verio extracted information from the publicly available Register.com WHOIS database for use in telemarketing.
- In response, Register.com sued Verio and New York Southern District Court ordered Verio to stop using customer contact information acquired through the database for mass marketing purposes.
- At issue here are limits on access to and use of personal information on publicly available online databases.
A & M Records vs. Napster (2001)

- As peer to peer file sharing increased, Napster started a website. This website offered downloads of songs of all genre – new and old. Napster closed the site in 2002 after paying $26M.
- Several websites still thrive on offering free music to people who can download it at no cost.

Authors Guild et al vs. Google (2005)

- In 2002 Google began digitizing books in libraries, and in 2004, launched Google Book Search, allowing users to search its database of books, download full copies of public domain books, and view snippets of copyrighted books.
- A class action lawsuit resulted in the 2008 settlement where Google agreed to pay $125 million.
- The amended settlement case is scheduled to go to court by July 2012.
Case vs. Library.nu (Gigapedia.com)

- **Library.nu** was a popular linking website accused of copyright infringement and was shut down last **February 15, 2012**.
- it hosted some 400,000 ebooks and allegedly had a revenue of over $10 million.
- It was sued by coordinated legal action from 17 publishers (incl. HarperCollins, MacMillan, and Oxford U Press) who obtained an injunction from a Munich court.

Common Internet infringements

- illegally downloading music files, videos and movies
- pirating certain types of software applications
- posting copyrighted works
- file-sharing of music, films, computer games, etc.
What is legal? illegal?

- Downloading copied music is legal in some countries in the context of their copyright laws, such as Canada, The Netherlands, Spain, and Panama, provided that the songs are not sold.
- Downloading music and films for home use is legal in Russia.
- Digital copying is allowed for internal use in Australian libraries and archives for deteriorated materials only.
- Digital Millennium Copyright Act of 1998 (US) allows libraries and archives to copy, digitize and make accessible online published documents in their collections even if the work in question is in copyright.

“Digital is not different”…

- Basic principles of copyright remain the same for "traditional" and digital works.
- Reproduction made in a traditional way or with the use of digital technology is treated the same.
- New provision --- computer programs and databases are protected by copyright.
Copyright in a digital environment is much more difficult to control because of:

- Ease of creation
- Ease of modification
- Ease of distribution

Challenges of the digital environment

**Ease of creation**

- Easy to create content in cyberspace
- Easy to publish works online
- Easy to upload photos, videos, etc.
- Easy to attach files
Challenges of the digital environment

Ease of modification

• very easy to **change and move information** including moving resources (changing servers) or changing content (like the text on a web page)

• easy for information to **change or be updated** (which means that things aren't always in the same place, and that you can't always be sure that a web page will have the same content it had when you first looked at it).

Cited from: https://cyberspace.ischool.utexas.edu/course/copyright/7.php

Ease of distribution

“It is easy to **copy and share digital information**. Networks were created to share information, which makes it easy to copy and paste from a web page, and to share files. In most cases, the sharing of files involves the creation of copies. Even common tasks such as sending email and browsing the web involve the creation of copies.”
Copyright enforcement is a challenging task!

Why do libraries need exceptions in the copyright environment?

- Preservation copying of unpublished works
- Replacement copying of published works
- Digital preservation and replacement copies
- Reproductions in response to patron requests such as interlibrary lending

Cited from: Peter B. Hirtle, Emily Hudson, and Andrew T. Kenyon, COPYRIGHT AND CULTURAL INSTITUTIONS: GUIDELINES FOR DIGITIZATION FOR U.S. LIBRARIES, ARCHIVES, AND MUSEUMS, Ithaca, NY: Cornell University Library Press,
Copyright issues in digitization

- Copyright is a complex issue that strongly impacts the selection of materials for digitization.
- Libraries and archives avoid the complexities of copyright law by digitizing materials that have passed into the public domain and are no longer covered by copyright restrictions.
- In many digitization projects for preservation, access is limited to in-house use only, and not for public access on the web.

What can be digitized/go online?

- Copyright-protected works where permission from copyright holder has been obtained, or
- the work is in the public domain (i.e. copyright on the material has expired), or
- there must be a special legal exemption allowing digitization and making it available online without permission of the copyright holder. (In the US, it may apply to libraries and archives with respect to some out-of-print copyrighted books published between 1923 and 1936. In some other countries, it might apply to books known as "orphan works".)
What is public domain?

- Public domain information is “publicly accessible information, the use of which does not infringe any legal right, or any obligation of confidentiality. It thus refers to the realm of all works or objects of related rights, which can be exploited by everybody without any authorization.”
- Includes any official text of a legislative, administrative or legal nature, works of government, government-held records, public or official records.

Cited from: Copyright in the Digital Environment by Petya TOTCHAROVA, Legal Advisor, Cultural Enterprise and Copyright Section, Division of Arts and Cultural Enterprise, Culture Sector, UNESCO

Fair Use as limitation

Conditions under which copying a work, or a portion of it, does not constitute infringement of copyright, including copying for purposes of criticism, comment, news reporting, teaching, scholarship, and research.

(Sec. 185, IP Code)
**Fair Use Doctrine**

1. purpose and character
2. nature of work being used
3. amount and substance of work being used
4. the effect on the use or real or potential market

---

**Purpose Favoring Fair Use**

- Scholarship
- Research
- Criticism
- Commentary
- News Reporting
- Teaching (including multiple copies for classroom use)
Nature of the work

**Favoring Fair Use**
- Published
- Factual
- Nonfiction

**Requiring Permission**
- Unpublished
- Highly creative
- Fiction

Amount of material used

**Favoring Fair Use**
- Small amounts
- Appropriate to the purpose
- Not the heart of the work
### Effect on the Market

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Requiring Permission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owning a legal copy</td>
<td>Takes away sales</td>
</tr>
<tr>
<td>Few copies made</td>
<td>Easy licensing mechanism</td>
</tr>
<tr>
<td>No ready market for permission</td>
<td>Many copies made</td>
</tr>
<tr>
<td>Out of print</td>
<td>Wide distribution of copies</td>
</tr>
<tr>
<td>Owner unidentifiable</td>
<td>Repeated use</td>
</tr>
</tbody>
</table>

---

### Can anyone make a copy?

**Yes,** if the private reproduction of a published work is in a single copy, where the reproduction is made by a natural person exclusively for research and private study (Sec. 187.1, IP Code)…except...
Can a published work be reproduced?

NO, if the published work is:

- (a) A work of architecture in the form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in graphic form by reprographic means;
- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. (Sec. 187.2)

Can a Library copy?

Yes, if the library is non-profit and makes only a single copy for the following reasons:

- Work cannot be lent because it is fragile/rare;
- Isolated articles in composite works for expediency for research and study;
- Preservation and Replacement (lost, deteriorated, or destroyed) and not available from the publisher and is out-of-stock. (Sec. 188)
Can I copy Computer Programs?

- Yes, but only 1 back-up copy is allowed on the condition that it is necessary for its use or for archival purposes, and/or for replacement of lost, destroyed, unusable copy (Sec. 189, IP Code).

If it’s on the Web, can I copy?

- No, by virtue of treaties entered into by member states (Berne Convention, Rome Convention, TRIPS, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty)
- Some copyrighted works may have been posted in the Internet without permission from the copyright holder
Challenges of the digital environment

- Libraries help copyright holders to protect digital works against copyright infringements.
- Libraries also represent users of protected materials, and have a crucial role to play in ensuring access to them regardless of technological innovation.
- The question is whose rights should be more protected by libraries?


Conference on “Planning, Developing, and Managing Digitization & Research Projects for Libraries”
April 18-20, 2012 at Daven’s Palace Hotel, Tapyas Road, Coron, Palawan
Information is increasingly being produced in digital format.

ICT brings unprecedented opportunities for improving access to information.

Technology has the potential to improve communication and access for those disadvantaged by distance or economic circumstances.

Technology also has the potential to divide society into the information-haves and the information-have-nots.

If reasonable access to copyright works is not maintained in the digital environment, access will be denied to those who cannot afford to pay.

Position on Copyright in the Digital Environment

“Reformatting of material to make it accessible should not be considered an infringement of copyright and should be considered as reasonable access.” ---to benefit those with physical disabilities

“Providing access to a digital format of a protected work to a user for a legitimate purpose such as research or study should be a permitted act under copyright law.”

“Information packaged in all formats has and will become part of the lending stock.”

---

Position on Copyright in the Digital Environment

“Copyright law should not prevent libraries from relying on new technology to improve preservation techniques.
- Legislation should give libraries and archives permission to convert copyright protected materials into digital format for preservation and conservation related purposes.
- Legislation should also cover the legal deposit of electronic media.”
Position on Copyright in the Digital Environment

- protect the right to fair use for unpublished materials under copyright law
- open access to educational (learning and teaching resources) by distance learners
- allow conversion of copyright protected materials into digital format for preservation and conservation related purposes

To date, there is no international standard for exceptions for libraries

- in some countries, libraries operate without conditions that would allow preservation and replacement of printed materials
- other countries allow libraries and archives to reproduce and distribute copyright material, without limits, for educational purposes
- US, etc. allows libraries and archives to digitize and make freely available on the Internet copyrighted works (with conditions)
Digital technologies and network technologies are continually changing, so copyright laws must also be continually revised.
I AM NOT A LAWYER!

But I am willing to answer

Contact famverzosa@yahoo.com

Thank you for listening.

Contact famverzosa@yahoo.com
Please Remix/Reuse/Share!

This presentation may be used for your library or organization without further request from the author. Please feel free to use it in whole or in part, incorporate it into another presentation, quote from it, snag the images, etc. A citation to this presentation with a nod to the original author, Fe Angela M. Verzosa, would be greatly appreciated.