



# Digital libraries: Legal issues

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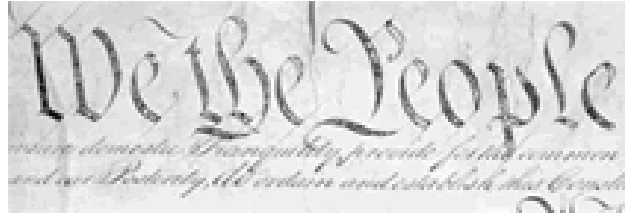
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# ToC

- Legal bedrocks
- Copyright
- Extension laws
- Problems & critiques
- Seeking reform
- Conclusions

# Caveats

- I am not a lawyer
- This lecture is guaranteed to be incomplete and incorrect at places



# US Constitution

## Article I, Sect. 8

The Congress shall have Power  
[among others] ...

"To promote the progress of science  
and useful arts, by securing for  
limited times to authors and  
inventors the exclusive right to their  
respective writings and  
discoveries."

# The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

# Legal bedrocks for libraries

- US Constitution, Article I, Sect. 8
  - Base for intellectual property rights (IPR) legislations that also govern what libraries can & cannot do with information resources
  - This was always so, but in respect to digital resources this is even more so
- We will not deal here with libraries and the first amendment, but you should be aware of its importance to libraries

# Legal framework for digital resources

- Traditional resources (books, artifacts ...) are relatively stable
- Well established legal frameworks for handling, access, preservation are in place
- Digital resources need consideration of both
  - content and
  - also hardware and software
  - require different methods of handling, access, preservation
- Legal framework not well established

# © legally speaking

- Copyright:

Legally granted property rights in intellectual works embodied in some physical means of expression, such as print, musical score or electronic image

For history see

Edward Samuels **The Illustrated Story of Copyright**

<http://www.edwardsamuels.com/illustratedstory/isc1.htm>



# Copyright

- Legislation that governs a variety of uses of the **CONTENT** of information objects (books, journals, images, recordings, maps ... in any format or medium including digital)
  - Library may own or have access to an object but does not own the content
- Includes public domain & fair use
- Maintained by & at Library of Congress
  - <http://www.copyright.gov/>

# Impact

- Copyright and other intellectual property rights (IPR) have a substantial impact on:
  - digitization
  - digital preservation
  - access to digital resources
- Legal issues: more complex and significant than for traditional media

# Copyright law

- The US Copyright Act is a complex piece of legislation
- At the base of the law is the notion that authors own the material they record, "in any tangible medium of expression, now known or later developed, from which [the work] can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device"

# Registering copyright

- Registration is not a condition of copyright protection
- But Registration establishes a public record of the copyright claim - important for infringements
- Registration through LoC

# Public domain

- “ Definition: A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.”
- From: <http://www.unc.edu/~unc1ng/public-d.htm>

# Orphan works

- Copyrighted works whose owners may be hard or even impossible to identify and locate
- Significant issue
  - [LoC issued rulings](#)
- Digitization of orphan works sought
- But costs to clear them is huge
  - fear of damages
- Various legal initiatives to resolve problems
  - so far not realized

# Fair use

- Not an infringement of copyright
- But factors specified by law determine whether or not a particular use is fair
  - and they are interpreted by courts
- Many legal challenges to libraries on fair use & murkier when digital
  - Digital content often restricted by license
  - Digitization not necessarily fair use

# Fair use

(<http://www.copyright.gov/fls/fl102.html>)

- By law, the following factors must be taken into consideration when determining fair use:
  - the purpose of the use, including whether such use is commercial or nonprofit/educational;
  - the amount quoted in relation to the copyrighted work as a whole;
  - the nature of the copyrighted work;
  - the effect of the use upon the market for or value of the copyrighted work



# Internationally

- There is **no** such thing as an “international copyright” that will automatically protect an author throughout the entire world
- Protection against unauthorized use in a particular country depends on national laws of that country
- But there are various international treaties
  - [Berne Convention](#)
  - [Universal Copyright Convention](#)

# Sonny Bono Copyright Term Extension Act of 1998

- Before the Act (under the Copyright Act of 1976), copyright would last for the life of the author plus 50 years, or 75 years for a work of corporate authorship; the Act extended these terms to life of the author plus 70 years and for works of corporate authorship to 120 years after creation or 95 years after publication
- E.g. Most sound recordings issued before 1972 are protected until 2067  
CLIR report:  
Copyright Issues Relevant to Digital Preservation and Dissemination of Pre-1972 Commercial Sound Recordings by Libraries and Archives  
<http://www.clir.org/pubs/abstract/pub135abst.html>

# 1998 Digital Millennium Copyright Act

(DMCA from Wikipedia)

- Attempt to deal with new technology
  - primarily with digital storage media of all kinds
  - designed to protect music, images, movies, and other data whether on the Internet or elsewhere
- Reinforcing the copyright protection & copyright management information systems that are adopted by the copyright owners
- Protects the package, rather than the content
  - thus the controversy

# DMCA on the one or other hand ...

## On the one hand

- Supported by the software and entertainment industries
- Intent to stop pirates from circumventing technical protection measures used to safeguard copyrighted works

## On the other hand

- Opposed by scientists, librarians, and academics
- “DMCA has become a serious threat that jeopardizes fair use, impedes competition and innovation, chills free expression and scientific research, and interferes with computer intrusion laws. “

[Electronic Frontier Foundation](#)

## In digitization & preservation: legal aspects enter into play

- Copying or emulating content in another medium
- Migrating content to new hardware and software
- All involve activities which can infringe on IPR
  - unless statutory exemptions exist
  - or specific permissions have been obtained from rights holders

# Digitization problems

- Obtaining permission to digitize books, even if they are out of print, entails high transaction costs: it can be difficult, if not impossible, to locate the current owners of copyrighted works
- Unrestricted access to our cultural heritage in digital form currently ends in 1923
- Current copyright laws not only keep most twentieth-century works from becoming available in digital form but also threaten the preservation of born-digital works

# Critiques on present copyright

- The term "limited times" has been stretched to mean "extended, infinitely renewable times"
- Current copyright law seems to assume all authors would like to have their knowledge impounded rather than allow the free and wide distribution of their ideas and discoveries.
- Fundamental reason copyright has been so boldly usurped has to do with economics
- Many stakeholders & LARGE amounts of \$\$\$\$ at stake
- Leading to wide battles & calls for reform
- Libraries involved & have significant stakes

# Critiques ...

- To protect their investments & credibility publishers presently demand that authors hand over their copyright
  - precludes original authors from disseminating their works as freely and widely as they may like
- In the name of "protection," authors have become little more than necessary resources to keep publishers & associated institutions alive and in business



# Now that most information is digital – from publishers side

- The ease with which authors can put their works online and share knowledge far and wide clashes severely with the rights asserted by publishers
- Wide dissemination of information is perceived as a serious threat
  - because it means publishers cannot control remunerative compensation for those bits that are traveling to all parts of the globe

# ALA concerns with copyright

## ALA Washington Office

- “Copyright issues are among the most hotly contested issues in the legal and legislative world; billions of dollars are at stake. Legal principles and technological capabilities are constantly challenging each other and every outcome can directly affect the future of libraries.”

# Interference

“Many people (including most of those from whom the Commission heard) believe that the balance has been upset and that the property claims of rights holders are interfering with the promotion of intellectual and educational progress.”

“Current copyright laws not only keep most twentieth-century works from becoming available in digital form but also threaten the preservation of born-digital works.”

From:

["Our Cultural Commonwealth" The Report of the American Council of Learned Societies Commission on Cyberinfrastructure for the Humanities and Social Sciences](#)

[Copyright section](#)

# Seeking copyright reform

“I believe that many copyright professionals share my view that the current statutory framework is akin to an obese Frankensteinian monster.”

Pamela Samuelson [Preliminary Thoughts on Copyright Reform](#)

- Digital libraries have high stakes & so do all other stakeholders
- [The Library Copyright Alliance \(LCA\)](#) seeks a number of reforms
  - three major library associations
  - joining in legal battles, e.g. over the years many [court Google decisions](#)

# Alternative to traditional copyright



- Creative Commons has developed a set of machine-readable licenses authors can use to share their works with appropriate rights for both authors and consumers.

– All lectures here are under 

- “Creative Commons defines the spectrum of possibilities between full copyright — *all rights reserved* — and the public domain — *no rights reserved*. Our licenses help you keep your copyright while inviting certain uses of your work — a **“some rights reserved” copyright**”



# Legal deposits

- A number of countries started developing laws & structures for legal deposits of digital resources, as are for print resources
- Goes along with voluntary Web archiving, as [Minerva program](#) of LoC
- For examples see the Australian National Library [Legal Deposits](#)

# Open access legislation

- Public Access to NIH-Funded Research (National Institutes of Health)
  - directs NIH to strengthen its Public Access Policy by **requiring** rather than **requesting** deposit of articles by researchers
  - articles will be made publicly available no later than 12 months after publication in a peer-reviewed journal

# Cyberspace issues: ending in battlegrounds

## On the one hand

- What protection does each party have under the law given that cyberspace is global?
- What are the economic implications of this change?

## On the other hand

- What rights should libraries & institutions have in providing digital information access?
- What rights should publicly sponsored works have to be publicly available?



# Clashing positions

## On the one hand

- The cyberspace culture is that all information should be freely available to anyone anytime. Perhaps the information may come cluttered with advertising, but otherwise it should be free.

- Libraries are sympathetic to free access but also follow protection of rights – in the middle

## On the other hand

- The publishers, information producers want to protect their information property rights in cyberspace as well



Give me a one-handed economist! All my economists say, On the one hand on the other.

(Harry S. Truman)

# Big new battleground: Digital Rights Management

- DRM not clearly defined but it generally seeks to regulate by law **technologies** that control how digital content is used
  - ALA [DRM & Libraries](#)
- Broadened the policy debate to include user rights such as privacy, fair use, first-sale and preservation
- **Content owners** are looking to DRM technologies as a means to control the use of their content
- **Public interest organizations** fear erosion of capabilities previously permitted by copyright fair use
  - restrict the use of digital files to protect copyright holders
  - mostly corporate

# Conclusions

- Digital resources & the Internet resulted in many legal problems
  - redefining old issues e.g. copyright
  - legalizing new ones e.g. digital rights management
- Digital libraries are but one part in all this
  - but for them stakes are high, even critical
  - thus have to be involved
- Like never before librarians have to be cognizant of legal issues
  - & participate in their resolution

# But

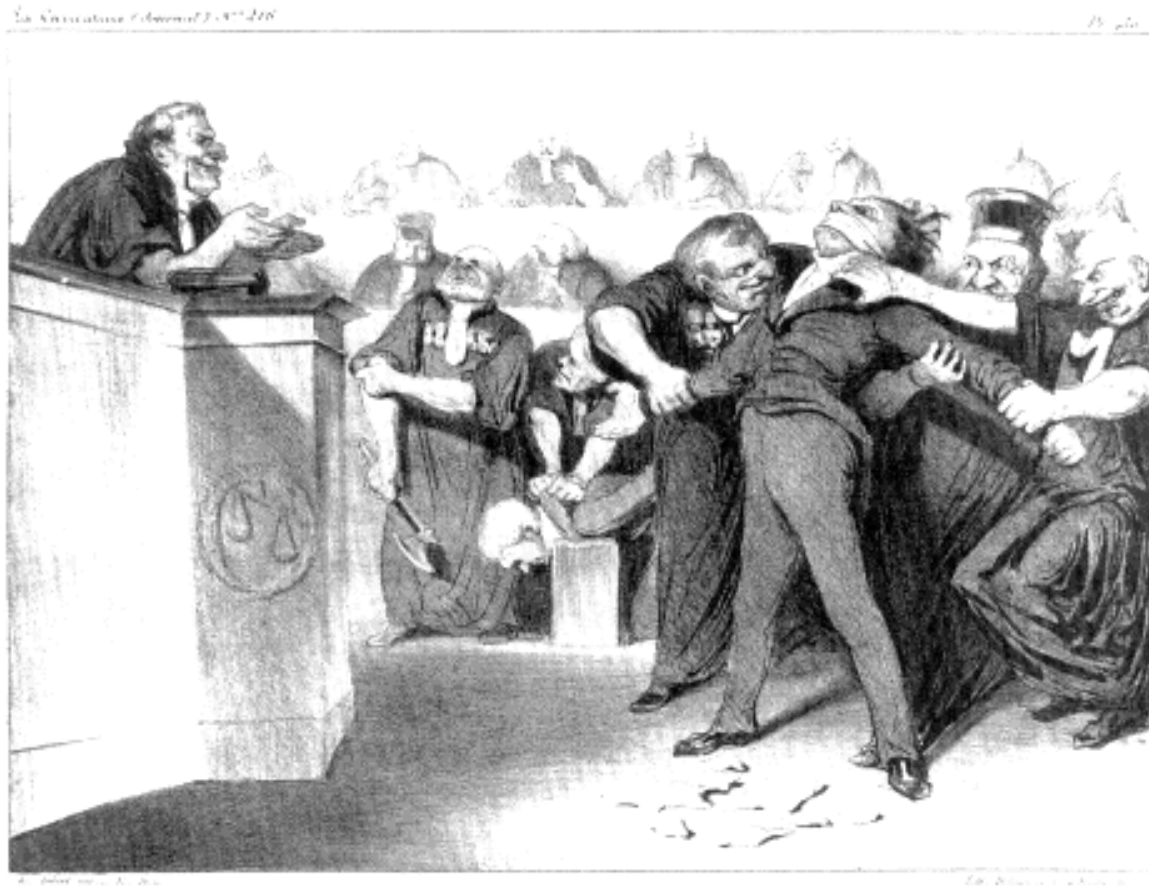
- Digital libraries & librarians, as all institutions & professionals, have no choice but to follow the law
  - like it or not
- They can try to influence changes in the law (through legislation or courts), but till then they must follow it
- More than ever they must know what is the law – it means you as well

# A few information sources

- Cornell U: [Legal Information Institute](#)
- Association of Research Libraries: [Know your Copy Rights](#)
- Univ. of Texas: [Copyright crash course](#)
- Duke Univ Libr: [Copyright, licensing and intellectual property issues for data](#)
- [Copyright for Librarians](#) – Course - free (joint project by Harvard's Berkman Center for Internet and Society and [eIFL.net](#))

Take it!

# Present copyright legal wrangling from a 19 century perspective



*... Vous avez le droit d'expliquer, mais non de le braver !*

by Honoré Daumier, 1808-1879

