Chapter 6

Copyright and Licensing Essentials for Librarians and Copyright Owners in the Digital Age

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ABSTRACT

So much of what we as librarians do involves some aspect of copyright, whether it is document delivery, electronic reserves, online learning tools, and course management systems (e.g. Blackboard), or online modules that allow one to share one's references and full-text attachments with others (e.g. RefShare). It is therefore important that we become involved in copyright- and licensing negotiations with our online content providers. We also have an obligation to not only familiarize ourselves with but also to tutor our library patrons in terms of copyright legislation, bearing in mind that they may be held personally liable for their use of copyrighted materials through digital interfaces (Graveline, 2011).

INTRODUCTION

This chapter provides a brief introduction to copyright and licensing in the digital environment, especially as it pertains to academic libraries. It seeks to facilitate an understanding of best practices in fair use of copyrighted materials in academic libraries. It aims, furthermore, to highlight the most important lessons learned from the well-documented Georgia State University (GSU) copyright lawsuit, which was filed in 2008, and to also provide ideas on how to launch a successful copyright education programme.

BACKGROUND

As academic librarians we know that our clients make and/or transmit thousands of copies of documents and images they find in libraries and

on the Internet. The question that can be asked in each of these cases is "Is that copy legal?" The answer lies in Copyright legislation. This varies from country to country, especially in terms of its term which, in most countries, is the duration of the author's life plus either 50 years or 70 years.

The definition of Copyright, according to *BusinessDictionary.com* is as follows:

Legal monopoly that protects published or un-published original work (for the duration of its author's life plus 50 years) from unauthorized duplication without due credit and compensa-tion. Copyright covers not only books but also advertisements, articles, graphic designs, labels, letters (including emails), lyrics, maps, musical compositions, product designs, etc. According to the major international intellectual-property protection treaties (Berne Convention, Universal Copyright Convention, and WIPO Copyright Treaty) five rights are associated with a copyright: the right to: (1) Reproduce the work in any form, language, or medium. (2) Adapt or derive more works from it. (3) Make and distribute its copies. (4) Perform it in public. (5) Display or exhibit it in public. To acquire a valid copyright, a work must have originality and some modicum of creativity. However, what is protected under copyright is the 'expression' or 'embodiment' of an idea, and not the idea itself. A copyright is not equivalent of legal-prohibition of plagiarism (which is an unethical and unprofessional conduct, but not an offense), and does not apply to factual information.

Some of the five rights are immediately clear, especially nos. 3-5 above. Others, however, require some explanation. The copyright owner's exclusive right to reproduce a work in any form or medium implies, amongst other things, that we need to seek permission, should we wish to have the work transcribed into Braille or an audio-recording for visually disabled or illiterate users. The second right is one which many of us are familiar with by virtue of the much publicized

lawsuit involving Shepard Fairey's copyright infringement in his design of the Obama 'Hope' *poster during the* presidential *campaign.* The poster, which consisted of a stencil portrait of Obama in solid red, beige and blue, led to sales of hundreds of thousands of posters, mugs, tote bags and t-shirts, and became so much in demand that copies signed by Fairey were purchased for thousands of dollars on eBay. The poster was based on a photograph owned by the Associated Press (AP), which Fairey took off the Internet without permission and without credit for its originator. The AP held that Fairey should not have used the photograph as the basis for his portrait without compensating them or, at the very least, crediting them. In terms of the United States Copyright Act of 1976 their photograph of Obama was, after all, protected from "un-authorized duplication without due credit and compensation". The civil lawsuit was settled out of court with the two parties agreeing to finan-cial terms that were not disclosed (Italie, 2009; Kennedy, 2012). It is known, however, that part of the private settlement included a split in the profits for the work (moonlighter1965, 2013)

Copyright laws are vague, ambiguous, and frequently misunderstood. A case in point is the Georgia State University (GSU) copyright lawsuit, in which three publishers, Cambridge University Press, Oxford University Press and SAGE Pub-lications, sued GSU for 74 alleged instances of copyright infringement involving GSU Library's electronic reserves collection.

Approximately two years later, only 5 of the 74 claims succeeded.

The remaining 69 claims failed due to the following reasons:

- Ten of them failed because the copying was de minimise, for example because it was a supplemental reading assignment that no student actually downloaded;
- Sixteen of them failed because the plain-tiffs were unable to prove ownership of

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