COPYRIGHT AND DIGITAL LIBRARIES: 
presentation to the LOUIS Users Conference (LUC) 
Baton Rouge, October 5-6, 2006

ABSTRACT

Explores the issues of copyright as it applies to digital libraries. Covers the origins of copyright legislation, current legislation and periods of copyright. Discusses major legislative provisions and examines solutions for digital libraries. Concludes with an analysis of specific problem areas and challenges relevant to copyright in digital libraries.

INTRODUCTION

The nature of copyright: Complex area; difficult to define exactly what is or is not copyright, how far materials can be used; major recent changes; final decisions taken by the courts.

Until recently: area of minor impact; limited civil damages; slow change.

Last decade: rapid development; major impact; draconian legislation; commercial interests.

TRADITIONAL PUBLISHING
Based on sale of physical objects produced by specialized equipment: Large
number printed / lower unit cost; Quality paper, illustrations, binding: higher unit cost.

**DIGITAL SYSTEMS**
Based on sharing, readily available hardware / software: WWW: Basic command: GET FILENAME; Server sends electronic copy of "master" page to client; can be duplicated infinitely at minimal cost

Procedures and legislation appropriate for one situation, not necessarily applicable to the other.

**STAKEHOLDERS**

**TRADITIONAL INFORMATION PROVIDERS:**
Publishers of books, newspapers, databases, software, music, films:
Uncertain how to approach Internet (librarians have similar problems!)
Afraid of losing control over their products /
Afraid of losing their market if they do not occupy space on Internet

**MUSIC**
until recently major monopoly:
five big names; huge sales;
Large profits from selling consumers same music in different formats:
LP, cassette tape, CD, preparing for digital
fought off bootlegs, imported fake tapes / CDs:
Now whole basis is threatened by compressed music files:
MP3; Rio; Napster, Kazaa, Grokster, BitTorrent ...

**BOOK PUBLISHERS**
sitting it out, awaiting safe technologies, e-books, standardization

**PUBLIC IN GENERAL**
Many people see little sense in copyright for small-scale personal copying:
Xerox, cassette tape, videotape copying, MP3, iPods
They see even less sense in copyright on Internet:
Much material on Internet is placed there for free use to advertise / promote a company / institution / person (Harry Potter sites)
SPECIALIZED INTERESTS
Disney, religious groups, certain music groups: aggressively support copyright

JUDICIAL SYSTEM
Law generally follows technology; Courts in general uphold commercial interests

LIBRARIES AND ARCHIVES
Libraries pioneered with databases, CD-ROMs, Internet
Well aware of the potential of digital media
Want to make collections available digitally:
problems: copyright restrictions, lack of experience, standardized systems.

DISCLAIMER:
REMEMBER THAT COPYRIGHT LAW IS COMPLEX, OFTEN DIFFICULT TO INTERPRET AND SUBJECT TO CHANGE; IT CAN BE DIFFICULT TO OBTAIN CLEAR ANSWERS TO APPARENTLY SIMPLE QUESTIONS. CONSULT A SPECIALIZED COPYRIGHT ATTORNEY IN CASES OF DOUBT. WHEN IN DOUBT: REQUEST PERMISSION! (if you know who to ask!)

HISTORY
First English law: 1709/1710: Statute of (Queen) Anne:
"An act for the encouragement of learning by vesting the copies of printed books in the authors or purchasers of such copies during the times herein mentioned"
14 years protection from date of printing
plus additional 14 years if author still alive
(Note similarity with patent law)

**CONSTITUTION: 1787:**
"The Congress shall have the power ... 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" (Article I, section 8).

Early American copyright: by notice and registration; fixed terms; renewable; from original 14 years extended up to 28 plus 28 years

---

**CURRENT U.S. COPYRIGHT LAW**

---

**1976 COPYRIGHT ACT:**

passed 1976 (after 15 years discussion)
in effect 1978
Berne Convention basis:
Copyright automatic / life of author plus (50) years
Basis for current law on copyright:
Study carefully:
Copyright basics: Circular 1:
[http://www.loc.gov/copyright/circs/circ1.html](http://www.loc.gov/copyright/circs/circ1.html)
Copyright FAQ:
[http://www.loc.gov/copyright/faq.html](http://www.loc.gov/copyright/faq.html)
Full text of law is at:

---

**TIMELINE:** A History of Copyright in the United States:
[http://www.arl.org/info/frn/copy/timeline.html](http://www.arl.org/info/frn/copy/timeline.html)
WORKS PROTECTED BY COPYRIGHT
"original works of authorship" fixed in tangible form of expression (Fixation can be via machine or device).

Eight categories: (1) literary works; (2) musical works; (3) dramatic works; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; (8) architectural works. Computer programs / most "compilations": may be registered as "literary works"; maps and architectural plans: may be registered as "pictorial, graphic, and sculptural works."

WORKS NOT PROTECTED BY COPYRIGHT
Works not been fixed in a tangible form: choreographic works that have not been notated or recorded improvisational speeches performances that have not been written or recorded

Titles, names, short phrases, and slogans (these can possibly be protected as trademarks)

Familiar symbols or designs; variations of typographic ornamentation, lettering, or coloring; listings of ingredients or contents

Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, devices: (but descriptions, explanations, or illustrations: protected by copyright) (also descriptions of devices etc. may be patentable)

Works consisting entirely of information that is common property Works containing no original authorship: standard calendars, height and weight charts, tape measures, rulers, lists or tables taken from public documents etc.

(Works by the US Government are not protected by copyright)
PERIOD OF COPYRIGHT

SONNY BONO COPYRIGHT TERM EXTENSION ACT, 1998
(Sonny Bono Act; CTEA) (favored by major publishers, Hollywood).

"As a general rule, for works created after Jan. 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years.

For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first.

For works first published prior to 1978, the term will vary depending on several factors."

http://www.copyright.gov/help/faq/faq-duration.html#duration
(Constitutionally, copyright cannot be eternal)

ELDRED DECISION
Failed attempt by e-book publisher Eric Eldred to overturn Sonny Bono Act

Foster, Andrea L. A Bookworm's Battle: Eric Eldred, inspired by the Internet, takes a copyright case to the Supreme Court. The Chronicle of Higher Education. 2002 Oct. 25.
http://chronicle.com/free/v49/i09/09a03501.htm
Eric Eldred is taking on the federal government in a U.S. Supreme Court showdown that pits him, scholars, and library groups against the nation's largest media companies. At issue is whether copyright
policy can accommodate both the entertainment industry and consumers, who increasingly seek to gain access to movies, songs, and books over the Internet. … Mr. Eldred keeps track of the expiration dates of copyrights on American literary classics, so he can copy them to his site, using an Epson scanner and software with optical character recognition. He intended to republish Horses and Men, a short-story collection by Sherwood Anderson, and New Hampshire, a collection of Robert Frost poems. Both works, published in 1923, were set to enter the public domain in 1998 under the 75-year copyright protection in place before the Copyright Term Extension Act took effect.

Brief of Amici Curiae The Internet Archive Filed on behalf of Petitioners: [http://www.arl.org/info/frn/copy/ia_brief.html](http://www.arl.org/info/frn/copy/ia_brief.html)
Libraries exist to preserve and provide access to society's cultural artifacts. To continue to foster education and scholarship in this era of digital technology, libraries must extend into the digital world. Libraries depend heavily on public domain materials to serve their mission of preservation and access. The Sony Bono Copyright Term Extension Act of 1998 ("CTEA") frustrates the Archive's goals of preservation and universal access thereby denying the public its rightful access to public domain works. The Archive submits this brief to increase the Courts understanding of the true cost of the CTEA to our cultural heritage … In the year 1930 10,027 books were published. In 2001, all but 174 of these titles are out of print. While a copy or two may exist in a library or a used bookstore, the copyright holders are not making these titles available to the public. But for the CTEA, digital archives could inexpensively make the other 9,853 books published in 1930 available to the reading public starting in 2005.


"Not only is the result, in my view, erroneous, but the opinion that
reached it is deeply flawed. It also bodes ill for the future, for it is yet another step in the direction of complete privatization of our culture, at the expense of the public domain."


"As two new books compellingly argue, the time is ripe for more anarchy, and fewer lawyers. It's become fashionable lately to vilify Mickey Mouse. So much money and power have been invested in the otherwise innocent-looking, squeaky-voiced cartoon character that he no longer is, for many of us, just a drawing. Mickey is, instead, The Man, the symbol of a global entertainment behemoth bent on remaking our world to its own ends. The most persistent claim these days is that Mickey is corrupting our Constitution: In order to protect Mickey Mouse and his cartoonish brethren -- not just Minnie and Pluto but also Britney and Eminem -- from the scourge of digital technology, this argument goes, the entertainment industry is clamping down on our freedoms to create, innovate and speak. The Mickey-as-Machiavelli theory has been promoted most aggressively by Lawrence Lessig, a constitutional scholar at Stanford Law School. Lessig is a brilliant and eloquent opponent of the entertainment industry's strong hand, and his fight is certainly broader than one cartoon rodent; still, Lessig clearly has Mickey on the brain. In 2002, Lessig led a constitutional challenge to the Sonny Bono Copyright Term Extension Act, the 1998 law Congress passed to extend copyright terms just as Mickey was about to enter the public domain. Lessig called it the "Mickey Mouse Protection Act"; his rallying cry was "Free Mickey!" But in court, Mickey beat Lessig. In a 7-to-2 ruling handed down last year, the Supreme Court let the copyright extensions stand. Mickey would not be freed."

WHEN WORKS PASS INTO THE PUBLIC DOMAIN

Copyright Term and the Public Domain in the United States http://www.copyright.cornell.edu/training/Hirtle_Public_Dom
Comprehensive, authoritative analysis

**When works pass into the public domain:**
http://www.unc.edu/~unclng/public-d.htm

**Gutenberg: Copyright How-To**
http://www.gutenberg.org/wiki/Gutenberg:Copyright_How-To
Project Gutenberg's seven rules to determine copyright.

**How do I find out whether the book is in the public domain?**
http://onlinebooks.library.upenn.edu/okbooks.html#whatpd
Comprehensive international coverage

**How to Determine Whether a Work is in the Public Domain / Dennis S. Karjala, Professor of Law, Arizona State University**
http://www.public.asu.edu/~dkarjala/publicdomain/SearchCR.html
Tells you where to look for copyright renewals and includes links to online versions of the US Catalog of Copyright Entries.

**Trend of Maximum U.S. General Copyright Term**
http://www.tomwbell.com/writings/(C)_Term.html
The above chart illustrates the most easily quantified evidence of the expansion of U.S. copyright law: the trend of the general copyright term (that is, for works not created anonymously, pseudonymously, or for hire). The first federal copyright legislation, the 1790 Copyright Act, set the maximum term at fourteen years plus a renewal term of fourteen years. The 1831 Copyright Act doubled the initial term and retained the conditional renewal term, allowing a total of up to forty-two years of protection. Lawmakers doubled the renewal term in 1909, letting copyrights run for up to fifty-six years. The interim renewal acts of 1962 through 1974 ensured that the copyright in any work in its second term as of September 19, 1962, would not expire before Dec. 31, 1976. The 1976 Copyright Act changed the measure of the default copyright term to life of the author plus fifty years. Recent amendments to the Copyright Act expanded the term yet again, letting it run for the life of the author plus seventy years. As the chart reveals, all but
the first of these statutes extended copyright terms retroactively. In calculating copyright terms based on the life of the author, the above chart conservatively assumes that authors create their works at age thirty-five and live for seventy years.

Duration of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection
http://www.copyright.gov/circs/circ15a.html

FAIR USE (Copyright Act, section 107)

The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), [private study], scholarship, or research, is not an infringement of copyright.

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."

http://www4.law.cornell.edu/uscode/html/uscode17/usc_sec_17_0000107-000-.html
REPRODUCTION BY LIBRARIES AND ARCHIVES: Section 108:

Complex legislation;
Nine subsections, lettered a - i
characterised / summarized as follows:

[GENERAL CONDITIONS: Subsection (a)]
[PRESERVATION COPIES OF UNPUBLISHED WORKS: Subsection (b)]
[PRESERVATION COPIES OF PUBLISHED WORKS: Subsection (c)]
[FAIR USE COPYING FOR PRIVATE STUDY ETC.: Subsection (d)]
[COPYING OUT OF PRINT WORKS FOR PRIVATE STUDY ETC.: Subsection (e)]
[UNSUPERVISED COPYING: Subsection (f)]
[SYSTEMATIC OR CONCERTED COPYING: Subsection (g)]
[OLDER COPYRIGHT PUBLICATIONS: Subsection (h)]
[MUSICAL, PICTORIAL WORKS: Subsection (i)]

[GENERAL CONDITIONS: Subsection (a)]

... it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce ... one copy or phonorecord of a work, [or more than one copy ... as provided in subsections (b) and (c)] or to distribute such copy or phonorecord, under the conditions specified by ... section [108], if -

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are
(i) open to the public, or
(ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or .. stating that the work may be protected by copyright if no
such notice can be found on the copy or phonorecord that is reproduced ...

[PRESERVATION COPIES OF UNPUBLISHED WORKS: Subsection (b)]

The rights of reproduction and distribution under ... section [108] apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if -

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

[PRESERVATION COPIES OF PUBLISHED WORKS: Subsection (c)]

The right of reproduction under ... section [108] applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if -

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured
or is no longer reasonably available in the commercial marketplace.

[FAIR USE COPYING FOR PRIVATE STUDY ETC.: Subsection (d) ]

The rights of reproduction and distribution under ... section [108] apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if -

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright ...

[COPYING OUT OF PRINT WORKS FOR PRIVATE STUDY ETC.: Subsection (e)]

The rights of reproduction and distribution under ... section [108] apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if -

(1) the copy or phonorecord becomes the property of the user,
and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright ... 

[UNSUPERVISED COPYING: Subsection (f)]

Nothing in ... section [108] -
(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises:

Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107 ... 

[Systematic or Concerted Copying: Subsection (g)]

The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee -

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material ... or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d)

Provided, That nothing in this clause prevents a library or archives from participating in interlibrary
arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

[OLDER COPYRIGHT PUBLICATIONS: Subsection (h)]

(1) ... during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research ... (except when) ...
(A) the work is subject to normal commercial exploitation;
(B) a copy or phonorecord of the work can be obtained at a reasonable price; or
(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.
[Note] The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

[MUSICAL, PICTORIAL WORKS: Subsection (i)]

The rights of reproduction and distribution under ... section [108] do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work (other than an audiovisual work dealing with news), except that no such limitation shall apply with respect to rights granted by subsection (b) [PRESERVATION COPIES OF UNPUBLISHED WORKS] and [subsection] (c) [PRESERVATION COPIES OF PUBLISHED WORKS] or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).
LATER LEGISLATION AND LEGAL DECISIONS

DIGITAL MILLENNIUM COPYRIGHT ACT, 1998

18 p. summary (.pdf file):  
http://lcweb.loc.gov/copyright/legislation/dmca.pdf

Implements World Intellectual Property Organization (WIPO) treaties:

Extends protection for works from other member countries

CIRCUMVENTION

Technological measures to protect copyrighted works cannot be circumvented;  
circumvention devices or services prohibited.  
Library exception:  
Nonprofit libraries, archives:  
can circumvent protective software in order to evaluate digital materials to determine whether they wish to obtain authorized access (p.5)
Also exceptions for reverse engineering, encryption, protection of minors, privacy, security testing

**COPYRIGHT MANAGEMENT INFORMATION**
Nobody can distribute digital copies from which electronic rights management information (name of copyright holder, date, etc.) has been removed (or modified) without authority
Remedy: civil action for damages;
non-profit libraries, archives and educational institutions are not liable for damages if they were not aware and had no reason to believe their acts constituted a violation (p. 6-7)

**LIMITED LIABILITY FOR ONLINE SERVICE PROVIDERS** for
transitory communications
system caching
storage of information on systems or networks at the direction of users
information location tools: hyperlinks, directories, search engines etc. (p. 8-13)
if provider does not know material is infringing;
if provider has no control over infringing material, provider does not gain financial benefit from it;
takes down copyrighted materials from system or network on receipt of sworn, specific complaint (p.12)
or blocks access from search engine / directory if notification of "claimed" infringement received (p.13)

Example from search engine:
[http://www.lycos.com/lycosinc/legal.html#Infringement](http://www.lycos.com/lycosinc/legal.html#Infringement)

**LIMITED LIABILITY FOR NONPROFIT EDUCATIONAL INSTITUTIONS**
for actions of faculty or graduate student employees: but:

must inform faculty, students of copyright law,
encourage compliance;

not more than two complaints in last three years against specific faculty member / grad. student
Limitation does not protect provision of online access to course materials (p. 13)

Also note:
p. 9, paragraph 2: mention of fair use;
p. 9, paragraph 5: definition of service provider:

**NON-PROFIT LIBRARIES AND ARCHIVES:**
(DMCA amendments to Section 108, 1976 Law)
Copies for preservation, ILL:
can be up to three copies
(e.g. archival, master, use copy)
for preservation, ILL, substitution of worn copies
if impossible to purchase copy at fair price
Copies can be digital:
**Digital copies cannot be made available to public outside library premises**
Can copy from one format to another
if original device no longer available (p. 15)

Section 108 Redlined to show DMCA Changes:

**DISCUSSION OF DMCA**

**PRIMER ON THE DIGITAL MILLENNIUM:**
what the Digital Millennium Copyright Act and the Copyright Term Extension Act mean for the library community; Arnold P. Lutzker, Attorney:
http://www.arl.org/info/frn,copy/primer.html
includes useful timeline of events

**Digital Millennium Copyright Act : Status & Analysis: ARL**
http://www.arl.org/info/frn,copy/dmca.html

**What Colleges and Universities Need to Know about the Digital Millennium Copyright Act; by Casey Lide:**
Summary:
http://www.educause.edu/LibraryDetailPage/666?ID=CEM9913
Full text:
The Digital Millennium Copyright Act (DMCA) is a far-reaching attempt to update copyright law for the digital environment. Title II of the DMCA establishes certain limitations for copyright infringement liability for online service providers (OSPs). "Service provider" is broadly defined and likely includes many colleges and universities. The DMCA specifies requirements for notice (by the copyright owner to the service provider) and takedown (by the service provider of the alleged infringing material). Colleges and universities will be challenged to develop effective processes for making takedown decisions involving material faculty have incorporated into an online course, as such takedowns could result in course disruption or even be seen as threatening the principles of academic freedom.

UPDATING OF DMCA

The Digital Millennium Copyright Act (DMCA) requires the librarian of Congress to declare, every three years, exemptions from the statute's prohibition against circumvention of technology that effectively controls access to a copyrighted work. Current exemptions include:

Computer programs and video games distributed in formats that have become obsolete and which require the original media or hardware as a condition of access.

Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling of the ebook's read-aloud function and that prevent the enabling of screen readers to render the text into a specialized format.

Statement of the Librarian of Congress Relating to Section 1201 Rulemaking
http://www.copyright.gov/1201/docs/librarian_statement_01.html
ROSETTA BOOKS DECISION 2001

http://www.rosettabooks.com


2001: Random House tried to stop them from distributing electronic versions of works by Kurt Vonnegut, William Styron, and Robert B. Parker. The judge ruled in favor of Rosetta Books, determining that ebooks are a separate medium from the original product, because they offer full-text searching, hyperlinking, and other electronic advantages. Older contracts in which authors had assigned rights to publish “books” would not therefore automatically cover electronic versions (Decision of Judge Sidney H. Stein, July 12, 2001).

TASINI DECISION, 2001

Formerly, freelance authors who wrote for newspapers, magazines did not formally surrender right to put articles into databases (because this market was small or nonexistent). Now, after legal action, the Supreme Court agreed they have rights; actions basically retrospective: current freelance author contracts cover database rights.

Post-Tasini: Pity the Librarians:
http://www.wired.com/news/culture/0,1284,44905,00.html
"For publishers reeling from a recent Supreme Court loss, it’s time to pay freelancers whose work has been republished in electronic databases without their permission. But rather than pay up or face billions in liabilities, publishers are deleting tens of thousands of freelance articles spanning decades. So who will bear the brunt of that extra work? "The librarians, of course,"

New York Times v. Tasini Decided:
The New York Times announced that it would remove 115,000 articles written by the 27,000 freelancers

UnCover settlement: http://www.coalliance.org/datalink/aug00/index.html
"The settlement also requires UnCover to destroy its electronic storage disks containing images of over 800,000 articles"

Tasini v The New York Times:
http://www.nwu.org/nwu/?cmd=showPage&page_id=1.2.13.3
National Writers Union: "For decades when freelance writers sold stories to American publications, it was understood by all concerned that they were selling only First North American Serial Rights which allowed the newspaper or magazine to publish the story in print one time. For freelance authors, retention of all other copyrights is crucial to their economic survival because a significant additional source of income comes from their ability to sell secondary rights such as syndication, translations, anthologies, and so forth, to other publications."

ORPHAN WORKS DECISION 2006

Copyrighted works whose owners are difficult or even impossible to locate.

Situation examined by the Register of Copyrights:
http://www.copyright.gov/orphan/index.html

Lengthy .pdf: 133 pages.
The U.S. Copyright Office has proposed a solution to the vexing problem of "orphan" works — older materials that people are reluctant to republish because they cannot track down the copyright owners. But the office's recommendation, backed by publishers, is unlikely to please archivists or scholars. In a 133-page report, the office said that people who republish orphan works should pay "reasonable compensation" if the copyright owners surface and demand payment for the use of their materials. The copyright office said its recommendation could be accomplished by amending the infringement and remedies section of the Copyright Act. But recognizing that many orphan works are republished online, the proposal also said that if "nonprofit institutions like libraries, museums, and universities" immediately stop using orphan works when contacted by copyright owners, the institutions should not have to pay anything for the copyright infringements. The copyright office also recommended that would-be publishers of orphan works must first conduct a "reasonably diligent search" to locate the owners of the works. Librarians, scholars, and museum directors frequently seek to republish orphan works for archival, research, and preservation purposes. They told copyright-office representatives at hearings last summer that nonprofit educational and cultural institutions should not be required to pay anything if copyright owners subsequently come forward, or should pay no more than a set amount — typically between $100 and $500 — per work infringed ... Public Knowledge, an advocacy group, said the copyright office had done little to help scholars. They could still face infringement suits — and large payouts — should the copyright-office recommendation become law, the group said. "We're not in a lot better shape than we were when we first started," said Gigi B. Sohn, president of Public Knowledge. "If the purpose of this exercise was to get more certainty and more orphan works in circulation, that's not going to happen.". Full text: EBSCOhost
The report proposes a trade-off between the costs and demands of a potential search and the risk of damages for infringement. Those who are interested in using copyrighted works would be required to perform a "good faith, reasonably diligent search" to locate the owner of the work. The user would also be required to give the original author credit and attribution for the use of the work. In return, the user would not be required to pay any statutory damages if the owner later claimed infringement. The user would only pay "reasonable compensation" for the work. If the use is noncommercial in nature and is discontinued after receiving a notice from the copyright owner, then no damages or compensation would be required. The requirement of what would constitute a "good faith, reasonably diligent search" will depend on the circumstances. The report suggested at a minimum that the work should be reviewed for any identifying information, looked at to see if the work was previously published and whether its publishing history was sought out, and reviewed to find publicly available records and resources. The report encouraged parties including publishers, library organizations, and groups (e.g., The Authors Guild) to work together to develop standards, best practices, and data resources to help in the search process. The report's proposals, which are not law, will not become law unless specifically enacted by Congress. Already some commentators have raised concerns about what would be considered a "reasonably diligent search" and what would be considered "reasonable compensation.". Full text: EBSCOhost

Brief of Amici Curiae The Internet Archive Filed on behalf of Petitioners:
http://www.arl.org/info/frn/copy/ia_brief.html

"In the year 1930 10,027 books were published. In 2001, all but 174 of these titles are out of print. While a copy or two may exist in a library or a used bookstore, the copyright holders are not making these titles available to the public. But for the CTEA, digital archives could inexpensively make the other 9,853 books published in 1930 available to the reading public starting in 2005."
Orphan works in Canada:
http://www.cb-cda.gc.ca/unlocatable/index-e.html
The Copyright Board of Canada has operated a licensing system for orphan works since 1990; less than 200 licenses have been applied for; most were granted.

AVOIDING COPYRIGHT PROBLEMS IN DIGITAL LIBRARIES

USE COPYRIGHT DISCLAIMERS

Disclaimers of various types are a common feature of Digital Library sites. They are essential to protect the DL against potential legal actions. These notes present a few selected samples, to demonstrate the variety of disclaimers that can be found. They do not represent all types of disclaimer; the inclusion of a specific disclaimer does not constitute an endorsement of its content.

GENERAL DISCLAIMERS

Some materials may be protected by Copyright

Materials made available to the public for fair use purposes only: research, private study scholarship (not necessarily scholarly publishing)

Educational purposes (rarely precisely defined)

Additional use may require authorization

Institution not aware of any copyright restrictions; or: Where possible the institution helps in determining copyright status of specific items, but ultimate responsibility of obtaining necessary clearances is with the user who wishes to go beyond fair use
Holders of copyright are invited to contact the institution

Do not remove or alter copyright information

Cite source

#

**Library of Congress:**

"About Copyright and the Collections:
Whenever possible, the Library of Congress provides factual information about copyright owners and related matters in the catalog records, finding aids, and other texts that accompany collections. As a publicly supported institution, the Library generally does not own rights in its collections. Therefore, it does not charge permission fees for use of such material and generally does not grant or deny permission to publish or otherwise distribute material in its collections. Permission and possible fees may be required from the copyright owner independently of the Library.

It is the researcher's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing material found in the Library's collections. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Researchers must make their own assessments of rights in light of their intended use. More information about U.S. copyright law (Title 17 U.S. Code) is provided by the Copyright Office.

The Library of Congress wants to hear from any copyright owners who are not properly identified on this Web site so that we may make the necessary corrections."

[http://www.loc.gov/homepage/legal.html#copyright](http://www.loc.gov/homepage/legal.html#copyright)

**The Civil Rights in Mississippi Digital Archive:**

"The resources provided by the The University of Southern Mississippi Libraries as a part of the Civil Rights in Mississippi Digital Archive are made available for the specific purposes of research, teaching, and personal study. Under Fair Use, users may make a
single reproduction (print or download) for these purposes, on the condition that they adequately attribute credit to The University of Southern Mississippi Libraries in any resulting works (see guidelines for citation).

Under U.S. Copyright Law (Title 17, U.S.C.) unpublished works created prior to 1978 are automatically given Federal copyright protection until December 31, 2002. Thus, use of resources from the Civil Rights in Mississippi Digital Archive for publication, broadcast, mirroring, or other applications not considered Fair Use requires permission of the copyright holder.

It is the sole responsibility of the user to identify and secure permission from the copyright holder to make reproductions of copyrighted resources. Recipients of resources agree to indemnify and hold harmless The University of Southern Mississippi, its officers, employees, and agents from and against all suits, claims, actions, and expenses arising out of the use of reproductions provided by the USM Libraries''

http://www.lib.usm.edu/%7Espcol/crda/ipp/index.html

http://www.lib.usm.edu/%7Espcol/crda/ipp/subpage_copystate.htm

**Rare Book, Manuscript, and Special Collections Library, Duke University:**

"The materials on this web site have been made available for use in research, teaching, and private study. For these purposes, you may reproduce (print, make photocopies, or download) materials from this web site without prior permission, on the condition that you provide proper attribution of the source in all copies (see below). Although we don't require you to contact us in advance for these purposes, we do appreciate hearing from teachers, students, and researchers who are using our resources in interesting ways (please send e-mail to special-collections@duke.edu). For other uses of materials from this web site -- i.e., commercial products, publication, broadcast, mirroring, and anything else that doesn't fall under "fair use" (explained below) -- we require that you contact"
us}in advance for permission to reproduce. Please read on for more information.

... Reproductions of material from the Rare Book, Manuscript, and Special Collections Library may be made only for use in the research, teaching, or private study of the recipient of the reproduction. They may not be made for or donated to other repositories by the recipient. They may not be further reproduced without permission.

The recipient agrees to give proper acknowledgement to the Duke University Rare Book, Manuscript, and Special Collections Library, and further agrees to secure permission in advance from the Rare Book, Manuscript, and Special Collections Library to publish or broadcast any item, in whole or in part, from its collections. This permission may be granted in so far and only in so far as the rights of the Rare Book, Manuscript, and Special Collections Library are concerned. The Library claims only physical ownership of most Special Collections material. Persons wishing to broadcast or publish this material must assume all responsibility for identifying and satisfying any claimants of literary property rights or copyrights.

The recipient agrees to indemnify and hold harmless Duke University, its officers, employees and agents from and against all suits, claims, actions and expenses arising out of the use of reproductions provided by the Rare Book, Manuscript, and Special Collections Library ..."

http://scriptorium.lib.duke.edu/copyright.html

**Television News of the Civil Rights Era** All material, including film, text, and image, on this site are copyrighted. No film, image, or text on this site may be reproduced, copied, or duplicated for any purpose whatsoever without the express written permission from the rights holders. The rights to WSLS films and scripts are held by the University of Virginia. The rights to all WDBJ films in this collection are held by WDBJ-7 (Roanoke, Virginia). This site is intended for educational and research use by scholars, teachers, and students of all levels. Teachers, students, and scholars are encouraged to use this site for in class demonstration as well as for research projects. Teachers, scholars, students, and the public,
however, may not under any circumstances duplicate these films for any purpose without permission of the rights holders. Duplication would constitute the saving of files on a hard drive or the excerpting of film, text or image materials for use in another piece of software. Fair use guidelines for limited reproduction do not apply to many copyrighted materials on this site. (Virginia Center for Digital History, University of Virginia).
http://www.vcdh.virginia.edu/civilrightstv/copy.html

DIGITIZE NON-COPYRIGHT OR OTHERWISE ACCEPTABLE MATERIALS

DIGITIZE OLDER MATERIALS

Classical studies:
http://www.perseus.tufts.edu/

African American Women Writers of the 19th Century
http://digital.nypl.org/schomburg/writers_aa19/

Images of African Americans from the 19th Century
http://digital.nypl.org/schomburg/images_aa19/

The Victorian Women Writers Project:
http://www.indiana.edu/~letrs/vwwp/index.html

American Memory:
http://memory.loc.gov/

CREATE "TRIBUTE" SITES

Tribute sites, celebrating the achievements of specific individuals, are more likely to be acceptable to rights holders

Margaret Thatcher Foundation
http://www.margaretthatcher.org
Documents relating to the former British Prime Minister; the largest contemporary history site of its kind; the site offers free access to the full texts of thousands of documents relating to the politics of the last quarter of a century.

**The Emma Goldman Papers:**
http://sunsite.berkeley.edu/Goldman/

**Evelyn Birkby Collection of Radio Homemaker Materials**
http://mingo.info-science.uiowa.edu/birkby/index.html

**Dean Martin Display**
http://library.nevada.edu/speccol/dino/index.html

**Hoagy Carmichael Collection -- IU Digital Library:**
http://www.dlib.indiana.edu/collections/hoagy/index.html

**OFFER ABSTRACTS ONLY**

**PubMed: Medline on the net:**
(with links to full-text when available)

**DISSEMINATE GOVERNMENT DOCUMENTS**

**Southern Methodist University:**
http://worldwar2.smu.edu
A digital library of Government Publications from World War II

**University of Iowa: Virtual Hospital:**
http://www.vh.org/
Based on Government documents and texts prepared by U. of Iowa faculty.

**DISSEMINATE TELEVISION NEWS**

**Television News of the Civil Rights Era 1950-1970**
www.vcdh.virginia.edu/civilrightstv
Television News of the Civil Rights Era, 1950-1970, aims to collect, digitize, and present in streaming video format over the World Wide Web all available news footage from the period and to make these valuable materials available to scholars, teachers, and students. The
current archive contains all scripts and full film collections (over 400 hours of original film) for the nightly news from two local television stations in Virginia—WDBJ (CBS) Roanoke and WSLS (NBC) Roanoke. This rare footage includes full speeches of Martin Luther King, John F. Kennedy, Richard M. Nixon, the governors of the Commonwealth of Virginia, as well as original footage of school desegregation, public meetings, local debates over civil rights matters, and interviews with citizens.

DISSEMINATE LEGAL DISCOVERY DOCUMENTS

The Legacy National Tobacco Documents Library: LNTDL: http://legacy.library.ucsf.edu/
"Over 20 million documents: scientific research, manufacturing, marketing, advertising and sales of cigarettes obtained through the legal discovery process for a lawsuit against the major tobacco companies by the Attorney General of Minnesota and Blue Cross/Blue Shield of Minnesota ... The University of California, San Francisco Library, which hosts the LTDL, has been a leader in the field of tobacco industry document research and access since the UCSF Library Tobacco Control Archives was established in 1994"

DISSEMINATE PRE-PRINTS

arXiv http://lanl.arxiv.org/
"Open access to e-prints in Physics, Mathematics, Computer Science and Quantitative Biology. arXiv is owned, operated and funded by Cornell University, a private not-for-profit educational institution. arXiv is also partially funded by the National Science Foundation.". Pronounced "archive".

DISSEMINATE INSTITUTIONAL DOCUMENTATION

The ACM Portal to Computing Literature: http://portal.acm.org/portal.cfm
Association for Computing Machinery. Paid access.

PAY LICENSING FEES AND CHARGE USERS
NetLibrary:
http://www.netlibrary.com/

Questia:
http://www.questia.com/

AREAS CURRENTLY IN DISPUTE / UNDER DISCUSSION

Section 108 Study Group
http://www.loc.gov/section108/
The Section 108 Study Group is a select committee of copyright experts, convened by the Library of Congress, and charged with updating for the digital world the Copyright Act balance between the rights of creators and copyright owners and the needs of libraries and archives.

IN PROGRESS: Potentially very important; currently scheduled to draft report in March 2007.

Library Launches Web Site on Independent Copyright Committee
http://www.loc.gov/today/pr/2005/05-179.html
The Library of Congress has launched a new public Web site to cover the groundbreaking work of a special independent committee. By 2006, this committee will recommend changes to copyright law that recognize the need for exceptions to the law for libraries and archives in the digital age. The site, at www.loc.gov/section108, offers the group’s mission statement, its schedule of meetings and links to relevant sections of the Copyright Act. The site also offers links to background papers pertinent to libraries and archives and the rights issues they encounter when working with digital materials. Members of the independent committee include representatives from the private and public sector. The group is co-
chaired by Laura Gasaway, director of the law library and professor of law at the University of North Carolina, and Richard Rudick, former vice president and general counsel of John Wiley and Sons. The 17 other members are from various interests and bring a broad range of perspectives to the group. The group was limited to 19 members to ensure efficiency and to meet the mid-2006 deadline for making recommendations. Public meetings are being planned, and the dates and locations will be posted once finalized.

SEARCH ENGINES AND THE DIGITAL LIBRARY FIELD


Amazon scanned 33-million pages of 120,000 books as approved by publishers (not necessarily by authors, some of whom challenged their publishers for giving approval). Being able to search the content of the books rather than just their metadata (title, author, publisher, genre, year), mightily expands the users' capabilities to judge the relevance of the book from their perspective. Not only the topical relevance, but also the relevance of the treatment level, which is quite apparent after reading a few pages from a book. You can turn two pages forward and two pages backward to read the text and see a good map of the region. The next page is a continuation of the narrative. If you click on the next page link, you get a warning that you may not display more than two pages in this direction. This five-page limit was introduced to ease the controversy after some authors and their guilds lodged protests and complained that the SIB feature would reduce book sales.

GOOGLE

"How does Google Book Search work?: Just do a search on Google Book Search or on Google.com. When we find a book whose content contains a match for your search terms, we'll link to it in your search results. Click a book title and you'll see the Snippet View which, like a card catalog, shows information about the book plus a few snippets - a few sentences of your search term in context. You may also see the Sample Pages View if the publisher or author has given us permission or the Full Book View if the book is out of copyright. In all cases, you'll also see 'Buy this Book' links that lead directly to online bookstores where you can buy the book.
The book content in Google Book Search come from two sources: publishers and libraries:

Google Books Partner Program – an online book marketing program:
An online book marketing program designed to help publishers and authors promote their books by showing you a limited number of sample pages

Google Books Library Project – an enhanced card catalog of the world's books:
Our project to include the collections of a few libraries in Google Book Search and, like a card catalog, show you information about the book plus a few snippets – a few sentences of your search term in context – or to show the full book when out of copyright."


GOOGLE LIBRARY PROJECT

Google will digitize and search millions of books from 5 leading Five of the world's largest libraries have joined Google in a Herculean effort to digitize millions of books and make every sentence searchable. The project, which Google officials plan to announce today, involves libraries at Harvard and Stanford Universities, the University of Michigan at Ann Arbor, and the University of Oxford,
as well as the New York Public Library. It could soon turn Google into the single largest holder of digitized published material, while also providing researchers and students with an unprecedented tool for finding information.

http://chronicle.com/temp/reprint.php?id=3bjkpzh91tqc182825w6gil3wf9v4y

Some publishing groups have raised questions about whether Google has the right, under copyright law, to make digital copies of every book in a college's library. Among those groups is the Association of American University Presses, whose lawyers sent a letter to Google officials in May raising concerns and asking the company for more information about the project. Peter Givler, executive director of the association, says that he supports the idea of building a large digital library, but that the rights of authors and publishers must be protected. (Full text: LexisNexis).

Young, Jeffrey R. **From Gutenberg to Google: Five views on the search-engine company's project to digitize library books.** *The Chronicle of Higher Education.* 2005 June 3; 51(39):A24.
http://chronicle.com/temp/reprint.php?id=n3ffkdo04uurw0wc064nw7dh0ux1fx1

There are only four documents; Gorman and Wilkin are a single document

http://chronicle.com/free/2005/06/2005062101t.htm

The Association of American Publishers has asked Google to stop scanning copyrighted books published by the association's members for at least six months while the company answers questions about whether its plan to scan millions of volumes in five major research libraries complies with copyright law.
Authors struggle, mostly in vain, against their fated obscurity. According to Nielsen Bookscan, which tracks sales from major booksellers, only 2 percent of the 1.2 million unique titles sold in 2004 had sales of more than 5,000 copies. Against this backdrop, the recent Authors Guild suit against the Google Library Project is poignantly wrongheaded. The Authors Guild claims that Google's plan to make the collections of five major libraries searchable online violates copyright law and thus harms authors' interests. As both an author and publisher, I find the Guild's position to be exactly backward. Google Library promises to be a boon to authors, publishers and readers if Google sticks to its stated goal of creating a tool that helps people discover (and potentially pay for) copyrighted works.

**RELATED ACTIVITIES**


Now that all the busy book digitizers have done enough to create what anyone would call library-size collections, they have begun to deliver the full text electronically and to reveal how they plan to “monetize” their investments. Instead of just using its Search Inside the Book postings to encourage online purchases, Amazon.com will soon deliver “any page, section, or chapter of a book, as well as the book in its entirety” to consumers under two payment plans. Random House plans to offer its books digitally at a price. In the “keep it free, at least free to the user” camp, Google, which has just changed the name of Google Print to Google Book Search, has opened its vaults and started delivering public domain books in full, as well as the “snippets” copyrighted books connected to book purchasing outlets or library collections. Microsoft, which announced a commitment to digitizing 150,000 books as part of its MSN Book Search commitment to the Open Content Alliance (OCA), has named
The British Library (BL) as the source of the first 100,000 books. Information professionals seeing this explosion of book content are already evaluating the impact of the new content and the opportunity to integrate and enrich their existing services. URL: http://books.google.com.

**SPECIALIZED AND RELATED DIGITAL AREAS**

**ARCHIVES**


The purpose of an archive (e.g., to ensure preservation or to provide an easy and convenient means of access), its subject matter, and the manner in which it will acquire copies, as well as who will have access to the archive, from where, and under what conditions, are all factors critical to determining the copyright implications for works to be included in it. The goal of this paper is to provide basic information about the copyright law for those developing such an archive and thereby enable them to recognize areas in which it could impinge on copyright rights and to plan accordingly. After initial decisions have been made, a more detailed analysis will be possible. As the paper indicates, there are a number of areas that would benefit from further research. Such research may not yield definitive legal answers, but could narrow the issues and suggest strategies for proceeding.

**MUSIC COLLECTIONS**


The Library of Congress has announced the results of its
commissioned study on the nation’s audio heritage. The study found that most of America’s historical sound recordings have become virtually inaccessible—available neither commercially nor in the public domain. Laws still protect the rights to fully 84 percent of recordings of interest to scholars and collectors made in the United States between 1890 and 1964. Of those protected, rights holders have reissued only 14 percent on compact disc. This means that the vast majority of historically important sound recordings are available for hearing only through private collectors or at research libraries that collect the nation’s audio heritage and have the equipment to play obsolete recordings.

ELECTRONIC RESERVES

Electronic Reserves Clearing House:  
http://www.mville.edu/Administration/staff/Jeff_Rosedale/

Electronic Reserves Operations in ARL Libraries  
http://www.arl.org/spec/245fly.html  
SPEC Flyer 245 (Systems and Procedures Exchange Center)

Electronic Course Reserves at San Diego State University:  
http://ecr.sdsu.edu

TEACH ACT

Distance Education and the TEACH Act  
http://www.ala.org/Template.cfm?Section=Distance_Education_and_the_TEACH_Act&Template=/ContentManagement/ContentDisplay.cfm&ContentID=25939#newc

The "Technology, Education and Copyright Harmonization Act" (the TEACH Act), was signed into law by President Bush on November 2nd, 2002. Applies to: Accredited non-profit institutions; with a declared copyright policy; which promote compliance with copyright and limit transmissions to enrolled students. Transmissions must only be available to students for the class session; institution cannot over-ride technological controls on material. Transmission must be made by, at the direction of, or under the actual supervision of an
instructor as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities of the educational institution. Displays must use legally made and acquired copies. See also: Checklist for Compliance with the TEACH Act
http://www.copyright.iupui.edu/teachlist.htm
Indiana University / Purdue University / Indianapolis

ADDITIONAL RESOURCES

World Intellectual Property Organization:
http://www.wipo.int/index.html.en

Copyright Advisory Network
http://www.librarycopyright.net/

ALA Washington Office: Copyright Issues
http://www.ala.org/ala/washoff/WOissues/copyrightb/copyright.htm

Public Knowledge
http://www.publicknowledge.org/
Public Knowledge is a group of lawyers, technologists, lobbyists, academics, volunteers and activists dedicated to fortifying and defending a vibrant information commons. Our first priority is to stop any bad legislation from passing—laws we think would slow technology innovation, pick market winners, shrink the public domain, or prevent fair use.

Interlibrary loans and copyright

Copyright Website
http://www.benedict.com/

The UT System Crash Course in Copyright
http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm
Comprehensive coverage; note especially:
Fair Use of Copyrighted Materials:
http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm
Includes Rules of Thumb for Electronic Reserves, Coursepacks, etc.

Cavan McCarthy, Ph.D. | Assistant Prof. SLIS / LSU
All Rights Reserved | Conditions of use / Disclaimer