Copyright, Open Access, and Library Instruction

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There are numerous technological tools that librarians can utilize in their informal and formal instructional activities from course management platforms, to mobile applications, to media and websites. Using these tools can foster deep-level learning in students (Stark-Wroblewski *et al.*, 2008), however, librarians must be cognizant of copyright implications that may arise. This article discusses basic copyright information, including educational exemptions; creative commons licenses; tips and tools to avoid infringement; open access; and copyright considerations specific to using music in instruction.

Copyright Basics

United States copyright law is codified in title 17 of the United States Code. It lays out the scope of the law from owners' rights to duration to what is covered by copyright. It also provides limits on owners' rights. Section 106 of the Copyright Act grants owners the following exclusive rights: reproduction; distribution; creation of derivatives; performance; display; and performance by digital audio transmission ("Exclusive Rights in Copyrighted Works" 2014, § 106). This means that no one else can utilize the work in any of the above ways without proper permission from the owner.

The Copyright Act does provide a few limits to these rights. Fair use allows for use of works or parts of works, "...for purposes such as criticism, comment, news reporting, teaching...scholarship, or research..." ("Limitations on Exclusive Rights: Fair Use" 2014, § 107). Even if an instructional use seems to be covered under fair use, librarians need to be careful how much of a work they use and for what purpose. Courts use a balancing test to determine whether a particular use is fair and look to whether the use is commercial, whether the work is published, how much of the work is used, and the impact on the market of the work ("Limitations on Exclusive Rights: Fair Use" 2014, § 107).

The Teach Act (“Limitations on Exclusive Rights: Exemption of Certain Performances and Displays” 2014, § 110(2)) provides exemptions specifically for distance/online education. Librarians are able to make use of works in the course of distance instructional activities, though there are many requirements with which instructors and educational institutions must comply. Specific requirements are stated in the Act.

Creative Commons Licenses

One way librarians can avoid determining whether their use is allowed under the TEACH Act or is covered by fair use or other copyright exemptions, is by utilizing content that is covered by Creative Commons licenses.

What is Creative Commons?

As stated on its website, “Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools” (<http://creativecommons.org/about>). The organization makes available licenses for content creators to share their works with others. The licenses do not replace copyright, instead they allow content creators to explicitly state how others may use their works (<http://creativecommons.org/about>). Others can use the works in ways specified by content creators without having to seek formal permissions from copyright holders. Creative Commons licenses were first created in 2002 and are currently in their fourth version.

Types of Creative Commons licenses

There are six main categories of Creative Commons licenses, ranging from simple creator attribution to more specific restrictions on derivatives and commercial uses. Each license has three attributes: the legal code, the Commons Deed, and the CC Rights Expression Language (<http://creativecommons.org/licenses/>). The legal code is exactly what it sounds like; it expresses

the terms and conditions of the license in legalese. The Commons Deed explains terms and conditions in lay terminology so that licensors and licensees understand what that particular license allows. The CC Rights Expression Language is what search engines and other technology read to determine the terms and condition of a license. (<http://creativecommons.org/licenses/>).

The following list details of different types of Creative Commons licenses and includes the corresponding Creative Commons abbreviation (<http://creativecommons.org/licenses/>):

Attribution (CC BY): This is the least restrictive license. It allows others to share and adapt content in any way they choose, even for commercial purposes. The only restrictions it places on use is that users must provide credit to the creator, link to the license, and provide notice of changes made to the content.

Attribution-NonCommercial (CC BY-NC): Others can share and adapt content but can only use the content for non-commercial purposes. Users must provide credit to the creator, link to the license, and provide notice of changes made to the content.

Attribution-NoDerivs (CC BY-ND): Others can share the content commercially or non-commercially, but cannot adapt the content or create derivatives. Users must provide credit to the creator, link to the license, and provide notice of changes made to the content.

Attribution-ShareAlike (CC BY-SA): Others can share and adapt content and use it for both commercial and non-commercial purposes. Users must provide credit to the creator, link to the license, and provide notice of changes made to the content. If users adapt the content in any way, they must use the same type of Creative Commons license for the new material as was used for the original content.

Attribution-NonCommercial-ShareAlike (CC BY-NC-SA): Others can share and adapt content but can only use the content for non-commercial purposes. Users must provide credit to the creator, link to the license, and provide notice of changes made to the content. If users adapt the content in any way, they must use the same type of Creative Commons license for the new material as was used for the original content.

Attribution-NonCommercial-NoDerivs (CC BY-NC-ND): This is the most restrictive license. Others can share the content for non-commercial purposes only and cannot adapt the content or create derivatives. Users must provide credit to the creator, link to the license, and provide notice of changes made to the content.

Public Domain (CC0): Content creators can use a CC0 license to place their work in the public domain. Others can then use the content in any manner they choose.

Finding Creative Commons content

Librarians can search directly from the Creative Commons website to find content for instruction; this tool is not a search engine but does provide access to sites like Flickr, Google Images, YouTube, and more for content with Creative Commons licenses (<http://search.creativecommons.org/>). While this is an excellent tool, librarians still need to verify that content found on these sites does in fact have Creative Commons licensing.

Tools and Tips to Avoid Copyright Infringement

There are numerous tools, tricks, and websites that can assist librarians with copyright issues. A few are discussed below.

Haiku Deck: Haiku Deck is a free web-based platform that allows users to create beautiful presentations (www.haikudeck.com). It is available for iPads and the web. Users can sync presentations across devices and the platform limits the amount of text that can be placed on each slide; which allows for more image-based, dynamic presentations. It helps with tricky copyright issues by allowing users to search the web, directly from the platform, for photos and other images that have Creative Commons licenses. It even automatically puts the Creative Commons license attribution directly on the slides. Users do not need to wonder whether the content chosen infringes on the creator's copyrights, rather the license tells users exactly how

the content may be used. Librarians can use this resource in their own instruction and also direct students and faculty to the tool to explain the benefits of using Creative Commons images in scholarly activities.

Getty Open Content Program: Another great resource for finding images to use in instruction or scholarly activities is the Getty Open Content Program (www.getty.edu/about.opencontent.html). The Program provides free access to nearly 90,000 images of artwork in the Getty collections as well as some works in the public domain. Users can search the Getty Search Gateway to find suitable images and can download the images directly from that site (<http://search.getty.edu/gateway/landing>). The Getty Trust simply asks that users include this attribution when using an image, "Digital image courtesy of the Getty's Open Content Program" (www.getty.edu/about.opencontent.html). No other permissions are required.

Linking to websites and media: Many instructional librarians choose to embed media or content from other websites into their online course materials. While this is a good way of including Web 2.0 materials in pedagogy, it opens the door for copyright infringement. Instead of embedding media or linking to a video, librarians should consider linking to the main page of a website like YouTube and have the students search for the particular video. Not only does this alleviate potential copyright issues (since the librarian is not reposting something that may infringe a holder's rights), but it also serves as yet another way to instruct students on proper search techniques.

Open Access

Due to continuously constricted library budgets and exorbitant student fees when purchasing educational supplies, to save money for librarians and students many teaching librarians utilize open access (OA) Web 2.0 materials in their pedagogical endeavors. Most of these OA materials are obtained for less cost to the libraries and students, compared to subscription or one-time

non-OA fee-based curriculum. However, when implementing OA resources, it is imperative to remain cognizant of the different ways in which items may be offered. Most items proffered as openly accessible are deemed either green or gold OA, but there is a clear demarcation between these two types of accessibility. An item is offered as green OA when it is made freely electronically accessible to anyone via a repository (Suber, 2012). For example, a pre or a post-print of journal article or a book chapter accepted for publication that is placed in an institutional repository is deemed as green OA, and is freely accessible to the entire world. In other words, no one paid a fee for the article or book chapter to be deposited into the repository and no one has to pay a fee to access the items.

In contrast, an item offered available as gold OA has been made accessible by a journal article (Suber, 2012), usually because the author or a sponsoring entity (e.g., a university or a research institution) has paid a publisher an article processing charge (APC). By paying this APC, the publisher then allows the item to be openly accessible to a specified audience. In theory, the APC pays for the subscriptions that would have been sold but for the open access availability. For example, PeerJ, a modern gold OA publisher, accepts APCs from \$99 to \$299 to make articles available to various audiences (<https://peerj.com/>). Therefore, a librarian teaching a class may save money by locating needed pedagogical material that is either located in their own or another entity's institutional repository (Green OA), or by discovering items accessible via an APC that grants his or her institution's stakeholders access to needed pedagogical materials. Thus, using OA materials can assuage library and student budgetary barriers, however, using open access items can also lead to copyright confusion.

Confusion of copyright and open access

Often, instructors assume that pedagogical resources found on Second Life, web apps, YouTube, and other Web 2.0 sites that are designated as OA means that there are also no copyrights associated with those items. Such an assumption is false. When an entity or an individual offers an item available via green or gold OA, this indicates that the item is freely accessible, but some copyright may still be attached to the item. Thus, one should investigate what copyrights are still

attached to a potential pedagogical item. The bundle of copyrights generally associated with most pedagogical materials include: the rights to reproduce, prepare derivatives, distribute, perform, display, and for sound recordings to publicly perform the copyright protected work by means of a digital audio transmission (“Exclusive Rights in Copyrighted Works” 2014, § 106). However, attempting to determine whether any of these bundle of rights are still attached to an open access work can be mystifying.

Alleviating the copyright fog

Because the copyright status of Web 2.0 tools designated as open access is not always apparent, it is helpful for creators of these materials to implement licenses, such as Creative Commons licenses (<http://creativecommons.org/>) or a Getty Open Content License (<https://www.getty.edu/about/opencontent.html>), that clearly identifies how the material may be used (is commercial use acceptable, can derivatives be made?). For example, when one desires to use an open courseware module created by another faculty member, the questions often arise, may I tweak the courseware or use it for commercial purposes? Arriving at valid answers for these questions can be tenuous, unless the courseware is labeled with a descriptive license. Providing such a detailed license, such as a CC-BY-NC license informs subsequent users exactly how they may and may not utilize an open access work. For example, a CC BY-NC license notifies subsequent users that they may create derivatives of the courseware, they may use any of the CC licenses to relicense their own versions of the courseware, they must give attribution to the original creator, and they may not use their derivative for a commercial purpose (<http://creativecommons.org/>). Thus, labeling OA works with licenses such as CC licenses removes some of the ambiguity of how an OA work may be utilized and it promotes judicious and compliant uses of OA material.

Music and Copyright

Numerous librarians are now utilizing mainstream Web 2.0 music platforms in their pedagogy as a baseline from which they can help students make connections to other esoteric pedagogical materials. For example, a recent Neilson poll indicated that the venue from which teenagers in the United Kingdom most prefer to access their music is YouTube (Michaels, 2012). Michaels additionally noted, the next most popular venue identified in the study was iTunes. Thus, librarians who are cognizant of this information are including music in their pedagogy to capture student interest in many different substantive areas of study, and to make connections to new substantive areas. However, using music in a virtual or a face-to-face setting manifests certain copyright conundrums.

Each musical rendition created establishes two separate copyrights, one for the musical composition, and one for the sound recording (“Subject Matter of Copyright” 2014, § 102). Each of these two levels of copyright may be held by multiple parties. For example, if a band that includes four members writes a song, each of those members may hold a specific percentage of the copyright to the musical composition. Further, the sound recording company holds the copyright to the actual recording of the song, and that copyright may be broken up into multiple copyrights depending on how the recording studio contract is drafted. Thus, discovering who holds the copyright to a song can be perplexing. Of course, depending on one’s pedagogical use of the music, one may be able to rely on fair use, or another statutory exception. But, if one decides a statutory exception is not appropriate, then permission from all copyright holders is necessary.

Obtaining permission from licensing agencies, or using a statutory exception

If one decides that obtaining permission is the best route in utilizing music in an educational endeavor, fortunately, many licensing agencies efficiently grant these permissions for the compositions and the sound recordings, when necessary. Some of these agencies include the American Society of Composers, Authors, and Publishers (ASCAP) (<http://www.ascap.com/>), the Harry Fox Agency (hfa) (<https://www.harryfox.com/>), Broadcast Music International (BMI) (<http://www.bmi.com/>), the Society of European Stage Authors and Composers (SESAC)

(<http://www.sesac.com/>), and SoundExchange (<http://www.soundexchange.com/>). Each of these rights societies offers efficient guises to quickly obtain permissions to use copyrighted music. However, in determining how one may use music in a pedagogical environment, it is also vital to remain cognizant of the statutory exceptions available for use of copyrighted works. For example, fair use (“Limitations on Exclusive Rights: Fair Use” 2014, § 107) is the most common exception relied upon for pedagogical uses of copyrighted works. Also, the TEACH Act 110(2) (“Limitations on Exclusive Rights: Exemption of Certain Performances and Displays” 2014, § 110(2)) and section 110(1) (“Limitations on Exclusive Rights: Exemption of Certain Performances and Displays” 2014, § 110(1)) of Title 17 of the United States Code may offer exceptions that allow one to use portions of the entirety of copyrighted works.

Conclusion

While using various types of media and other content has many pedagogical benefits, it comes with some risk. When thinking about library instruction, librarians should be careful what content they include and be mindful of copyright implications. Determine whether content is in the public domain or is covered by copyright law. If not in the public domain, decide whether fair use, the TEACH Act, or other exemptions apply. Utilize content with a Creative Commons license, open access materials, or obtain permission from copyright holders.

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