A Few Things Every Instruction Librarian Should Know About Copyright

Molly Kleinman, University of Michigan

Every librarian knows at least one thing about copyright: It's confusing. U.S. Copyright law was written by lawyers for lawyers, and that makes it difficult for regular humans to understand. This is particularly troublesome because millions of people deal with copyright every day: the movies we watch, the books we read, the music we listen to, and the web pages we surf are all copyrighted. The works we create are copyrighted, too. For instruction librarians, the ubiquity of copyright can affect what we teach and how we teach it. Recent news coverage of record companies suing fans and of publishers suing universities have made many librarians even more cautious about what they use in the classroom and online, thinking it's better to be on the safe side. They refrain from making uses that are probably fair because they're just not sure what's allowed.

Unfortunately, there are no simple rules I can give you that say, "These uses are always okay," and "These uses are always infringing." What is permitted depends a lot on the specifics of each individual situation. What I can offer are some key facts about copyright, and general answers to a few common questions about copyright and instruction. These will give you the tools to make more informed decisions about the copyrighted material you use when you're teaching, and to help you get the most out of the works you create.

A Few Copyright Basics

- It happens automatically - no registration or © required. Almost everything is copyrighted unless it is very old or a U.S. Government document

- It lasts a very long time - the life of the author plus 70 years

- It comes with a set of exclusive rights that the copyright holder can keep, give away, or share

- There are some exceptions to those exclusive rights that allow for fair use and some educational uses

- It only protects creative expression. Facts, ideas, titles, and data are not copyrightable. Neither are useful objects - those are protected by patent.

Copyright's Purpose

The most important fact librarians should know about copyright is that its purpose, as stated in the U.S. Constitution, is to "promote the Progress of Science and useful Arts." Copyright was enshrined to give authors and artists a limited set of rights that would support their efforts and encourage them to create more works, with the belief that those creations benefit society. As copyright law has changed over the last few decades the rights of copyright holders - often major media corporations - have become much more extensive, to the detriment of the public. When considering questions about fair use or your rights as an author, keep in mind that copyright law has strayed far from its original purpose, and that as librarians who are both creators and users of copyrighted work, we have a responsibility to seek balance between the rights of the creator and the needs of users, even when changes in the law have made it increasingly difficult to do so.

Guidelines for specific situations

Because copyright law is such a gigantic gray area, the responses to the following questions are not so much answers as guidelines that will give you a general sense of what to consider when faced with specific copyright-related situations.

Question 1: How do I know if the use I want to make is a fair use?

Fair use allows people to make certain uses of copyrighted material **without asking for permission**. There are no hard and fast rules governing fair use. Many organizations release guidelines for their employees stating that a certain number of words or pages qualify as fair use, but those guidelines are not based in law, they're based on a lawyer's assessment of risk. Some media companies have even tried to release guidelines telling the public what uses they permit as "fair uses", but that's not how fair use works. The whole point is that the user doesn't have to get permission from the copyright holder.

Instead of clear rules, copyright law provides four factors that must be considered in determining whether or not a use is fair :

1. The purpose and character of the use: Is the use commercial, or is it non-profit, educational, or parody?

2. The nature of the copyrighted work: Is it a highly creative work, like a song, or a mostly factual work, like a news report?

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole: Will you be using a small fraction of the work, or do you want to use the whole thing?

4. The effect of the use upon the potential market for or value of the copyrighted work: Is your use likely to damage sales of the original work (this can be the hardest to determine)?

In general, factual works have weaker copyright protection than creative works, and non-profit educational uses are more likely to be considered fair than commercial uses. There are a number of good fair use checklists online that will help you decide whether your use is probably fair; see http://www.copyright.columbia.edu/fair-use-checklist/ for one example. A good rule of thumb is to think about how you would feel if someone were using your copyrighted work: Would you feel comfortable with this kind of use without your permission?

Question 2: Am I allowed to hand out photocopies of an article in my classes? What about posting PDFs of articles to the library website? How about a CMS?

It depends a lot on the fair use determination above. There are also some additional protections for educational use, including distance education, that protect certain kinds of online uses of a work provided certain requirements are met. See NCSU's TEACH Act Toolkit http://www.provost.ncsu.edu/copyright/toolkit/ for more information about copyright and distance education.

Handing out photocopies for classroom use is expressly permitted in copyright law, but if you hand out the same article in every workshop you teach, semester after semester, many experts say you should ask for permission. Putting copies of copyrighted material on the open web without permission is clearly a bad idea. When you put something on the open web, you are potentially distributing it to the entire world, which is almost definitely an infringement of the copyright holder's right to control distribution. However, posting digital copies to a password-protected course management system is frequently considered acceptable, provided access is limited to students enrolled in the class or registered for the workshop. Also, if your library has a database subscription that provides access to the article you want to share

with your class, point students to that article in the database; this kind of linking is always okay.

Question 3: What if my use isn't fair? How do I ask for permission to use copyrighted material?

First, identify the copyright holder. For most scholarly books and journal articles, the copyright holder is probably the publisher, and there will be a copyright notice somewhere on the published work that looks like "© 2008, Elsevier". Most publishers post permissions guidelines on their websites, and my strongest piece of advice is to request permission in the manner preferred by the publisher. Believe it or not this might mean mailing a letter or even sending a fax, but your request is more likely to be considered in a timely fashion if you follow the publisher's guidelines. It's also a good idea to start the permissions process early. It can take a very long time, especially if you have a hard time finding the copyright holder.

Question 4: Are the rules different for work that I find online?

No. Just because a website lacks a copyright notice or attribution, doesn't mean it's not copyrighted. Since 1978, copyright has happened automatically the moment a work is recorded, and no copyright notice is necessary. This means that almost all new works are copyrighted, online or off, including those silly cat pictures on http://CuteOverload.com.

Question 5: Who owns the copyright in the instructional materials that I create?

It depends on the policy at your library. Copyright in a work generally belongs to the creator of the work, unless an employee creates the work in the ordinary course of her employment, in which case the copyright belongs to the employer. This is called the "work made for hire" rule. So if creating bibliographic instruction materials is a part of your job description, under the work for hire rule the copyright in those materials would belong to your employer. However, many universities have a policy that faculty and librarians own the copyrights to their work, despite the work made for hire rule. If you are concerned about whether or not you hold the copyright in your instruction materials, find out if your institution has a policy.

For example, I co-taught a critical thinking course for several years and early on I got assigned to give the "lecture" on plagiarism, and I gave my "Just Say No" lecture for a couple of semesters. I hated it, the students hated it, and the professors still got plagiarized papers. As a result, I decided to shift the focus of the lecture to an activity with some questions for discussion on authorship. I have the students read five passages attributed to an author and ask them to answer the following questions for each passage:

1. Is source likely to have the information or the good judgment we need?

2. Can we trust the authority to tell it to us straight?

3. Is this information provided believable?

I then re-show the passages with the actual author. One example: how did their answers change for a quote on communism attributed to Stalin when they find out the quote on communism was actually from Mandela? Another example: how did their answers change for a quote on immigration attributed to President Bush when they found out that he and a team of writers actually wrote the speech? Students are then asked to consider how authorship, the perceived authority of the author, the perceived authority of the authorities that the author refers to, and the perceived authority of the sources and statistics that the author refers to have impacted whether or not an author's argument is believable. Ultimately, the students are asked to consider what happens if the stated author is not really the author. I have been also known to ask how do you think a professor feels when s/he receives a paper that states an author that is not really the author (but at that point it usually goes without asking).

So right about now you are thinking what in the world is she talking about? The point is that there are other ways to think about plagiarism. It is not just about attribution and stealing intellectual property. There are trust and believability dimensions, which fit nicely with teaching about the ethical uses of information. Resources for citations can be offered and degrees of plagiarism can be illustrated following the authorship piece, but I have found that this content is best conveyed via comments in context. Therefore, I always give extensive feedback on class papers and projects. For example, noting that a student may be technically plagiarizing because of poor format or that I can not find the resource mentioned. More important may not be what is taught, but following campus policies on acts of plagiarism, or facilitating a campus-wide dialog on the issue.

Conclusion

In this article, I have advocated the need to foster more critical thinking and reflection among students in order to enhance learning about information literacy. To do so will require librarians to do some reflecting of their own. Why we teach what we do, and why do we teach it the way we do? Does everything we do have to be directly measurable? What reflection and critical thinking skills are you facilitating in your instruction in order to develop lifelong learners? Going beyond the measurable outcomes will no doubt mean taking risks and trying something new. Individual librarians will need the support of their libraries and institutions, but in the end hopefully it will mean a larger role for our profession in the area of helping people learn to learn.

These questions just scratch the surface of the many copyright issues facing instruction librarians. Here a few good resources where you can go to learn more:

- The website of the U.S. Copyright Office (http://copyright.gov) has the complete text of the copyright law, along with detailed FAQs, searchable copyright records and information about copyright registration.

- Bound By Law: Tales from the Public Domain (http://www.law.duke.edu/cspd/comics/). This free online comic book from the Center for the Study of the Public Domain is an engaging and entertaining journey through the copyright-related obstacles that face the heroine, a documentary filmmaker named Akiko.

- ALA's Copyright Advisory Network (http://www.librarycopyright.net/) offers a number of copyright resources for librarians, including a forum where anyone can ask copyright questions, and a blog about current copyright issues.