Ask an Open Lawyer Q&A

Unconference Session 10:30-11:30

Moderator: Teresa Slobuski

Panel members: Luis Villa, Kat Walsh, Katie Fortney, Ray Campbell

Note taker: Stephanie Waslohn

Session begins with introduction of participants as a way of evaluating interest for the panel.

As session Moderator, Teresa Slobuski, mentions some copyright implications for her students "Copyright for k-12 Educators " by Carrie Russell was suggested by Katie Fortney.

Introductions of the panel members

Luis Villa, Wikimedia foundation – We are lawyers, but not your lawyers. A theme of this talk is how to speak with your lawyers. But, one should definitely not act based on solely what's heard today. Thematically it will be talking for a few minutes and then questions and discussions, allowing for a focus on specific themes.

Kat Walsh, Creative Commons – Creative Commons serves dual purposes: 1. Behind the CC licenses allowing for less restrictive terms for sharing. 2. Advocating for adoption of open policies. Kate focuses on the licenses, allowing them to be easy to understand and easily sharable allowing for a sense of understanding of your licenses. Six main licenses: one licenses content to the Common Domain, but the main is copyright licenses keeping materials out of the Common Domain. Most of the CC licenses are focused on crediting of creator; there are non-commercial versions, non-derivative, then non-commercial non-derivative. All licenses requires documentation of creator, suitable for all formats except software, such as paper, art, data sets, and all allow for access and sharing. Keep their rights, but allowing for access. Part of the power is the consistency. New improvements will allowed to increased validity around the world, despite original basis in US. New improvements also include being clearer about flexibility of requirements specifically scientific data sets as well as for the norms and standards of materials, adopted fairly widely. In particular, we recommend the attribution and attribution-share alike rights. There are more options that work for more restrictions if necessary.

Katie Fortney—CDL California Digital Library- Copyright Policy Librarian – Surprised by how often people think they know about copyright and other areas of the law, and will tell other people their opinions, when they are wrong. Even lawyers. Lawyers on campus often aren't copyright lawyers. Plenty of room for librarians to bone up their copyright law. Faculty know a lot about certain things, and sometimes they think they do about copyright and it's a wide range of application in reality—educating kindly about

copyright. ("Here's an authority—the law—that says you shouldn't do that, or you can do more than you think you can") Hosting journalists, open access, digital collections are some of her work issues

Ray Campbell – Public Library of Science. Founded about 10 years ago with the idea that science should be open access. All journals available online with CC license, attribution to authors is all that's necessary for access and use. There is some confusion among authors and users as far as what they can do with the content. Many authors don't understand what rights they've given up or not. Authors have questions like who can make money off my work, remixing that puts you in a bad light, what is proper attribution, and if I have a problem with someone using these materials, who deals with it? Users similarly wonder what they can do—getting unsolicited questions about use and access to materials. Clearance issues of looking at text, images, figures for materials included in the work with authors. He points out the padlock on our badges is from his own company after someone accidentally posted it to Wikimedia and thus the common domain.

Luis Villa , You've all heard of Wikipedia, and may not have heard about the Wikimedia Foundation. While a first stop for many students, now beginning to be a primary source of 16 Million CCCA licenses. 900 different licenses in Wikimedia Commons. All materials contributed to the Commons must be available for reuse. Wikipedia is both a source and repository these days. We're working with authors to improve articles about their work. When you put something out freely to allow people to re-use, in traditional publishing when you get the book, you got the book, you're not really encouraged to play with it and reuse it which is part of the format—but the nature of digital formats allows for that reuse. It's not magical pixie dust—you may put things out and nothing really happens with it. So you do have do outreach and engagement, but no one said marketing but that's the subtext of this morning's panel.

Opening up to Q&A

Q: What about the general policies of sharing of materials licensing as far as software? He asks the Creative Commons about the ability to license for software.

A: Kat: There are people who do that well currently, such as the open source initiative, with specialization in what actually needs to be included in the code.

Luis: Line between content and software is a blurring question. WikiMedia publishes the software for just about any wiki, under open source license, and speaks to bepress's copyrighted software can be used for CC licensed content. So the point of the answer was that software is licensed separately from the content, even though from the end user point of view things it looks the same.

Q: Authors rights defaults: Is it all over the map or is it consistent?

A: Katie: There's a wide variety of author's rights.

Ray says funder often restricts the authors, World Health NIH, rights as part of the production of the materials. There are 12-15 different exceptions that he runs into, exceptions in the sense to the author owning the copyright outright.

Q: So if I'm an author, I need to talk to my funder, my publisher… do I need to talk to my institution?

A: Katie: UC campuses don't have a commercial restriction. A lot of my authors, they just get told by their publishers. So, publishers in open access situation demand a waiver. By and large, the authors have no awareness of their rights and don't search out more information or ask.

Q: Open access publishing typically involves a fee to the author, any idea where the funding comes from?

A: Ray: From research grants.

Q: Are you concerned that you're creating a have-and-have not two tier system?

A: Ray: We have a global participation list, mostly third world countries, and if you're in first tier country you don't pay anything. If you're in a second tier country, you'll pay half. We also have publication fee assistance that can be evaluated based on need. If you come from a lab that's well funded, we're not going to give it, because historically it's a professor saying that money would be spent on a post-doc.

Katie: I want to jump in, pointing out that grant funding is done for STEM OA. But, many of the OA journals in humanities don't have a fee and run on volunteers and endowments.

Q: I have a question about commercial copyright clearance, asking the about .edu log in e-mail necessary for, say Wall Street journal, is there a two-tier pricing system?

A: It's a case-by-case basis, especially in for-profit publishing world. Other than saying "we can come down on you like a case of bricks" there's no real consistency in the commercial world. But they suggest that it's the licensing agreement with the institutions, hence the .edu stop-check.

"Cost-recovery" fees are seen in a non-commercial light—just making access sustainable. Open access licenses still allow for selling, but it means that after you sell it, it doesn't keep someone from passing it on after purchasing it. Creative Commons avoids the term "royalty", but does allow for charging for access.

Q: Who here speaks with lawyers on open access and finds it frustrating? (Only one person raises their hands) Concerns of the publisher were about music profitability, less so about education context. So, Fair Use and the ability to defend yourself under it, is being expanded as I understand, but it's still murky. So, would you comment on the murkiness of fair use?

A: Appellate decision in Hathi Trust and Georgia State will make it less murky. And if everything used is open access, then not an issue. The murkiness comes from the blending of different types of copyrighted content as well as non-quasi copyright.

Katie brings up the Kevin Smith article on Duke MOOCs, which is the thrust is let the pedagogy drive the MOOC. If only this image can be used to explain it, then their use should be considered fair.

Luis: The problem is that law is better but enforcement is easier, which is where some of the tension comes from. Wikimedia Commons does not accept submissions based on fair use, because any one who accesses the materials should be able to use the materials for any use—Wikimedia allows for commercial use of any of the materials. As from a values-moralist hat now, if you want your stuff to be widely used, if you want the world to see your stuff, then you should rely on Fair Use as little as possible. In reality, we're all English speakers and we all can probably get away with it without an issue. So it depends.

Katie: Don't be afraid of fair use. There's a lot of over compliance. Fair use is super important and it's our jobs out here to push those limits. Most cases (504 c2 allows for waving of damages) Let's assume the worst case scenario: you get sued, you have a fair use defense, I think that most judges who will throw it out. I say don't be too afraid—if you've got a good faith argument, then why not. Nobody's better positioned than you.

Q: User's issues as from the point of view of the Georgia Tech case—how much obligation with the user? Pointing out that it's really difficult to law council for students to evaluate. From that angle, can we push the fair use?

Learn about fair use—tell the students to research it. Wikipedia has a list of myths about fair use. For books: "Copyright for Library Educators."

Kat: Good sets of resources that you can trust—like Wikimedia Commons. Under the CC license, give proper credit.

Katie: Fair re-use tale remixing Disney to explain fair use. Obviously transformative.

There are a number of folks who have been doing fair use best practices guides. There's one for documentary filmmakers, there is one for education librarians, one for poetry—because these are

tailored to specific audiences, it can be really useful. I know for example, the documentary filmmaker one have difficulty getting insurance due to copyright concerns and they worked with insurance companies to make a best practices.

Q: Accessibility question: There's a lawsuit going on against Neflix about captioning?

A: Things are in flux.

I feel like there's a best practice for this.

An audience member who specializes in access services advocates for access issues with open source/open access materials.

Kat: Creative Commons license allows for you to increase accessibility, even though it is not a solution overall. The content industries tried to kill a bill because it gave provisions allowing reuse and access to the blind.