Copyright licenses and legal deposit practices of grey multimedia materials

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Abstract

The purpose of this study is to determine whether the type of copyright license under which grey multimedia materials are published makes a difference in terms of their inclusion in library catalogs. The two types of copyright licenses examined are Creative Commons and traditional copyright, and the library catalogs examined is that of the United States Library of Congress and national catalogs of countries represented in the population of the study. The population included grey multimedia materials whose main use is as educational materials, with half the items licensed under traditional copyright license and half licensed under Creative Commons license. The main finding of the study is that Creative Commons license is a barrier to access in traditional bibliographic utilities, and that traditional copyright is a barrier to access in web 2.0 environments. In addition, the study found weak enforcement of legal deposit laws regarding multimedia materials.

Introduction

Multimedia is everywhere and awareness and recognition of it growing.¹ As noted in a recent New York Times article,² we consume multimedia everywhere, anywhere, and all the time: in a taxicab, on a plane, on the street, in front of our computer, on our mobile
devices. We watch and listen, often not by our own initiative and often reluctantly. The multimedia surrounding us is mostly push technology: publishers, vendors and others involved in the creation and distribution of content have their content visible on giant billboards, on the backs of taxi seats, and in stores. When it comes to push technology multimedia, we seem unable to shut off the current, but what about pull-technology? When we want the single commercial that we feel will best demonstrate to our students the importance of information to a global society, or that campaign ad that expressed a value-based approach to information, we are at a loss as to where to find them. An added difficulty is that much of multimedia is grey by nature: it is published outside the traditional scholarly communication powerhouses and has limited, if any, bibliographic control. Repositories for multimedia are few and usually highly specialized, limiting the scope of collections. Users of multimedia content, particularly academic faculty, such as those involved with this study, are not only users of information, but increasingly they are asked to be organizers as well. The amount and types of information used in learning and teaching now includes image files, sounds files, movies of varying lengths, web pages, multi authored documents and more. We store these materials on our personal computer’s hard drive, in our space on a variety of web 2.0 applications such as YouTube or Flicker, we manage them with tags and list them on multiple bibliographies such as LibraryThing, Zotero and more, but when the moment of truth arrives, few of us are able to locate all this multimedia and we all end up doing a Google search and hoping for the best.

But beyond problems resulting from lack of organization, other barriers to access to multimedia materials also exist: Copyright restrictions and confusion regarding type of copyright license, fair use and permissible use of multimedia materials also hinders use.
Multimedia licensed under traditional copyright license is more likely to benefit from existing methods of storage, organization and bibliographic control, but also more likely to have restrictions on use, while multimedia licensed under copyright alternatives, such as creative commons, may have less restrictions on use but may also be less findable. Another layer of complexity is added by the fact that while some countries have legal deposit requirement for multimedia materials, others do not. This study wishes to examine how copyright licenses and legal deposit legislation interact to effect access to grey multimedia materials.

**Copyright licenses**

Copyright in a personal property right that protects creators and allows them to benefit from the fruit of their intellectual and creative work. In the United States copyright, as part of intellectual property, is a constitutional right and protected by the U.S. Copyright Law. In the United States, copyright is automatically awarded to all creators, without preconditions such as registration or legal deposit. The same holds true to all citizens whose countries are signatory to WIPO. Copyright is therefore inherent to all intellectual work and giving up rights in a creation is an opt-out option, an act that requires purposeful action. Copyright owners may choose to transfer their rights, with or without preconditions, to others, and allow them to use their creation in ways that are outside the scope on traditional copyright law. The transfer of copyrights occurs most typically when creators award their exclusive rights to others who help promote their work, in exchange for profiting from it. For the most part, copyrights are transferred from authors to publishers.
The opposite of having a work under copyright is having it in the public domain. While most works reach the public domain due to legal requirements (government publications, expired term-limit of protection, failure to renew copyrights), creators may also choose deliberately to place their work in the public domain. In recent years, alternative to the traditional copyright (symbol©) have emerged, particularly as it pertains to content on the internet. Collectively, these alternative copyright licenses are known as Copyleft, although the terms itself is conceptual and has no legal or contractual implications. The most established among the copyright alternative is the Creative Commons license (symbol CC). Creative Commons is the brainchild of law professor Lawrence Lessing and was founded as a non-profit organization in 2001. It serves as an alternative to traditional copyright, allowing creators of content to set their own perimeters of use for their creative works, retaining some or no right to them. Under the Creative Commons license, holders of copyright can allow others to use their materials with some or no restrictions, specifically, any combination of attribution (allowing use of your work under the condition of crediting the original author), non-commercial (allowing use of the work for non-commercial purposes), no derivatives (allowing use of the work as long as it is left intact and no derivative works are based on it) and share alike (allowing use of the work as long as the new works based on it are shared under the same copyright license as the original).

Another alternative to copyright is GNU, known predominately to users of open source software. GNU General Public License (GPL) (symbol: Ram) license is specifically for computer programs and associated most often with Linux. The main provision of GNU is “share alike”. What is common to all these copyright alternatives is that while traditional
copyright is often viewed as censorship and inhibitor of access, alternative copyright licenses are viewed as being to the benefit of users since they do not restrict access.

Legal deposit

Dating back to the days of King Francois I, the legal deposit was enacted first in France in 1537 and now exists in many countries. The main purpose of legal deposit law is to guarantee that countries will be able to preserve the cultural heritage of their nation. This is done by systematically collecting, storing and recording the print output of the country. While laws differ greatly in detail, the main provision of most legal deposit laws is that publishers are required to send a specified number of copies of each publication they produce to a specified library or libraries. Once received, the publications are recorded in either a catalog or national bibliography, some copies are stored for posterity, and some are made available to the public for research or recreational use. This mechanism ensures bibliographic control, access, and a collection of last resort to a country’s print culture. Legal deposit has long been considered by librarians to be a vital link in the chain that allows bibliographic control as well as a safeguard against the loss of cultural heritage.

In the United States, legal deposit is required by the Library of Congress for all works under copyright protection, with a limited and specified list of items exempt from legal deposit requirements. Works licensed under Creative Commons licenses are not addressed by the U.S. Copyright law. One could argue that as long as some right are retained to a work licensed under Creative Commons, legal deposit applies.
One of the advantages to publishers from legal deposit is the inclusion of deposited materials in the Library on Congress catalog and the assignment of a deposit number subfield in the items MARC record (field 017 of MARC 21 record format). Creators of content who do not deposit copies of their work with the Library of Congress are at a disadvantage in terms of making the record of work known and available to a wide audience.

**Problem statement**

With the proliferation of multimedia materials for both formal and informal learning environments, the question of access to these materials gains urgency. What are the sources that educators, researchers and interested individuals turn to for multimedia materials, and what are the barriers to access? Traditional copyright licenses and lawsuits filed against educational institutions for copyright violation have created a culture of fear among librarians and educators which is inhibits access. Images and multimedia materials are used like never before. In the past they were mostly the domain of those with an interest in visual arts, but today they are created and used by educators in all disciplines. While clearinghouses and registries for copyright holders are well established for the print works, such parallels do not exist for multimedia materials.

The use of multimedia in education is growing, as well as the discussion devoted to issues relating to its use, as articulated in The Journal of Educational Multimedia and Hypermedia. This research wishes to examine the landscape of grey educational multimedia materials in terms of copyright licenses and traditional tools of bibliographic control. Specifically, the research attempts to answer the following question:
Are grey multimedia works carrying creative commons licenses more or less likely to be included in traditional tools of bibliographic control such as national bibliographies?

**Literature Review**

In a series of articles published beginning in 2001, Michael Seadle addressed several of the issues pertinent to this study, although they were not examined in an integrated approach. Specifically, Seadle examined multimedia fair use\(^{xi}\), digital legal deposit\(^{xii}\), and grey copyright\(^{xiii}\).

Fair use for educational multimedia in the United States is directed by a non-legislative report by the Council of Fair Use (CONFU) on “Fair use guidelines for educational multimedia” that was adopted by the Subcommittee on Courts and Intellectual Property” in 1996.\(^{xiv}\) While not a legally binding report, it does define the scope of fair use for educational multimedia materials that carry traditional copyright licenses. Unfortunately, the CONFU guidelines are rather restricting in the use of multimedia materials and perhaps as a result, the guidelines are relatively unused,\(^{ xv}\) and are considered to fall short in several crucial ways, mainly that in virtually all cases, fair use for educational multimedia is almost non-existent and requires permission for use.\(^{xvi}\) While attempting to disentangle the murky waters in which legal deposit for digital materials, among them education multimedia, exists, Seadle\(^{ xvii}\) offers an interpretation that while based on existing U.S. copyright law, also introduces issues not specifically addressed by the law and encourages major internet-publishing countries, such as the U.S., U.K. and Germany, to develop policies and procedures for handling the legal deposit of digital materials.
Copyright confusion describes situations where users are uncertain about the copyright status of a work and the extent of permissible fair use. A recent report by the Center for Social Media at American University found that critical teaching is compromised as a result of copyright confusion.\textsuperscript{xviii} As a result of the complexity of copyright law, along with restrictions imposed by parent institutions, educators sometimes opt not to use certain materials, or apply copyright provisions erroneously.\textsuperscript{xix} The report’s recommendation, that teachers educate themselves regarding clear and unambiguous use rights, is easier said than done.

Adding to the confusion regarding fair and permissible use is the multitude of copyright licenses that have developed over the past decade, particularly Creative Commons licenses, developed by Lawrence Lessig of Stanford University in Dec. 2002.\textsuperscript{xx} In a recent study\textsuperscript{xxi} Kim examined whether Creative Commons can offer solutions to problems of copyright in digital environments and found that Creative Commons licenses offer a greater degree of flexibility for digital environment than traditional copyright, but did not address the question of bibliographic access and control.

\textbf{Justification and research questions}

As the literature review demonstrates, prior research examining access to grey multimedia materials based on type of copyright license is scant and piecemeal. In the absence of a legislative framework as well as prior research addressing access to grey multimedia materials carrying different copyright licenses educators who wish to access and use multimedia for classroom materials have a difficult time both learning about the existence of multimedia materials suitable for their purposes, and in understanding the
conditions for their use. This research wishes to fill a gap by learning whether Creative Commons licenses that are usually seen as promoting use, also limit bibliographic access. Specifically, the following research questions (RQ) will be addressed:

RQ1: What are the characteristics of multimedia are used by researchers participating in the study

RQ2: Are works carrying traditional copyright more, less, or just as likely to be included in national bibliographies as works carrying Creative Commons licenses?

**Methodology**

Syllabi of courses taught by researchers and educators in graduate departments of library and information science were harvested and lists of multimedia materials used for their teaching and research were compiled. An initial list containing two hundred items was collected. Each item was examined to identify the type of copyright license it carried and only items carrying either traditional copyright or Creative Commons licenses were included. Next, the country of origin (i.e.: publication or production) of each item was noted and the four top counties that emerged were the United States, Australia, Belgium and Israel. Other counties identified had a number of items deemed too small to provide meaningful data and were excluded from the study. The final research population consisted of a list of 117 items that met the following conditions: they carried either Creative Commons or traditional copyright and they were published in one of the four countries mentioned above. The majority of items on the list were films with music and games also being represented.
Next, list checking\textsuperscript{xxii} a methodology used primarily for collection development, was used to determine inclusion in bibliographic utilities. The bibliographic utilities chosen were national catalogs, OCLC WorldCat, and the increasingly ubiquitous YouTube, as well as NetFlix. YouTube and NetFlix were added to the more traditional national catalogs and WorldCat after faculty interviewed indicated they are just or more likely to search for movies on the non-traditional sources than in the traditional sources.

Findings

The research population used for this study was found to be relatively new, spanning in years from 2001 to 2008, with newer items receiving higher representation. Countries represented include the United States (75\% of all items) followed by Australia, Belgium and Israel, each with just about 8\% of items. Most items represented were movies, either on DVD or downloadable, ranging in length from 17:37 minutes to almost 3 hours.

When checked against traditional and non-traditional collection, WorldCat included the largest percentage of items (41.6\%), followed by Netflix (33\%), YouTube (30\%) and Library of Congress (8.3\%).

Next, items were divided into groups according to the type of license they are licensed under: Creative Commons or traditional copyright. When examined this way, it was found that for traditional copyright, 57\% of multimedia were available in Library of Congress or WorldCat and 20\% were available complete on YouTube. As for items carrying Creative Commons licenses, 16\% were available on Library of Congress or WorldCat and 50\% were available complete on YouTube.
The representation in national catalogs was very low. Only 8.3% if items were found in the Library of Congress catalog, with none in the items represented in the national catalogs of their respective countries, regardless of whether or not these countries have legal deposit requirements for multimedia materials.

Discussion and conclusions

This study set out the answer two main research questions: First, we wanted to identify the general characteristics of multimedia material used by faculty in graduate programs of library and information science. Results indicate that the majority of materials used are less than a decade old, originate from the United States, and are mostly movies. Secondly, we wanted to know whether different copyright licenses are represented the same or differently in national catalogs. Results indicate that works licensed under Creative Commons are less likely to be included in national bibliographies than worked carrying traditional copyright. The results indicate that Creative Commons is a barrier to access in traditional tools while traditional copyright is a barrier to access in Web 2.0 environments.

The analysis points to some other findings that are worthy of further examination. First, the study was structured around the assumption that legal deposit laws were systemically applied to multimedia in those countries where there are appropriate provisions in the law. This assumption proved wrong and results seem to indicate that multimedia materials are not deposited as required by law. Second, traditional bibliographic utilities such as national catalogs and WorldCat are not reliable tools for searching for multimedia materials, regardless of copyright license type, and national
catalogs are particularly inept when trying to locate multimedia carrying Creative Commons licenses. At the same time, it seems that other more popular Web 2.0 tools such as YouTube and Netflix are gaining dominance and a larger percentage of materials from the study were included in them than in professional bibliographic utilities. While this study initially set out to examine only inclusion in national catalogs, Web 2.0 tools were examined since faculty indicated these are the sources they are most likely to turn to first when searching for multimedia materials. It seems that application and enforcement of legal deposit of non-print materials is weak, regardless of type of copyright license, implying disappearance of many of these materials.

While Creative Commons licenses may encourage use, they do not seem to provide access to metadata about multimedia materials implying that knowledge about the existence of Creative Commons materials may not survive in the long run.

**Recommendations**

Results from this study lead to several questions that should be examined in follow-up studies. First, what is the level of enforcement legal deposit requirements for multimedia materials? Second, does the young age of multimedia materials used in the study (2001 being the earliest) suggests that access to older materials is being lost? Finally, is there a way to achieve long-lasting bibliographic control of gray multimedia materials while limiting restrictions that results from traditional copyright.
i Recently, UNESCO has reserved Oct. 27 at World Day for Audiovisual Heritage
http://portal.unesco.org/ci/en/cv.php-
URL_ID=25525&URL.DO=DO_TOPIC&URL_SECTION=201.html


iii The United States dropped registration and legal deposit as a prerequisite for copyright in 1978, in preparation for entering the WIPO agreement, as WIPO does not allow conditions for copyright protection.


v More about Creative Commons at the Creative Commons website http://creativecommons.org/about/

vi GNU General Public License http://www.gnu.org/copyleft/gpl.html

vii For further discussion of copyright as censorship and inhibitor of access, see Lessing, L. (2008 Oct. 21), Copyright and politics don’t mix. – In: The New York Times

viii See part 202 of 37 CFR, Chapter II for list of exempt materials

x See Copyright Clearance Center http://www.copyright.com/


xii M. (2001), Copyright in the networked world: Digital legal deposit. – In: Library Hi Tech, 19 (3), pp. 299-303. ISSN 0737-8831

xii M. (2008), Copyright in the networked world: Gray copyright. – In: Library Hi Tech, 26 (2), 325-332. ISSN 0737-8831
