

E-Books, Licences, Copyright

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Influences

The CARL Ebook Report:

<http://www.carl-abrc.ca/projects/copyright/pdf/CARL%20E-Book%20Report-e.doc>

Two rights that our users have

Fair Dealing: Sections 29, 29.1 and 29.2

Fair dealing for the purposes of research, private study, review, criticism or news reporting does not infringe copyright.

Perceptual Disabilities: Section 32:

It is not an infringement of copyright for a person, at the request of a person with a perceptual disability, or for a non-profit organization acting for his or her benefit, to (a) make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

Copyright and Libraries

Two of the rights that libraries, archives and museums have under the Copyright Act:

30.1 Management and Maintenance of a Collection

30.2 Research or Private Study

Section 30.1 of the Copyright Act

It is not an infringement of copyright for a library... to make for the maintenance or management of its permanent collection ..., a copy of a work or other subject-matter... in its permanent collection

- The circumstances under which a library can copy an entire work for preservation are narrowly proscribed, but it is nonetheless a valuable library right.
- This right is particularly useful when an original work is in an obsolete format.

Fair Dealing for our patrons

Section 30.2 allows libraries to act on behalf of their patrons in fair dealing.

It is not an infringement of copyright for a library, archive or museum or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1.

CCH and Section 30.2

Paragraph 49 of the CCH Supreme Court Judgment makes section 30.2 less important than fair dealing:

It is only if a library were unable to make out the fair dealing exception under s. 29 that it would need to turn to s. 30.2 of the Copyright Act to prove that it qualified for the library exemption.

Why the concern about ebooks?

Software for e-books is much better. There are many more e-book packages than a few years ago. So academic libraries are purchasing e-book packages at a rate that didn't exist a few years ago.

There is a concern about new contract language and requirements creeping into e-book licences that didn't exist in e-journal licences. Most importantly most e-books use DRMs (Digital Rights Management) to restrict copying of e-books, while most e-journals don't use DRM. As a result our users do notice a difference between e-books and e-journals. Our users also notice differences in print books and e-books, much more so than between print journals and e-journals.

A Look at E-Book Licences...

The CARL Report compared nine e-book licences to both the OCUL (Ontario Council of Universities) Model Licence and to the Copyright Act which applies to print books. We looked at the following things:

- Restrictions on ILL
- Are ILL rules based on US law?
- Options for course reserves and multiple classroom copies
- The Impact of Digital Rights Management

Restrictions to Interlibrary Loan

Do the licences restrict interlibrary loan beyond what libraries are allowed under the Copyright Act?

- Some licences didn't mention ILL.
- Other licences allowed ILL:
may copy and print portions of the materials ...to the extent permitted under Canadian law pursuant to the doctrine of fair dealing
- Other licences restrict ILL – for example transmission can only by mail or fax. No electronic transmission.
- Some licences don't allow interlibrary loan.

Confusion about ILL with e-books

Interlibrary Loan departments are confused by e-book licences:

- Some ILL departments refuse any e-book requests
- Some ILL departments fill all e-book requests

Jurisdictional Conflicts

Copyright law varies from country to country.

- Canadian libraries have to follow the Canadian Copyright Act.
- Many licences assume that the licensee will follow US copyright law.

Section 108 g (2)

A number of licences specifically mentioned Section 108 of US law and one licence specifically mentioned the CONTU Guidelines.

- Section 108 is similar to but not the same as sections 30.1 and 30.2 of the Canadian Copyright Act.
- There is nothing in Canadian copyright similar to section 108 g (2).
- *... 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.*

The CONTU Guidelines

The CONTU Guidelines were drawn up in the 1970's to provide guidance to US libraries on how to comply with S. 108(g)(2) and many US librarians consider the guidelines as binding as copyright law.

How they work:

- A borrowing library limits requests to no more than five articles from the most recent five years of a specific journal.
- A request for a sixth article violates the CONTU Guidelines.
- Libraries either pay copyright royalties after the 5th article is requested or subscribe to the journal.
- There are onerous record-keeping requirements in conjunction with the CONTU Guidelines.

Canadian ILL & CONTU

- Canadian ILL departments are not set up to follow the CONTU Guidelines.
- Three licences specifically mentioned s. 108 of US Copyright. One licence specifically mentioned the CONTU guidelines.
- Canadian libraries which sign licences requiring themselves to follow the CONTU Guidelines or Section 108 of US Copyright Law are setting themselves up for a contract violation.

E-Reserves; Reserves; Coursepacks

Faculty typically want their students to read the same material for classroom discussions.

- Educational institutions have traditionally used licences from Access Copyright or Copibec (in Quebec) for multiple copies in the classroom, coursepacks and multiple copies of reserve readings.
- The Access Copyright and Copibec licences don't apply in the digital environment since they are reprographic (print) licences.
- Since the 2004 CCH Supreme Court Judgment, educators have argued that fair dealing includes multiple copies in an educational setting (paragraph 55).

The Licences and E-Reserves

- A few licences explicitly allowed persistent URLs and most didn't mention them.
- Three licences explicitly allowed course pack use. Two licences explicitly forbid coursepack use.
- It would be interesting to go through coursepack logs and see if faculty and university bookstores are including material from e-books that allow coursepack licences.
- Faculty expect the same or better access than in the print world and have difficulty understanding the differences in licenses let alone the differences between the Access Copyright Agreement and licenses negotiated for digital materials.

Digital Rights Management

- Most e-books seem to include some sort of DRM and most e-journal products don't.
- While journal aggregators monitor for systematic downloading they typically don't protect their products with DRM.
- Users quickly notice the difference that DRM makes to e-books. Users who are used to printing off entire journal articles, get frustrated when DRM stops them from printing an entire chapter of a book.

DRM and the Licences

- Four licenses in the e-book review had general or specific references against tampering with the DRM.
- Important to point out that while circumventing DRM would violate a licence, in Canada it is still not against the law to circumvent DRM.

DRM and S 30.1

- Will libraries be able to migrate e-books that are in obsolete formats using S30.1?
- Or will DRM provisions in a licence prevent libraries from doing that?

DRM and Perceptual Disabilities

- Only one licence allowed circumventing DRM for the perceptually disabled.
- Very similar to S 108 (g) (2) and ILL. Will departments on campus that provide assistance to the Perceptually Disabled even realize that they are violating a licence?

DRM, Fair Dealing and ILL

- DRM interferes with the ability to make a copy of a chapter of a book using fair dealing for research and private study.
- Likewise libraries making a copy for interlibrary loan face a similar problem.

DRM and the expiration of copyright

- In Canada, copyright lasts for the life of the author plus 50 years.
- Does DRM expire with copyright or do the licence provisions extend onward?

DRM and works in the public domain

- There have been large projects to digitize works in the public domain.
- The licenses for these works often have a period of exclusivity that restricts the e-book copies to use by the licensed organization and its authorized users.
- This may be reasonable given that otherwise many of these works would be unavailable digitally.
- Guidelines regarding reasonable periods of exclusivity would help libraries.

What Licences Should Include...

- The exercise of users' rights, including fair dealing under the Copyright Act;
- The ability to create formats of e-books for persons with perceptually disabilities;
- The preservation of e-books including the ability to migrate them to another format if necessary;
- The expiry of DRM license provisions when the copyright expires or after a reasonable period of exclusivity for a digital work that is in the public domain.

Questions??