

Editorial

In 1996, governments and NGOs from around the world met in Geneva for the Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions. The Conference was held to discuss copyright needs in the digital era and international copyright needs in light of new technologies. Negotiators from 160 countries reached agreement on two of the proposed treaties, the WIPO Copyright Treaty (“WCT”), and the WIPO Performances and Phonograms Treaty (“WPPT”). (*The Copyright & New Media Law Newsletter* was “born” just after this significant international gathering and was first published in Spring 1997.)

Although the two “new” World Intellectual Property Organisation (“WIPO”) treaties were agreed upon in 1996, they only came into force in 2002 when they had a sufficient number of signatory countries. The treaties specify the minimum protection and international norms that member countries must include in their own copyright laws. The treaties provide guidelines to member countries on how to legislate copyright law in relation to digital mediums that provide ways of creating, reproducing and distributing digital works.

WIPO Copyright Treaty

The WCT deals with the protection of literary and artistic works as defined in the Berne Convention and specifically protects computer programs and certain databases. The WCT provides authors the following rights: (i) the right of distribution; (ii) the right of rental; and (iii) the right of communication to the public. The Treaty also contains obligations concerning the protection against the circumvention of technological measures used by authors to protect their works, and the removal or alteration of rights management information.

WIPO Performances and Phonograms Treaty

The WPPT protects the rights of performers and producers of phonograms. The WPPT grants performers and producers four kinds of economic rights: (i) the right of reproduction; (ii) the right of distribution; (iii) the right of rental; and (iv) the right of making available. As well, the WPPT provides performers the following three economic rights with respect to live performances: (i) the right of broadcasting (except in the case of rebroadcasting); (ii) the right of communication to the public (except where the performance is a broadcast performance); and (iii) the right of fixation.



Compliance with the Treaties

There are currently 88 member countries to the WCT and 86 member countries to the WPPT. The WIPO Treaties are not self-executing. This means that signing the treaty alone does not result in a country fulfilling its obligations under the treaty. →

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Table of Contents

Editorial	1
Help! I found an Infringement! What Do I Do?	3
The Legacy of the Statute of Anne	5
Ensuring Legal Use of Electronic Content	8
Reviews - Print and Digital	11
Questions & Answers	12

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In order for member countries to be a party to the WIPO treaties, and to receive national treatment in other member countries, that country must first meet the requirement in the treaty. This usually means amending or implementing new domestic legislation to meet the obligations under the treaties.

For example, the United States enacted the Digital Millennium Copyright Act (“DMCA”) in 1998 to comply with the two WIPO Treaties. Australia and Japan have also enacted laws in order to comply with the treaties in 2007 and 2002 respectively. In 2009, the European Union (“EU”) and sixteen EU member states ratified the WCT and WPPT.

Other countries are still contemplating how best to amend their laws to comply with the two treaties, and there is increasing international pressure for these countries to do so.

Future

The treaties were adopted in 1996 with the intention of bringing the international protection of copyright and related rights up to speed with modern advances in information technology. However, the treaties are already considered by some to be outdated as they do not reflect the new digital realities faced today, such as peer-to-peer file sharing and social networking. There is debate, such as in Canada, as to whether amending national laws with a view towards ratifying the WIPO treaties continues to be useful and whether the treaties adequately address copyright protection in the context of present technologies.

Note that the Berne Convention for the Protection of Literary and Artistic Works, which remains the leading copyright convention, was initially introduced in 1886 and has been revised several times, with the most recent revision in Paris in 1971. To reflect the technological developments in the 1970s and 1980s including reprography, video technology, home taping machines, cable television and computer programs and storage and electronic databases, the international copyright community then followed a strategy of “guided development” by study and discussion, rather than attempting to initiate new international norms. ■

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HELP! I FOUND AN INFRINGEMENT! WHAT DO I DO?

By Carolyn E. Wright

You are sitting in your easy chair surfing the web. You are not paying much attention, until you see your photo, article or presentation - but you did not post it there. What do you do? The steps you take may limit your ultimate remedies so be sure to give thought to your actions for the unauthorized use of your work.

To start, make sure that the use is an infringement. Are you associated with a licensing agency/copyright collective that may have authorized the use? Could the user be related to an entity to which you authorized the use? Is the use a fair use/dealing or fall under an exception in the copyright statute?

Make Copies of the Infringement

If the use is likely an infringement, make copies of it – both in electronic and print forms – as evidence. Once the infringer realizes that she is caught, she will do what she can to get rid of the evidence of the infringement.

If the infringement is in print, take a photograph of it, scan it, photocopy it, and/or show it to another person who would be willing to testify about it. If the infringement is on the Internet or other electronic form, make a paper print of it and copy a screen capture of it (Snagit by TechSmith is a great program to copy web pages). Determine whether your copyright management information (“CMI”) is included in or has been removed from the infringing use.

Research the Infringer

Research the infringer’s website to find his name and contact information. For example, if the infringer is a corporation based in the United States, consult the state’s Secretary of State’s website. You also may be able to find a contact name by searching the website’s “who is” information. Several websites provide free “whois” services, such as <http://www.whois.net/>.

Option #1 – Do Nothing

Now that you have documented the infringement and have information about the infringer, you always have the option of doing nothing.

If the infringer is in a foreign country where infringements are rampant and difficult to enforce or is a small website with little traffic, you may decide that it is not worth your time and effort to enforce your rights.

Option #2 – Request a Credit

If the infringing website would provide a marketing outlet for you, you may prefer a proper credit over a legal suit. If so, write the infringer a letter officially giving her the right to use the work. Be sure to designate the parameters of that use, such as who, what, why, when and where. Include the condition that the infringer post a credit with a copyright notice on or adjacent to the use, and perhaps add a link to your website.

Option #3 – Prepare a DMCA Take-Down Notice

Due to the U.S. Digital Millennium Copyright Act (“DMCA”) enacted in 1998, the Internet Service Provider (“ISP”) that hosts a website is not liable for transmitting information that infringes a copyright only if the ISP removes the infringing materials from a user’s website after receiving proper notice of the violation. The notice must: be in writing, be signed by the copyright owner or the owner’s agent, identify the copyright-protected work claimed to be infringed (or list of infringements from the same site), and identify the material that is infringing the work. Additionally, the notice must include the complaining party’s contact information, a statement that the complaint is made in “good faith,” and a statement, under penalty of perjury, that the information contained in the notification is accurate and that the complainer has the right to proceed (because he is the copyright owner or agent). Even if you do not reside in the U.S., you may use this great tool, the DMCA take-down notice, to stop an infringer whose ISP is in the U.S. from using your work.



Option #4 – Prepare Your Own Cease and Desist Letter

When you do not want to alienate the infringer (the infringer is a potential client and/or appears to be an innocent infringer), you may want to contact the infringer to explain that the use is not authorized and either request payment of an appropriate license fee, a credit with a link to your website (as discussed above), or that the infringer cease use of the work. It is best to do this in writing – a letter by surface mail often appears to have more clout than email correspondence.

Photographers sometimes send an infringer an invoice for three times their normal license fee in an attempt to resolve the infringement issue. While the 3x fee may be an industry standard, it is not a legal right given by any court of law or statute. Instead, U.S. law states that you are entitled to actual or statutory damages for infringement as provided by 17 U.S.C. Chapter 5, specifically section 504. The damages that you can receive from infringement - especially if you timely register your works with the U.S. Copyright Office - sometimes can amount to a lot more than three times your normal license fee. So you may want to think 2x before you send the 3x letter.

There are some risks in sending the letter yourself. First, the infringer may attempt to preempt an infringement lawsuit and file a request for declaratory judgment that the use is authorized. This may involve you in a legal action for which you may need legal counsel in a jurisdiction (court location) where you do not want to litigate. Second, your demand for payment may be admissible against you if an infringement case is filed. If you demand too little, then it may limit your ultimate recovery. To avoid this possibility, include in your demand letter that “these discussions and offer to settle are an attempt to compromise this dispute.”

Option #5 – Hire a Lawyer

When an attorney gets involved, the matter is escalated and tensions rise. While the infringer may be more defensive, the weight of your demand letter is dramatically increased if it comes from an attorney and the infringer generally takes the matter more seriously. Some attorneys charge a flat fee to send a letter; others may charge a “contingency fee” which is based on the percentage of recovery. Or the fee may be a combination of both.

Option #6 – File a Lawsuit

Your most aggressive option is to pursue your legal remedies by filing suit. Unless you created the work outside of the United States and in a country that is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, you must register your copyright with the U.S. Copyright Office, hopefully before but at least after the infringement. If you created the work in a country that is a signatory to the Berne Convention (see list of member countries at www.wipo.org), you do not have to register in the U.S. to protect your copyright or to file an infringement lawsuit in the U.S. However, if you do, then you may be entitled to statutory damages and attorneys’ fees. If your work was not timely registered for this infringement, you may want to register it for future possible infringements, as well, to be eligible for statutory damages of up to \$150,000US per willful infringing use for each work. Legal fees and costs also may be recovered from the infringer.

In most jurisdictions you need to have received your registration certificate to file a complaint. Unless you have a breach of contract or some other state claim, you must file your infringement claim in a federal district court (<http://www.uscourts.gov/districtcourts.html>). To file suit, it is best to hire an attorney to help you because the legal procedures are complicated. Note that you have three years from the date of infringement to sue for copyright infringement.

When a work is not registered with the U.S. Copyright Office prior to the infringement (or within three months of the first publication of the photo), a copyright owner may recover only “actual damages” for the infringement, instead of statutory damages. Courts usually calculate actual damages based on your normal license fees and/or industry standard licensing fees. For example, one source for standard license fees for photographers is a software program called Fotoquote. You also may recover the profits the infringer made from the infringement if they are not too speculative.

(Continued on Page 7, right column)

THE LEGACY OF THE STATUTE OF ANNE

By Tyler Ochoa

April 10, 2010 marks the 300th Anniversary of the effective date of the Statute of Anne, the first modern copyright law. This anniversary is an occasion both for celebration and for reflection; for although copyright law has changed a great deal in the past 300 years, the legacy of the Statute of Anne is still with us today. Indeed, many features of modern copyright law in the United States and around the world can be traced, more or less directly, to antecedents that can be found in the Statute of Anne.

Leading to the Statute of Anne

Before the Statute of Anne, publishing in England was tightly regulated by the monarchy. No one could lawfully publish a book unless it was first approved by government censors and registered with the Stationers Company, a guild of London printers and booksellers. The members of the Stationers Company essentially were a cartel that recognized among themselves a private — and perpetual — quasi-copyright in any manuscript registered with the Company. In 1695, however, as Enlightenment ideas of freedom of speech were beginning to take hold, the last in a series of Licensing Acts expired, throwing the book trade into disarray. For the first time, members of the Stationers Company faced the prospect of lawful competition, especially from Scottish publishers who were eager to produce cheap reprints of classic books.

Although the Stationers were chiefly concerned with restoring and perpetuating their monopoly, they framed their petition to Parliament in terms of justice for authors. The Stationers argued that authors deserved to be compensated for their work, and that unless publishers were shielded from competition, they could not afford to pay authors for their manuscripts; and that authors, in turn, could not afford to devote themselves to writing. The eventual result of their petition was the Statute of Anne; and their author-centered argument is evident in the title of the statute, “An act for the encouragement of learning,” and in its stated purpose, which was “for the encouragement of learned men to compose and write useful books.”

Purpose and Duration

In order to encourage the creation and publication of new books, the Statute of Anne granted to “the author of any book or books . . . the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same.” If, however, the author was alive at the end of 14 years, he could obtain a second term of 14 years. For works that had already been published, a grandfather clause granted the publishers an additional 21 years of copyright protection. By imposing limits on the duration of copyright, the Statute of Anne created the public domain — a body of works no longer covered by copyright that could be freely republished or adapted by anyone.

In the United States, the Copyright Clause of the Constitution echoes the rationale of the Statute of Anne. It states that “Congress shall have power . . . To promote the Progress of Science . . . by securing for limited Times to Authors . . . the exclusive Right to their respective Writings.” In 18th-Century parlance, “Science” meant knowledge generally, while “Progress” usually meant distribution or spread, as in the “progress” of a fire. Thus, according to the Clause, the purpose of copyright law is to promote the creation and distribution of knowledge. This is accomplished by granting an “exclusive Right” to “Authors.” However, the Clause also recognizes the benefits of the public domain by requiring that copyrights can only be granted “for limited Times.”

The first U.S. Copyright Act in 1790 was modeled after the Statute of Anne. Its title was “An act for the encouragement of learning,” and it granted to “the author and authors of any map, chart, book or books . . . the sole right of and liberty of printing, reprinting, publishing and vending” the same. This structure is also evident in the 1976 Copyright Act, as amended, which grants to authors or their assigns a bundle of exclusive rights: reproduction, adaptation, public distribution, public performance and public display.



The 1790 Act followed the Statute of Anne in granting copyright for a period of 14 years, which could be renewed once for another 14 years if the author was still alive at the end of the first term. This two-term structure survived through the 1909 Act, which granted to authors an initial term and a renewal term of 28 years each. This two-term system had a number of benefits. First, most works were not renewed, meaning that they entered the public domain after their first term. Second, authors who had assigned their copyrights for a pittance during the first term could renew and renegotiate the terms when the second term began. This second goal, however, was thwarted when the U.S. Supreme Court ruled in 1943 that authors could validly assign their renewal terms at any time during the first term. Publishers began routinely requiring assignment of the renewal term at the time of initial publication, leaving authors without an opportunity to renegotiate. Accordingly, when Congress adopted a single term of life-plus-50 years in the 1976 Act (later extended to life-plus-70 years), it also included a mechanism that allowed authors to terminate their previous transfers during a five-year window, which restored the ability of authors to renegotiate their agreements if their works proved to be of enduring popularity.

Registration

In order to avoid the problem of “persons [who] may through ignorance offend against this act,” and to enable users to find and negotiate with the copyright owner, the Statute of Anne required that the work be registered before publication with the Stationers Company. In the United States, the 1790 Copyright Act likewise required registration before publication, with the clerk of the U.S. district court in the district where the author resided. The place of registration was changed in 1870 to the Library of Congress, and in 1897 to the newly-created U.S. Copyright Office. The 1909 Act permitted registration to occur after publication, at any time during the first term; but it still required registration in order to file suit for infringement, and in order to renew a copyright. Today, although the Berne Convention forbids a country from requiring registration as a condition of copyright protection, registration is still required under the 1976 Act (as amended) in order to file suit for infringement (for U.S. works), and in order to recover statutory damages and attorneys fees (for all works).

Deposit Requirement

Another feature of the Statute of Anne was a deposit requirement. The Statute required that a copy of each book registered had to be deposited with nine different libraries, including the libraries of the Universities of Oxford and Cambridge, so that these libraries could obtain a complete set of published books for their collections. Current U.S. law also has a deposit requirement: for all works published or registered in the United States, two complete copies of the best published edition (or one copy of an unpublished work) must be deposited with the U.S. Copyright Office, one copy of which is for the collection of the Library of Congress. Like the registration requirement, however, the deposit requirement is no longer a condition of copyright protection.

Remedies

The Statute of Anne provided that if anyone “shall print, reprint, or import . . . any such book or books, without the consent of the proprietor or proprietors thereof, . . . then such offender or offenders shall forfeit such book or books . . . to the proprietor or proprietors of the copy thereof, who shall forthwith . . . make waste paper of them,” and that any such offenders “shall forfeit one penny for every sheet which shall be found in his, her, or their custody.” Both of these remedies have analogous provisions in current U.S. law. The 1976 Act permits the court to “order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner’s exclusive rights,” including an order turning the copies over to the copyright owner; and it also permits, as an alternative to recovery of actual damages and the infringer’s profits, recovery of statutory damages of between \$750 US and \$30,000 US per work infringed.

Conclusion

As we celebrate the 300th Anniversary of the Statute of Anne, copyright law faces new challenges, including those posed by the internet, which provides an opportunity for both copyright owners and potential infringers to distribute works cheaply and efficiently.



As we face these challenges, it is worth looking back to see how existing copyright law has evolved from its beginnings in the Statute of Anne. The model that Parliament provided in 1710 has served us well for three centuries; and although further revisions may be needed to accommodate new technologies, that model continues to prove useful in today's world. ■

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News Brief

CHINESE COURT HOLDS SEARCH ENGINE NOT LIABLE FOR DEEP-LINKING

China's largest search engine, Baidu, who provides online deep-links to copyright-protected music files was found not liable for copyright infringement by Beijing's No. 1 Intermediate People's Court. The Court stated that simply providing search results does not breach Chinese copyright law. According to some lawyers, the case against Baidu was lost because the record companies failed to identify the actual sites that hosted the illegal music downloads.

In 2010, The Copyright & New Media Law Newsletter is entering into its 14th year of publication.

If you would like back volumes of this newsletter in print or PDF for the years 1997 - 2009, email: editor@copyrightlaws.com.

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(Continued from Page 4)

Additional Claims

While many photographers and other creators place "watermarks" including their name and/or their copyright notice on their work or in the metadata of the file to prevent someone from infringing them, it is fairly easy to crop or clone over the mark, or to remove metadata. Fortunately, the DMCA provides a remedy in addition to the infringement claim when the infringer removes your CMI to hide the infringement.

Additionally, when you can prove that the infringement was done willfully, then you are entitled to enhanced statutory damages. "Willfulness" means that the infringer either had actual knowledge that it was infringing the owner's copyrights or acted in reckless disregard of those rights. Evidence that the infringed works bore prominent copyright notices supports a finding of willfulness.

How to Best Protect Your Work

To be eligible for maximum damages for unauthorized uses of your work, place a copyright notice on all of your works and on each page of your website, and place your CMI on or at least adjacent to each work as well as in the metadata of your files. Further, register your works and website with the U.S. Copyright Office ASAP!

Conclusion

Infringements are rampant these days, both because it is easier for the infringers to find and copy your work and because too many people think that they have a right to use your online work or that they will not be caught. Fortunately, there are many tools to battle copyright infringement. It is up to you to use them. ■

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ENSURING LEGAL USE OF ELECTRONIC CONTENT

By Lesley Ellen Harris

You have just signed a license agreement for accessing an electronic database. You know that the use of the database is subject to certain terms and conditions as set out in the license agreement. What are your obligations, however, in informing others - the *end users* of the database — about those terms and conditions? Are you now the “copyright police”, required to monitor each search, access, download or printout, from the database? Or are you merely required to educate the end users about the terms and conditions of use and to inform them that they are responsible for their own actions and legal uses of the licensed database. Or do you have any obligations at all? Your first source for answering the question about your obligations is in the license itself.

Read the License

Look for clauses in the license that set out any licensee/library obligations. For example, there may be a clause to the effect that you will notify your patrons and other authorized users about the terms and conditions of the license. How will you do this? Will you require all end users to read a copy of the license prior to accessing the database? Likely, a summary of the terms and conditions would be more helpful, written in plain English, perhaps with some specific examples of what is permitted under the license. It would be helpful on this summary to include a contact name where further questions could be quickly and easily asked. And you will get many questions. Questions such as:

- Can I email a PDF copy of an article to a patron?
- Can I post an image from the licensed database on our library’s intranet or website?
- Can I print a copy of an article I access?
- Can I forward a copy of an article to another librarian in our library?

And if your answer is no to these questions, you will inevitably get the question: Why not? And in some cases the “but-I-could-with-the-print-version” reply.

For instance, *why can't I forward all the articles from a particular periodical to all the librarians in our library — isn't that the same as circulating the print periodical?* (This may put you or perhaps your legal counsel in the position of explaining the term “systematic copying.”)

Educational Initiatives

However you approach it, ensuring legal use of licensed electronic content is not easy and must be dealt with on various levels. The first step may be providing to your end users a strong basis about copyright law. A license agreement is a legal contract based upon copyright law. Your next step may be discussing how permissions work, and how license agreements set out specific terms and conditions of use.

If you have several licensed databases and periodicals, you may provide an educational seminar from time to time about how licensing content works in libraries, how a contract is adhered to, and what terms and conditions are often found in digital license agreements. That way, your end users have a solid understanding of the legalities of using electronic content, and will understand some of the specific limitations on that use under each particular license. If you do not feel qualified to teach such a seminar, many organizations offer online courses and this is also a popular subject in many library conference sessions.

Copyright Warnings

Another manner in which you could educate end users about legal uses of licensed content is to include copyright information on each reproduced article or item in the database (e.g., content owner’s name and email address.) In fact, the content owner may place this on each item, so that it is automatically there for view by the end user.

Wherever and whenever access to the licensed content is made available, patrons and other end users should be explicitly warned about copyright law and license agreements.



For example, a copyright notice should be posted near a computer terminal from where the database may be accessed. Where access is remote, a copyright notice should appear prior to granting access to the content. The wording of such a notice may be agreed upon in advance by the content owner and the library.

In addition, the library should make information on copyright law and license agreements easily accessible to all users, via its own website, intranet, as a listing of links to other websites, and/or on a shelf in the library.

Using some sort of DRM or digital rights management may also help ensure proper use of the licensed content. This may include keeping content behind a password protected site and using encryption. Some find this a good method while others find DRM burdensome and making it difficult to quickly access licensed content.

Having a “go to” person is handy too. This way, where the license is either unclear, or the activity involved is not specifically addressed in the license, the end user has somewhere to go, and someone to talk to. This “go to” person may be a fellow librarian, a person who is experienced in negotiating and interpreting license agreements, and can provide a quick practical answer. Generally a legal opinion is not necessary and approaching a lawyer for each question may be tedious, slow and expensive. It’s well worth a librarian stepping up to the plate and becoming a part or full-time Copyright Librarian to manage various copyright and licensing issues in your library.

A Multi-Facet Task

Ensuring legal use of licensed content is a multi-facet task. It involves understanding the license your library has signed, being able to explain the license terms in plain English, and support from your senior management (both for budget and time) in training end users about your licenses. This will result in greater confidence in how your end users use your licensed content and perhaps greater use of the content, providing extra value and use of your licensed content. And, of course, all your actions will lead to legal uses of licensed content.

Quick-Starter Tips for a Successful Agreement

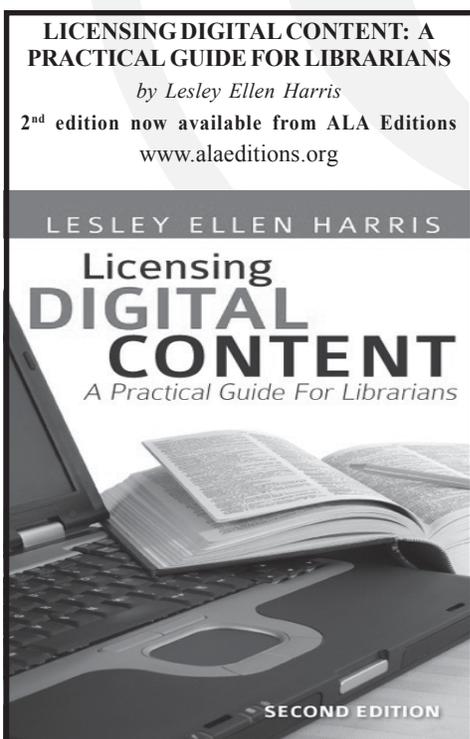
For those attempting to ensure the legal use of electronic content, your job may begin at the point of negotiating a license agreement. Below are tips from *Licensing Digital Content: A Practical Guide for Librarians* to help you ensure your license agreements work for you. For those looking for a “crash course,” the following are nine basic points you should always follow when negotiating digital licenses.

1. *Avoid oral licenses.* Although not always mandatory, use written agreements. Your written license is a summary of the terms and conditions of use of the licensed content and will be used for interpretation purposes by you and others in your library throughout the duration of the license.
2. *Before reading any license agreement offered to you, write down on a blank piece of paper the “must-have’s” for this license arrangement.* If offered a written license, carefully read the license from beginning to end before mentally or actively marking necessary amendments to the agreement (based on your “must-have” list).
3. *Understand your obligations.* Before signing on the dotted line, make sure you understand and are comfortable with the obligations the license demands of you. Do not base your agreement on any oral representations. If you see a clause you do not like, but the other party tells you not to worry because it will never be enforced, get that clause removed. Make sure you can live up to any obligations in the agreement. When in doubt, ask questions, lots of questions.
4. *Cover all issues.* Do not avoid inserting any relevant issues in the agreement because you think those issues might “scare off” the other party.



It is best to put everything on the table at the beginning and to avoid disputes in the future. Be honest and direct and negotiate in good faith.

5. *Avoid legal language.* Simple nonlegalistic language is the best approach. You want wording that is clear to the two parties signing the agreement, and to anyone who needs to interpret or apply that agreement later. Defining any ambiguous or new technical words can help with this.
6. *Use consistent words and terms.* Do not use the word “content” in one clause, “material” in another clause, and then “publication” in a third clause.
7. *Each license agreement is unique.* A license agreement that works for one library may not fit the needs of another library. It may not even fit the needs of the same library in two different licensing situations for different digital content.
8. *Be creative, patient, and flexible.*
9. *Know when to walk away.* ■



News Brief

U.S. ORPHAN WORKS REPORT

The U.S. Congressional Research Service (“CRS”) has published a report entitled “Orphan Works in Copyright Law”. Topics addressed in the report include the Copyright Office’s 2006 “Report on Orphan Works,” the various orphan works bills pending before Congress, and the Google book settlement proposal.

News Brief

U.S. INTERIM REGULATION ON DEPOSIT OF ONLINE WORKS

The Copyright Office will be adopting an interim regulation governing mandatory deposit of electronic works published in the United States and available only online. The regulation establishes that online-only works, that is those without a physical version, will be exempt from mandatory deposit unless and until a demand for deposit of copies of such works is issued by the Copyright Office. The categories of online-only works that will be subject to demand will be identified in the regulations, and currently electronic serials have been identified as the first category for which demands will issue.

News Brief

GOOGLE HELD LIABLE IN FRANCE

The Paris Tribunal de Grande Instance (Court of First Instance, or “TGI”) determined that Google’s digital book project infringed the copyrights of French books. TGI ordered Google to remove excerpts of French titles available online and to pay •300,000 in damages and interest to two publishers. In 2006, the two publishers, both subsidiaries of La Martinière, sued Google for violating French copyright law as Google made available online 10,000 protected French works without obtaining permission from the copyright owners. Google argued that since the books were scanned in the U.S. and under Article 5.2 of the Berne Convention, the fair use defense in U.S. law should apply. In their ruling, TGI decided that French copyright law applied since the books were owned by French authors, intended for French readers, and made available through Google’s French-language Web site. This decision is currently under appeal.

REVIEWS

PRINT

Intellectual Property Protection Of Fact-Based Works: Copyright And Its Alternatives, edited by Robert F. Brauneis; 344 pages; \$160.00 US; (Edward Elgar Publishing, Cheltenham, UK and Northampton, MA, USA, www.e-elgar.co.uk).

This informative book tackles the difficult issue of protecting factual material. The 1991 U.S. Supreme Court decision *Feist Publications v. Rural Telephone Service Co.* held that factual material is not protected, as it is not the original work of the author. Over the last two decades, questions have arisen regarding factual compilations—particularly in the area of electronic resources and databases. The European Union’s (“EU”) Database Directive was an attempt by the EU to provide a framework for legally protecting databases, but there is still a great deal of confusion in this area.

This book addresses questions of fact-based matter from a number of different perspectives. The first chapter is an essay that puts copyright-database issues in historical context. The second chapter addresses copyright and originality in news, and the third chapter compares different concepts of originality in copyright law. The remainder of the book covers various issues such as the copyright protection of factual compilations, fact and opinion, the concept of “created facts,” trade secrets, and more. This is a scholarly work rather than a practical guide; the index to cases and legislation make it a useful reference. ■

DIGITAL

COPYRIGHTWATCH

www.copyright-watch.org

In November 2009, Copyright-watch.org was launched in cooperation with the Electronic Frontier Foundation (“EFF”), the Electronic Information for Libraries (eIFL.net), and others with an interest in providing an international copyright law information resource. Those driving this ambitious project hope to collect laws and changes to laws—thus providing a central location for those interested in how copyright laws are structured in other countries.

The site depends on interested individuals and experts around the world to monitor copyright laws and provide information.

The site is easy to use—choose a country and click on the links. A quick check of several countries reveals that links are provided to government sites and other places such as the UNESCO site. There is also a blog discussing changes in various countries—but at the time of writing, the blog postings have not been updated since September 2009. It will be interesting to watch the development of this site, as it has the potential to become a useful online source for developments around the world. ■

News Brief

WHAT DID NOT ENTER THE PUBLIC DOMAIN ON JANUARY 1, 2010

If the pre-1978 U.S. Copyright Act was still in effect, copyright-protected works from 1953 would have entered the public domain on January 1, 2010. Current U.S. law protects works for 70 years from the date of the author’s death, but prior to the 1976 Copyright Act (effective in 1978), the maximum copyright term was 56 years (an initial term of 28 years, renewable for an additional 28 years). Copyright-protected works from 1953 include *Casino Royale*, Marilyn Monroe’s *Playboy* cover, *The Adventures of Augie March*, the Golden Age of Science Fiction, Crick & Watson’s *Nature* article decoding the double helix, Disney’s *Peter Pan*, and *The Crucible*. See www.law.duke.edu/cspd/publicdomainday/pre1976.

Looking for copyright training?

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COPYRIGHT QUESTIONS & ANSWERS

Question: My organization purchased a journal article from a document supplier. May I send this article to a third party for translation into another language?

Answer: Unless you own the copyright in a work, whenever you translate a work or have someone translate it on your behalf, you need permission from the copyright owner of that work. It is an adaptation of a work that requires advance permission.

Question: What does public domain mean?

Answer: Public domain means that a work is not protected by copyright. This may occur in several situations. For example, U.S. government works (those created by the U.S. government and its employees) are in the public domain. Also, works in which copyright duration has expired are in the public domain.

Question: I have published an e-book and am distributing it for free, however, I do not want others to redistribute it without my permission. How do I prevent redistributions?

Answer: One option is to use technology (some sort of digital rights management) to prevent redistribution of your electronic book. Another option is to have your readers sign a license agreement that they will not further distribute the book. Another option is to have copyright information/notices in your book to educate and warn others that any copying or sharing of it is not permitted without your consent. A combination of some of the above may work too.

Email your questions to: editor@copyrightlaws.com or post them in the Qs & As section of the weblog: www.copyrightlaws.com.



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