THE ©OPYRIGHT & NEW MEDIA LAW
*newsletter*

# *Editorial*

Unauthorized uses of copyright-protected works are arising in new ways with respect to digital media. Web 2.0, which allows sharing of content, provides a myriad of heavily populated sites (multi millions) for uploading and sharing copyright-protected content. Examples of Web 2.0 are wikis, blogs, and social networking sites such as Facebook, myspace and flickr (from Yahoo!).

**Flickr Images**

Flickr is a popular site where professionals and amateurs share their images (photos and videos) with the world. What can the public do with these shared images? To find out, one can easily click the link at the bottom of the flickr home page that says *Community Guidelines*. Simply set out are two lists: What to do; What *not* to do. On the former list is the following point: "Respect the copyright of others. This means don't steal photos or videos that other people have shared and pass them off as your own." This seems like a basic copyright rule, which makes you wonder what Toyota U.S.A. (or perhaps its advertising agency) was thinking when it recently included – without permission - on its Toyota 4Runner Web site, a number of photographs from flickr.

Shortly thereafter, a Toyota representative posted the following apology on a flickr forum: "Toyota apologizes for pulling images from flickr without photographer permission. Images from a handful of photographers appeared on a Toyota site for five days. We're working quickly to reach out to the individual photographers involved. Until then, the images have been removed, and corrections have been made to the process of pulling images from Flickr."

**And Now a Word from Our Photographers**

On a social networking site, reactions are, of course, quick and to the point. For example, one photographer commented, "I have to wonder if this would be an appropriate response if say, a bunch of vehicles were stolen from Toyota."

Another Flickr photographer comments, "You would think major corporations would know better." Hmmm.

And another… "Toyota will hear about this pretty soon. It's gone viral on Twitter." Ouch.

Another… "You make photographs that they use for free. They make cars that you use for free." Perhaps the cost of an after-the-fact license fee?

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Another… "Astonishing. One of my photos, one of those marked "All Rights Reserved" no less, has shown up there. Do they not know? Or not care? Or is this a case of any press is good press?" Toyota…any comments?

And another directly aimed at Toyota… "I'm surprised that nobody at Toyota considered the implications infringing copyrights to advertise your products." Would Toyota mind if we used their trademark without permission?

**Rules of the Road**

What was Toyota thinking? Using content without permission, even content from a social networking site, requires permission. In fact, flickr makes it easy – each image is linked to the original photograph so that all someone has to do is send a flickr mail to contact that photographer and to obtain permission.

Lesson learned: The rules of the road (pun intended) exist in the physical world as in the digital world. Never presume permission – even if you find online content, even if that online content is in a social networking, i.e., sharing forum, get permission! ■

Lesley Ellen Harris
Editor

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## COPYRIGHT LESSONS FROM "HAPPY BIRTHDAY TO YOU"

*By Robert Brauneis*

The song "Happy Birthday to You" is probably performed more frequently than any other song in the world. It earns an estimated two million US dollars per year in revenues for its current putative owner, Warner Music Group. It is frequently repeated that the song is basically an unoriginal folk song, and yet is clearly still under copyright, demonstrating that copyright law is overprotective. In a recently published article (see http://ssrn.com/abstract=1111624), I argue that both of those pieces of received wisdom are wrong, and that the truth may lead to some different lessons about copyright law. Below is a brief summary of those arguments.

**"Good Morning to All"**

Let us start with how the song "Happy Birthday to You" was composed. Though there is some mystery about how the "Happy Birthday to You" words were added, the composition of the melody turns out to be well documented. It was originally published with different words under the title "Good Morning to All" in 1893, and was the product of an intensely focused and extended creative process. Patty Smith Hill and Mildred Jane Hill, the two sisters who composed it, started with a specific goal in mind. They wanted a melody that could be easily sung and remembered by kindergarten students, yet would also have an emotional punch.

Because Patty was the principal of a kindergarten, the Hill sisters had a laboratory in which they could test melodies. They would compose a song; bring it into the kindergarten class; see how easily and enthusiastically the children would learn and sing it; and then go home in the evening, make changes, and bring the next draft into the class the following morning. Out of many such rounds of testing came the "Happy Birthday to You" melody.

The Hill sisters did not invent the melodic, harmonic, or rhythmic vocabulary they were using. But as far as I can tell, they were not just tweaking an existing melody either. Moreover, though they were not professional composers, they were quite aware of copyright.

Patty told the kindergarten teachers that they could sing the song all they wanted, but that they should not write it down, because that would endanger copyright protection. (At the time, under U.S. copyright law, publishing a work before registering it with the U.S. Copyright Office would forfeit copyright.)

**Copyright for Simple Melodies**

Where does this all lead? First, even simple melodies do not necessarily spring up without people devoting time and care to them. Many "folk songs" likely have authors whose identity has just been lost to our collective memory. Second, even nonprofessional composers who are not seeking to get rich from a song may desire copyright protection, because they understand that it is important to publishers who invest in disseminating that song.

Finally, lowbrow domestic music may be worth promoting with copyright protection just as much as highbrow concert hall music. As much as I love Schubert and Cole Porter, I am willing to concede that their entire output has probably not contributed as much to the happiness of humanity as a simple song by two little-known composers, as sung in groups large and small by millions of people around the world every day.

**The Questionable Copyright Status of "Happy Birthday to You"**

"Good Morning to All" was published in 1893; it entered the public domain 56 years later, in 1949. The combination of the "Good Morning to All" melody with the now-familiar words celebrating the addressee's birthday — "Happy Birthday to You" — was published frequently in the 1910s and 1920s. According to a sister of Patty Smith and Mildred Hill, birthday boys and girls were being serenaded with the song even back in the 1890s. Yet the Warner Music Group claims that the song was not copyrighted until 1935, and will thus remain under copyright until 2030.

As unlikely as that seems, it is in theory possible. If the Hill sisters had created the combination of the "Good Morning to All" melody and the "Happy Birthday to You" words, but had not authorized the distribution of copies of the combination until 1935 (all previous publications being unauthorized), then under the 1909 U.S. *Copyright Act*, they could have obtained copyright in the song by publication with proper notice in 1935. By filing a proper renewal registration in 1962, or their successors could have maintained copyright for the renewal term – a term which, after subsequent extensions, would last for 67 years, until 2030. Historical research, however, reveals three serious weaknesses with that theory.

**Weakness with Protection**

First, there is little or no evidence that Patty or Mildred Hill wrote the "Happy Birthday" lyrics. Indeed, Patty Hill testified in 1937 that she had written the original "Good Morning to All" lyrics, and that she had *used* the "Happy Birthday" lyrics, but she stopped conspicuously short of testifying that she had written the "Happy Birthday" lyrics. Over a hundred years after those words were first used with the Hill sisters' melody, no one is alive who could testify about their origin, and no relevant documentary evidence seems to be available — no drafts, no letters, nothing.

Second, the 1935 publications of "Happy Birthday to You" bore the copyright notice "Copyright 1935 by Clayton F. Summy Co." Yet the Summy Company almost certainly did not own copyright in the song at the time (it probably had an implied license for the song, and owned only the musical arrangements that its employees had made). Under then-prevailing precedent, and for several decades thereafter, publication of a work with copyright notice naming someone other than the work's owner resulted in forfeiture of copyright. More recent precedent, however, might give Warner Music Group a break on this point.

Finally, the renewal registrations filed in 1962 — necessary to maintain copyright beyond 1963 — are only for the arrangements, and do not claim to renew the song itself. This is probably the point of greatest weakness in the copyright, and this issue could also likely be decided early in litigation, because the facts are clear.

As for the second and third weaknesses, one might argue that our sympathies should be with Warner Music Group, because those weaknesses concern now-disfavored formalities. Yet other evidence suggests that the failure to pay proper attention to notice and renewal may have been connected to the first weakness: no one was thinking that Patty or Mildred Hill wrote the lyrics (they were not explicitly credited for them on authorized editions of the song until the 1960s).

**Two Lessons for Copyright Policy**

If there are such serious weaknesses in the copyright of "Happy Birthday to You," and $2 million per year is at stake, why has not someone litigated the matter? The answer to that question may lead to a first lesson for copyright policy. Warner Music Group may be receiving a total of two million dollars per year from the song, but no one licensee is paying more than twenty or thirty thousand dollars to use it. Indeed, most licensees are purchasers of blanket public performance licenses from ASCAP, and are paying only cents to use "Happy Birthday to You." No one licensee has a sufficient incentive to foot the entire litigation bill, and current law makes it difficult for an enterprising lawyer to file suit on behalf of a class of all licensees. Legal changes that made such a challenge easier might result in more robust protection for the public domain.

Second, recall "Happy Birthday to You" was widely distributed for about 20 years from the early 1910s to the early 1930s without any permission from or enforcement by the Hill sisters or their publishers. It was during that period — a period when the song was de facto in the public domain — that it became THE standard birthday song in the United States. It is even conceivable that the lack of copyright enforcement contributed to the song's assumption of its central place in American culture. If "Happy Birthday to You" were a piece of land rather than a song, doctrines of adverse possession or prescription might intervene to clear title, and protect users from owners who slept on their rights for two decades or more.

*(Continued on Page 9, right column)*

## E-BOOK PUBLISHERS AND COPYRIGHT

*By Lesley Ellen Harris*

With the Kindle, iPhone, and now the Nook, devices for reading electronic books are surrounding us. For a traditional (i.e., print) publisher, an electronic book will (legally) stem from the publisher's original publishing agreement with the author. Generally, the publisher must examine what electronic rights, if any, were secured by the publisher, for what length of time, whether there are any restrictions, and what royalty rate is due to the author. Further, if you are digitizing a print book, you may need to obtain additional permissions for other copyright-protected works included in the print version, such as any artwork, tables, maps and charts.

Electronic publishing and publishing e-books is opening the door for many individuals and organizations (from for-profits to associations to libraries and museums) to become publishers. With this new role come new business and legal responsibilities. E-book publishers, for example, must be aware of copyright issues relating to such things as cover artwork, tables, maps and charts, and excerpts from other works. It is important to consider the following copyright issues while in the initial planning stages of publishing a book in electronic format.

**Artwork**

Selecting the artwork you will use on the cover of your e-book will depend on various factors. One factor may be your budget—for example, whether you have sufficient funds to commission specific artwork or purchase pre-existing artwork from an individual creator or stock agency. Another issue is whether you want, can afford and are able to negotiate an exclusive license to use that artwork. Exclusive means that only you will be able to use the artwork for the purpose and period of time agreed upon by you and the owner of the artwork. In electronic uses, often non-exclusive uses are sufficient.

Another option is to ask a fellow employee who performs such duties as part of her job to create artwork for you or to take a photograph. Works created as part of one's job duties belong to one's employer. This means that you do not need to obtain permission to use such works on the cover of your e-book. Note: this rule only applies to artwork created and photographs taken if that would constitute one's official duties. If this goes beyond an employee's duties, then you would need permission from that employee just as you would permission from a non-employee or independent consultant.

**Tables, Maps and Charts**

If you are including any tables, maps or charts in your e-book, you will need to determine their copyright status. Are these works in the public domain, or can you find a public domain alternative to them? In the United States, many government tables, maps and charts are in the public domain; however, the U.S. government may acquire and own a copyright-protected work if the work was prepared by a non-government employee.

**Excerpts**

Excerpts from other books and articles need to analyzed with an eye toward determining fair use or fair dealing. Whereas a one-sentence quote is more than likely to fall within the defense of fair use/dealing, using several key paragraphs from a journal article may not. Each case is considered on its own merits, and the four fair use factors (in the U.S. *Copyright Act* or relevant factors in countries outside the U.S.) must be reviewed and applied to each excerpt.

Two situations in which you might want to double-check copyright status are: (1) using excerpts from your own writing, and; (2) using excerpts from another employee's writing. For excerpts not covered by fair use/dealing, the use of them will depend on various factors. Was the original document created as part of one's employment duties? If not, the individual author may own the work and have the right to say yes or no to excerpts from that work. If created within employment duties, the employer likely owns the copyright, and permission is not necessary to reproduce excerpts from the work.

Also, has the work in question been previously published? If so, was the copyright assigned to the publisher, or does it remain with the original author/owner? You may not have rights to reproduce excerpts from your own work if you assigned the copyright in that work to a publisher.

If you are including any public domain works in your e-book, make sure these works are in fact in the public domain. Return to the original public domain source, as any adaptation of a public domain work may have a new copyright and a "new" duration of copyright protection.

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You should also consider registering your work with your country's copyright office. Even though registration is not mandatory in any Berne Convention member countries, registration in the U.S., Canada and in other countries, will provide you with certain advantages should you ever want to enforce your copyright in a legal action.

**Plan Early**

These are some of the many copyright issues an e-publisher must take into account (other issues include book design, layout, marketing, and distribution). If you are publishing an e-book, consider the copyright and licensing issues in the early stages of your book project. These issues will help you prioritize and plan your budget, schedule and content. Permissions to use existing content should be obtained as early as possible in your project. Get these permissions in writing and file them appropriately so you can easily consult them after the fact. Although you are planning an e-book, you may need permissions for various uses of the licensed content such as using excerpts of the content for promotional persons and disseminating the content in a format other than an e-book. For any new content, similarly get publishing agreements in writing with any authors, illustrators and other copyright owners. Make sure that these contributors own the rights that they are licensing to you and include warranties in your agreements to this effect. ■

## TUNING IN TO THE CONSUMER OF DIGITAL MUSIC

*By Pascale Chapdelaine*

As the spheres of interest of consumers and copyright holders get closer in the Digital Age, there is a pressing need to get to know (and eventually confront the needs of ) consumers of copyright-protected materials. An increasing body of academic literature looks at copyright users[1] (often indiscriminately). Within that area of research, there are important justifications to zoom in on individual consumers more specifically (i.e., those physical persons who perform commercial transactions for personal purposes). While they share common interests with other users (just as they also do with copyright holders), consumers have little in common with broadcasters, film producers and even educational institutions, all larger copyright users.

### The Neglected Consumer

We seem to have neglected consumer protection in the last decades as a stand alone deserving field of study. The free market enthusiasts among us have been very influential and skilled at convincing governments that market forces could take care of consumers and that minimal intervention in their name was only necessary when a market failure had been identified. Also, the lines between private and business spheres, home and work, personal and commercial purposes have all become blurrier than ever. Everything is interchangeably portable, making the classic definition of "consumer" more confusing than ever before.

It is arguable that there is merit (perhaps more than ever before) in preserving a distinct "consumers' zone" that is equally portable. It is the one inhabited by physical persons who in their private sphere make commercial transactions and experience goods for personal purposes. They share common and distinct values and aspirations that our society needs to cherish, promote and protect.

***For information on digital license agreements, visit:***

***www.licensingdigitalcontent.blogspot.com***

### Digital Music as a "Commoditized Good"

The underlying copyright in music does not take away the mass market nature of digital music whether it is distributed through CDs or online. As a starting point of the analysis, consumers should get the same minimum level of protection that they get for other goods (including implied conditions of quality, fitness for purpose and of quiet possession)[2]. As uncontroversial as this proposition may seem, it is less than certain that current Canadian laws support it. The fact that music is an intangible and that it is not sold but licensed still gives rise to a lot of uncertainty as to the applicability of Canadian provincial sale of goods laws (and the *Québec Civil Code*).

Indeed, it is not clear that sale of goods laws' implied conditions (*and Québec Civil Code*) apply to the intangible aspect of digital music, largely predominant over the physical medium, when there is any. Common law warranties similar to the statutory implied conditions may apply, but their nature and scope are not providing much greater certainty. Consumer protection laws often provide that those statutory implied conditions cannot be contracted out in consumer transactions. This offers little help if they do not apply in the first place.

Confirming the applicability of sale of goods laws implied conditions (and consumer protection laws making implied conditions obligatory in consumer contracts) would start an interesting conversation. The scope of permitted use of digital music, as dictated by technological protection measures and/or contract terms would then be analyzed through the implied conditions of quality and fitness for the purpose for which the product was intended. For example, can the music provider limit the scope of use to certain audio devices or the number of copies permitted for time-shifting purposes? Also, can the music provider negate "users rights" provided in copyright law such as under the private copying regime for musical recordings or fair dealing provisions? Do digital rights management systems ("DRMs") breach the implied condition of quiet possession? Given the hurdles on the applicability of sales of goods laws to the largely prevailing intangible aspect of digital music, much of these questions have been left unexplored.

## Consumers and Copyright Works

One key question is whether consumers require even greater protection with respect to copyright works than with respect to other goods. The rationale supporting greater protection is that consumers interact differently with copyright materials than with traditional consumer goods. There are rights and values that are involved in this interaction (such as freedom of expression, creativity, privacy) that are fundamental in free and democratic societies. Whether there is a need to provide that greater protection depends heavily on the consumer that lawmakers envisage or want to promote. Is it a passive or an active consumer (or "consumer-author")? And is the nature of the consumer still being defined in the Digital Age? What aspirations are reasonable and justify protection?

In Canada, the *Copyright Act* has been presented as "a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator (or, more accurately, to prevent someone other than the creator from appropriating whatever benefits may be generated)"[3]. Recognizing that consumers are also an integral part of the process of culture and innovation, and that this sphere is not limited to authors and copyright holders, brings another weight in the balance.

It is arguable that lawmakers predominantly have a passive view of consumers of copyright works. Between the passive consumer and the consumer as author (which through her transforming acts, already receives some protection under copyright laws), there is a broad category of consumers who may also be closely aligned to one of the core objectives of copyright law, to promote and incent creativity and innovation.

Introducing a "private purpose" right for consumers, similar to what was proposed in Canadian Copyright Reform *Bill C-61*[4], would be an endorsement of the legitimate space that is required for consumers to deploy their participatory innovation aspirations to a greater potential. This private purpose right would define a virtual space in which consumers are allowed to perform a broad range of acts of a non-commercial nature for themselves and as they interact within their private spheres.

## It All Revolves Around the "Purpose"

Clarifying the scope of use of digital music and other copyright works for private purposes could be perceived as an expansion of "users' rights" and could on that basis receive fierce opposition by copyright holders. Free market believers will argue that copyright holders alone should determine the permitted scope of use of copyright materials. Further, they will argue that free competition will ensure that consumer interests are adequately preserved, inadvertently forgetting that copyright is a state granted monopoly that needs to be constrained within the limits of its core purpose. Moreover, the constant threat of piracy justifies that copyright holders have "carte blanche" for the secure dissemination of copyright works. Last but not least, any breathing space given to consumers should not unreasonably interfere with the copyright holders economic interests as per the "three-step test" for exceptions from copyright under various international treaties.

These concerns are legitimate, however one pivotal word taints the discussion and that is "purpose". We seem to have lost the sense of purpose in copyright law. Refocusing on a justifiable and proportionate incentive system to promote creativity and innovation, recognizing that consumers are integral to the realization of this purpose, as opposed to passive receptacles, would be a start. In the same vein, we also need to shift the copyright framework from an act-based set of exclusive entitlements to a purpose-based one. This would include a clearer delineation between commercial-based uses and non-commercial ones and how they are linked to the economic rights of the copyright holder. Focusing on purpose in those three instances may be showing a path towards some reconciliation.

## Conclusions

Dusting off old sale of goods and consumer laws for the Information Age, redefining the consumer we want to promote, and introducing a private purpose right in copyright law, are lower common denominator propositions. They are not likely to fully satisfy those consumers who believe they should get everything for free. To copyright holders, the relief may prove to be greater than the sacrifice.

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More clarity could go a long way in alleviating the irritant of fights against consumers for limited gains (never a good place to be in business). Such tune-ups may not make all interested parties sing in harmony but it will reduce a lot of unnecessary confusion and give consumers some breathing space. With that, it will arguably bring greater credibility to copyright law and hopefully, more respect for the legitimate interests of copyright holders. ■

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[1] This includes the works of Jessica Litman, Niva Elkin-Koren, Deborah Tussey, Josef Liu, Julie Cohen, Lucie Guibault, Natali Helberger and P.Bernt Hugenholtz. Some of these authors have already put forward similar recommendations to the ones discussed in this article.

[2] The Canadian *Copyright Act* does not have a pre-emption clause. The U.S. *Copyright Act* takes precedence over any conflicting state laws. By the Federal nature of the Canadian *Copyright Act,* some precedence principles apply. Also, in the U.S. the *Uniform Computer Information Transactions Act* ("UCITA") is one recent attempt to address the trade in intangibles in the Information Age.

[3] *Théberge v. Gallerie d'art du petit Champlain Inc.* [2002] 2 S.C.R. 336. In the U.S. Article I, section 8 of the Constitution of the United States places the promotion of innovation and creativity at the forefront of the copyright objectives with no reference to a need to reward authors.

[4] Bill C-61 *An Act to amend the Copyright Act,* presented on June 12, 2008, s. 17.

*This article is based on a paper presented at the conference: "The Intellectual Property Bargain, Consumer Perspectives in a Global Economy" on September 18, 2009, organized by IP Osgoode, www.iposgoode.ca/intellectual-property-bargain.*

## News Brief
## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

The nineteenth session will take place in Geneva from December 14 to 18, 2009. The Committee is currently discussing special provisions for education, libraries and persons with disabilities, as well as the protection of audiovisual performances and broadcasting organizations. Meeting documents are at: www.wipo.int.

*(Continued from Page 4)*

Copyright law has never had similar doctrines. As long as the term of copyright remained relatively short, it arguably had little need for them. Copyrighted works were going to enter the public domain soon anyway — after, at most, 28 or 42 or 56 years — and they would enter the public domain even sooner if copyright holders did not assert their continuing interest in the works by filing a renewal registration after 14 or 28 years. Now, however, copyright can last for 120 years or more, and has no renewal requirements. Under such conditions, copyrights can be expected to generate the same title clearance and reliance problems that interests in land do. For a variety of reasons, it may be difficult to gain judicial or legislative acceptance of a doctrine of adverse possession of copyright. There are, however, less radical alternatives available that address some of these, and one of them may actually be adopted in the United States: orphan works legislation. ■

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## News Brief
## FINLAND MAKES BROADBAND ACCESS A LEGAL RIGHT

The Finnish government is the first worldwide to introduce new laws that guarantee broadband access to every person living in the country. Starting in July 2010, every Finnish person will have the right to a one-megabit broadband connection; and by the end of 2015 the legal right will be extended to a 100Mb connection. Almost 80% of the population (5.5 million) currently use the Internet; there are approximately 1.5 million broadband connections in Finland.

## REVIEWS

## PRINT

**Copyright and Cultural Institutions: Guidelines for Digitization for U.S. Libraries, Archives, and Museums, Peter B. Hirtle, Emily Hudson, and Andrew T. Kenyon; 272 pages; $39.95 US; (Cornell University Library, Ithaca, NY 14853. Available for purchase at www.createspace.com/3405063, and as a free download at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1495365.**

As libraries and archives across the country and around the world go forward with projects to make their holdings available electronically, a myriad of copyright issues arise. Peter B. Hirtle, Emily Hudson, and Andrew T. Kenyon have tackled this complicated subject in an interesting and readable book.

The first two chapters of *Copyright and Cultural Institutions* provide an introduction to copyright law and the protection it provides. Did you know that part of a chair can be protected by copyright? Chapter 2 explains how this is possible. Chapter 3 explains the duration of protection and identifies problematic issues. Chapter 4 thoroughly examines exclusive rights, infringement and remedies. Fair use, a subject librarians grapple with frequently—arguably made more complex by the digital environment— is granted good coverage in chapter 5. Exemptions for libraries and archives are discussed in the following chapter. The book also includes some useful case studies.

**Privacy and Confidentiality Issues: A Guide for Libraries and Their Lawyers, Theresa Chmara; 98 pages; $42 US; (American Library Association, 50 E. Huron, Chicago IL 60611, www.alastore.ala.org)**

Presented in a concise, easy to digest, question and answer format, *Privacy and Confidentiality Issues* is aimed at public librarians and attorneys who represent them. Written by experienced attorney Theresa Chmara in plain English, this book provides guidance on how best to protect the rights of their patrons in a post 9/11 world.

The first chapter, "When Do Privacy and Confidentiality Issues Arise?", provides a brief, but good introduction to the material covered in the rest of the book. The second chapter goes to the important subject of library privacy policies and how to respond to various requests for information. Other chapters include coverage of Internet issues, and also the rights of minors.

Ms. Chmara's book should be required reading for anyone (including librarians and their attorneys) formulating or evaluating a library privacy policy.

**Publishing Forms and Contracts, Roy S. Kaufman; 462 pages; $155 US; (Oxford University Press USA, 198 Madison Avenue, New York, NY 10016-4308, www.oup.com)**

Roy S. Kaufman has compiled a volume of sample forms and contracts that is both compact and comprehensive. As legal director for a major publisher, Mr. Kaufman has used his knowledge and experience to produce a reference book that will be of interest to publishers and intellectual property legal professionals. Each chapter contains an introduction to issues related to the documents in that section. Though there is no index, the table of contents in *Publishing Forms and Contracts* is clear and useful for quick reference. There is also an accompanying CD-ROM with downloadable forms.

**COPYRIGHT LAW, DIGITAL CONTENT AND THE INTERNET IN THE ASIA-PACIFIC, Brian Fitzgerald (editor), Fuping Gao (editor), Damien O'Brien (editor), Sampsung Xiaoxiang Shi (editor); 419 pages; A$59.95 (Sydney University Press, University of Sydney, NSW, Australia, www.sup.usyd.edu.au)**

*Copyright Law, Digital Content and the Internet in the Asia-Pacific* is a collection of chapters written by a number of experts in intellectual property law in the Asia-Pacific region. Developing legal frameworks and established legal practises are discussed. There is case law included from Australia, Hong Kong, The People's Republic of China and Singapore, as well as the United States.

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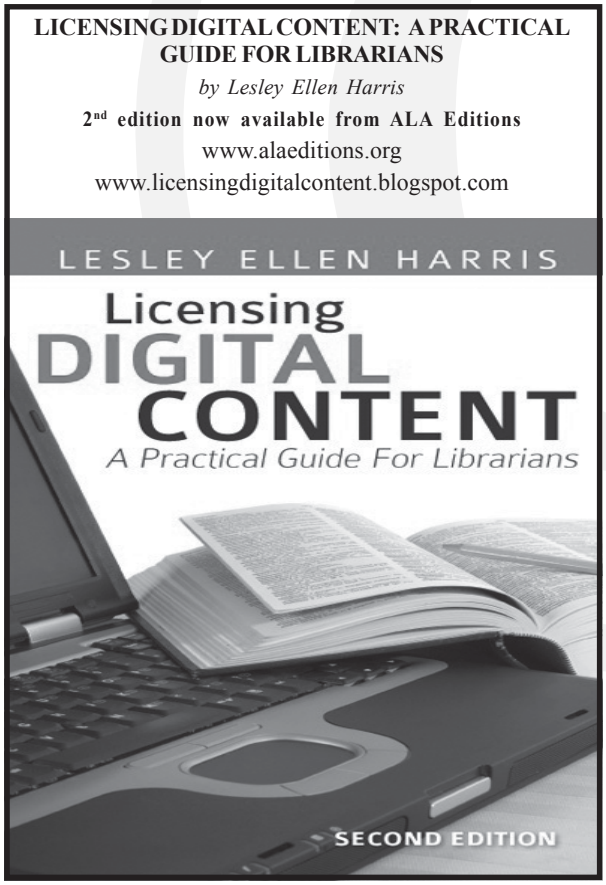
Part One of the book covers the nature of the new digital environment and includes a discussion of judicial protection of Internet content in China. Part Two, entitled, "Digital Content Policy, and the Networked Information Economy," contains chapters by various contributors discussing the legal and regulatory environment in China, Australia and Singapore. There is also an interesting discussion by Eric Priest on the development of new business models to generate revenue from changing digital content. "Copyright Law, New Media and the Future," is the topic of Part Three. Chapters include discussions of copyright reform in Indonesia as well as various issues with Internet and new media in China. Alternatives and solutions for the future are covered, such as the creative commons license featured in the chapter by Chunyan Wang. This book is a useful resource for attorneys and legal scholars who have a particular interest in the intellectual property law of this broad region.








## News Brief
## DATABASE OF CLASSIFIED ADS HELD COPYRIGHTABLE

This case involved the Defendant copying classified ads and pictures from an issue of Want Ad Digest into its own publication. The U.S. District Court for the Northern District of New York held that while the individual ads were not protected by copyright since they lacked creativity and originality, the digest's arrangement of subheadings was sufficiently creative to receive copyright protection as a compilation. See: *Want Ad Digest Inc.* v. *Display Advertising Inc*.

## News Brief
## SOFTWARE PIRATES FINED AND JAILED IN CHINA

Four people were sentenced to 2-4 years in prison and fined approximately 11 million Renminbi ($1.6 million) for distributing pirated versions of Microsoft Windows XP and other software on a Web site called "the Tomato Garden". The Huqin District People's Court in Suzhou also fined the company who operated the site more than 8.7 million Renminbi ($1.3 million) and confiscated part of its revenue. Estimates suggest that more than 10 million people downloaded pirated software from the Web site.

## News Brief
## ISTOCKPHOTO PROVIDES IP GUARANTEE TO USERS

iStockphoto, who licenses images for a relatively low cost, has implemented a new guarantee to alleviate customer concerns regarding infringement of intellectual property ("IP") rights. Under the guarantee, the company will cover up to $10,000 of legal costs in cases involving IP infringement. Coverage may be increased to $250,000 at a cost of 100 of the credits ordinarily used to purchase images, videos, etc. Credits presently cost $1.50 or less. This new guarantee capitalizes on consumer concerns of the risks involved in using images that are freely downloadable from the Internet. See: www.istockphoto.com.

## COPYRIGHT QUESTIONS & ANSWERS

*Question: Is permission necessary to publish in a book an image found through "Google Images"?*
Answer: Google Images answers this with the following: "The images identified by the Google Image Search service may be protected by copyrights. Although you can locate and access the images through our service, we cannot grant you any rights to use them for any purpose other than viewing them on the web. Accordingly, if you would like to use any images you have found through our service, we advise you to contact the site owner to obtain the requisite permissions."

*Question: Can you point me to examples of copyright warnings/notices posted near photocopiers?*
Answer: Both the U.S. and Canadian copyright statutes provide sample wording for libraries to include in copyright warnings/notices near photocopiers.

Similar wording can be used by all organizations, and similar wording could be used near all technology where copyright-protected works may be reproduced.

*Question: My organization purchased an electronic version of a journal article for purposes of research by one of our employees. May we store this electronic article on our Intranet or on the library's server?*
Answer: You should check the purchase order or license that accompanied the article. Were there certain rights and conditions placed on the article when you purchased it? What uses are permissible? If the purchase order or the license is silent on this issue, then you must obtain permission to use the article in any way in which it will be reproduced or distributed, other (presumably) than for the personal use of the researcher who ordered it.

*Email your questions to: editor@copyrightlaws.com or post them at: www.copyrightanswers.blogspot.com.*