

Law Libraries as Publishers Your Copyrighted Works

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Copyright is one of my favorite things, and copyright in libraries is even more fun. For most librarians, copyright affects what they can do with other people's copyrighted works. Can a student scan this chapter from a book? Can the library copy from a DVD to stream to a class? Copyright for

Copyright.gov

library publishing also involves others' works. Can a library post someone's article in the

institutional repository? Can we include an image in an exhibit?

For the moment, though, I want to focus on how copyright relates to *your* (or *your library's*) works. You are not the user in this situation, you are the owner, the one that controls how *others* use *your* works. This role raises new questions and makes us consider the tensions that can arise between the owners of copyrighted works and those who would use them. I will briefly consider two of these questions.

First, who is the copyright owner? In academic librarianship, some of what you—a naturally born human—create will be controlled by you, while some will be owned by your employer. This is because of a rule in copyright called the work-for-hire doctrine. We do not have time to cover this doctrine in full, but the short version is that copyrighted works created by you as part of your work duties will be owned by the employer.¹ Who owns a particular work matters because the owner decides what uses to permit. For example, my employer has a policy providing that I have copyright over my scholarly

works, so I put Creative Commons (CC) licenses on those works (more on CC in a bit). My employer has copyright over my non-scholarly works that I create as part of my job (such as a memo on weeding criteria), so I cannot unilaterally put a CC license on that document. Librarians producing creative works should check institutional policies and employment contracts to understand who keeps copyright in what works.

Second, assuming you know who has copyright in a work, how do you want to handle that copyright? The default rule is the most restrictive: a user must rely on a copyright exception (fair use is a prominent example) or ask for permission. I am merely speaking for myself, but requesting permission to use a copyrighted work, including those published by academic organizations, tends to require a good bit of time. I have to find contact information

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for the author (tricky when the work is unsigned and thus I have to look for someone that strikes me as responsible), draft a permissions

email, and wait for a reply. Perhaps I found the wrong person, perhaps the exact owner of the work is unclear, or perhaps my request is not on the top of someone's long list of emails awaiting response. My point is that, for works that have little commercial value, but that are useful to me, getting permission seems more trouble than it should be worth.



¹ I recommend Paul Hellyer, *Who Owns This Article? Applying Copyright's Work-Made-for-Hire Doctrine to Librarians' Scholarship*, 108 LAW LIB. J. 33 (2016), for more discussion of the factors determining when your work is owned your employer.

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Perhaps I am too impatient, but I have passed up using a work in a class or presentation because I did not think it worth the resources needed to get permission. In case others feel the same way, I put a CC license on my works, telling anyone that they can use my works as long as they give me appropriate credit. CC licenses are standardized and well known, but they are not your only options. Many law reviews expressly permit copying articles for educational purposes, for instance. A clear statement explaining what uses are

As owners ... we should do what we can to clearly communicate any permissions we give prospectively ...

prospectively permitted would be appreciated by future users. The University of Michigan Libraries have a copyright statement discussing its website.² If you want to review permission requests, and can commit

institutionally to fielding future inquiries, then clearly indicate whom to contact for each work, and have an articulated policy for deciding whether to grant requests. Perhaps requests from faculty and students will be freely given, but requests from unaffiliated users will be subject to greater scrutiny.

As users of copyrighted works, we have responsibilities to stay within copyright exceptions and avoid infringing on owners' rights. As owners of copyrights, we should do what we can to clearly communicate any permissions we give prospectively, and to reduce the transaction costs of making and deciding on permissions requests.

If you have any thoughts on copyright and libraries or library publishing, please contact me at bkeele@indiana.edu. 

² <https://www.lib.umich.edu/library-administration/library-copyright-statement>.