

Information Management Resource Kit

Module on Digitization and Digital Libraries

UNIT 1. CONCEPTUAL OVERVIEW

LESSON 4. COPYRIGHT ISSUES AND PROCEDURES CONCERNING LIBRARIES

NOTE

Please note that this PDF version does not have the interactive features offered through the IMARK courseware such as exercises with feedback, pop-ups, animations etc.

We recommend that you take the lesson using the interactive courseware environment, and use the PDF version for printing the lesson and to use as a reference after you have completed the course.

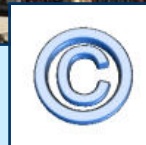


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Learning Objectives

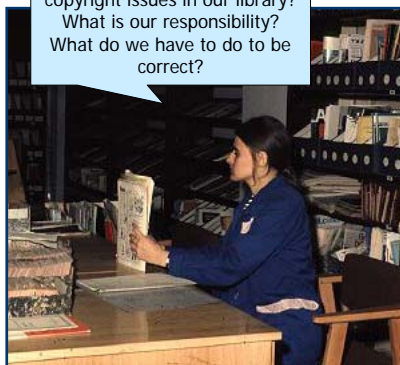
At the end of this lesson you will:

- be aware of some **special copyright exceptions for libraries**;
- understand copyright issues related to **different kinds of content**; and
- understand procedures to ensure **compliance with copyright law in a library**.



Introduction

How should we handle copyright issues in our library?
What is our responsibility?
What do we have to do to be correct?

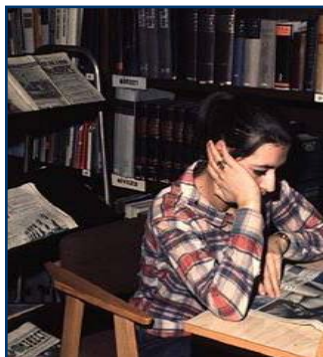


In this lesson, we will give our attention to those specific aspects of copyright which are especially relevant to libraries and librarianship, and more particularly to online and digital libraries.

Then we will move from theory into practice. Copyright affects many of the day-to-day activities of a library, especially in an online or digital environment.

Librarians are the gatekeepers to valuable resources and they have a responsibility to help ensure compliance with copyright law.

Exceptions for libraries



Many national copyright laws have **special provisions for libraries** giving exceptions or limitations to copyright.

For example, it is often permissible to **supply copies of journal articles or book chapters to readers**. Usually, libraries lend books but keep serials within the library, since serial issues are much harder to replace if they go missing.

Many libraries supply photocopies of journal articles to their patrons and do so under special provisions of copyright law. Others provide photocopiers inside the library so that patrons can photocopy directly from the original.

Exceptions for libraries



It is often permissible to **make a copy to replace a missing item** from the permanent collection of a library.

Such provisions may well only come into play if a book is out of print or otherwise no longer available commercially.

Thus, the law balances the interests of the library in maintaining its full collection and those of the author and publisher in preserving the economics of publication.



Research Task 1 (see
research_tasks.pdf)

Exceptions for libraries



Libraries lend books to each other to ensure the widest access to publications.

Many librarians also use the term “**inter-library loan**” (abbreviated to **ILL**) to cover the **exchange between libraries of photocopies** of journal articles and book chapters. They do not expect that these copies will be returned, but the system and framework for the supply of such photocopies is the same as that used for loans.

The significant difference is that there are copyright implications in the making of copies: if the country doesn't have exceptions allowing inter-library document supply, this practice requires the consent of the copyright holder.

Supply of copies between libraries and to commercial research organisations

In the European Union, exceptions to copyright cannot normally be used for commercial purposes. Since many commercial research organizations depend on the availability of copies of research papers published in journals to which they do not subscribe (it not generally being practical for even the largest organization to subscribe to every journal that might conceivably publish a paper needed for its research), a market has developed for the licensed supply of copies between libraries and to commercial research organizations.

Exceptions for libraries

Country A and Country B are both signatories to the Berne Convention, but only Country A has exceptions allowing inter-library document supply.

Imagine a scientific library in Country A asking another library in Country B to have the photocopies of some specialized journals. Is the scientific library expected to ask for the consent of the copyright holder?

- Yes
- No

Click on the answer of your choice

Exceptions for libraries



Many documents are now supplied in an **electronic format**. Rather than sending a photocopy through the mail, it is now quicker and often cheaper either to fax the article, or to scan it and to **send it over the Internet**.

If the original journal is published in an electronic form, the scanning process is not required. However, very **few copyright holders permit electronic document delivery** of articles first published in electronic form, other than directly from their own servers. Current exceptions to copyright are not always clear as to whether they extend to the electronic supply (e.g. by scanning and emailing) of documents first published on paper.

The Public Domain

Works not subject to copyright are said to be **"in the public domain"**. But remember: this term is sometimes used misleadingly, so be careful!

Authors can "dedicate their work to the public domain", that is let anyone anywhere do anything they like with it. Although the copyright remains with the author, it can be very difficult, if not impossible, for him/her to revoke a grant of licence in such terms (anyway, it is good practice to continue to respect the author's moral rights).



Often **works produced by the government** are in the public domain, or the government sets out generous rules for their use by not-for-profit organisations. Note that this applies **only in the country of origin**: thus, works produced by the US Federal Government are in the public domain in the USA, but they are subject to the copyright of the US Government in other countries.

The only way a work can truly enter the public domain is when the copyright expires fifty or seventy years after the death of the author: generally, **only very old works are truly in the public domain**.

Commercial content published on a tangible object



Commercial publishers depend on copyright to earn a fair return on their capital. Since the time of Gutenberg, the normal way to earn a return has been to **sell physical copies**. The fewer original copies sold, the more expensive the original must be to cover the initial investment in publication. So-called **“pirated” books, records and computer programs** thus hurt not only the original author or publisher, but also legitimate purchasers of the work.

As education is so important, one might expect most countries to provide major **copyright exceptions for the benefit of education**. In fact, often these are quite limited. This is to avoid undermining educational writing and publishing: authors and publishers might turn their talents and their capital towards other markets, because it would become harder to sell educational books in sufficient quantities.

Commercial content published online

Many of the same considerations apply to **online works**. Although these save publishers the cost of printing and warehousing, everything up to the print stage must still be paid for. Adding useful online extras such as hyperlinks and multimedia increases the production cost.

There is, however, a **problem of perception**. Most people are willing to pay something for a tangible object such as a book or a record; it is far harder for people to accept that they should pay for an intangible good such as online access to the same content.

Much government, commercial and academic content is produced as a by-product of the activity of government, business or scholarship. It is often in a form which can be readily transmitted and exchanged over the Internet, and it is in the interests of all parties that it should be so exchanged. Thus, in many countries, more and more government information is freely available on the Internet.



Companies publish their brochures and much more on their corporate websites; and universities and academics make more and more of their research available through open archives of research papers.

Collaborative content



The **Creative Commons** is an operation designed to make it easy for authors who want their works to be **freely and openly exchanged** to inform others of their position.

When a work is made available, an author can declare that it is provided under one of the various Creative Commons licences. Different licences have different conditions attached; Authors can choose whether to require attribution or to permit modifications of their work, for example. Each form of Creative Commons licence has an associated symbol, which can be attached to the work and serves as a shorthand symbol to advise users what may and may not be done with the work.

The Creative Commons is an evolving initiative which keeps pace with the evolution of internet. For more information, you should visit the Creative Commons website at <http://www.creativecommons.org>



[Other similar initiatives](#)

Collaborative content

There are a number of other initiatives similar to the Creative Commons.

- One of the longest-established is the Free Software movement, which has produced the GNU-Linux operating system. The Free Software Foundation has a licence called the GPL (short for GNU Public Licence); and a large range of software is now available licensed under the GPL. Indeed, the experience of the Free Software Foundation in the realm of computer software served as an inspiration to the founders of the Creative Commons, which applies many of the same principles to other forms of work, such as literary and musical works.
- Perhaps of greater relevance to the work of libraries is the Open Archiving movement, under which academic research papers are deposited by their authors in freely-accessible archives on the Internet. Open Archiving is long-established in fields such as high-energy physics and is rapidly developing in other disciplines. The Soros Foundation, endowed by the philanthropist financier Georg Soros, has sponsored an initiative to promote open access to scholarship – see, for example, <http://www.soros.org/openaccess/>

Traditional knowledge

Books and writing have played a very important role in the development of the cultures of Europe, the middle East and Asia, to the extent that sometimes such cultures undervalue knowledge that is held in a less tangible form. Yet libraries exist to serve as repositories of all sorts of knowledge, both written and oral, and modern recording technology means that **libraries can now archive much traditional knowledge**.



Statue of Alexander Pushkin, Russian writer and poet.

The task of preserving and recording traditional knowledge is one to which digital libraries, working in association with local people, are well adapted.

In some countries, copyright does not subsist until the work is fixed in a material form. Therefore, it doesn't subsist in material from a purely oral tradition, but only **once oral works are recorded**. Recording for archiving in a digital library is a process of fixation; thus, the very act of recording creates a copyright.

Even in that case, however, the first owner of such a copyright is the author of the work. In the case of traditional works, the original authorship may be lost in the mists of time.

Traditional knowledge



Projects to record and to preserve traditional knowledge must, of course, be undertaken sensitively and **with the support and collaboration of the people whose traditions are being recorded**.

This is, ultimately, much more important than the fine detail of international copyright law.

Nevertheless, the understanding between the organisation making the recording and the people whose traditions are being recorded should include **references to the copyright** both in the works being recorded and in the recordings themselves, and cover what uses might reasonably be expected to be made of the result. In some cases (for example, music) recordings may even generate some royalty income.

Traditional knowledge



Traditional knowledge about herbal medicines in particular may be very valuable to international pharmaceutical companies.

Can copyright be used to ensure that traditional societies share in any rewards from the exploitation of such medicines? And why?

Write your answer in the box

[View answer](#)

[Comment](#)

Copyright related procedures

Copyright affects many of the day-to-day activities of a library, the more so in an **online or digital environment**. Librarians are the gatekeepers to valuable resources and they have a responsibility to help ensure compliance with copyright law. Here are some procedures to be followed...



PRIMARY LICENSE ACQUISITION



SECONDARY LICENSE: OBTAINING PERMISSIONS



INFORMING AND EDUCATING USERS

Primary license acquisition



Tangible books and journals can be bought in the form of physical copies. Instead, digital content can be “bought” in many countries by acquiring a licence.

A license is the permission of the copyright holder setting out the terms on which digital content is sold. By obtaining a license you can read digital content, copy it from the disk or file-server into your pc. Licences are usually contracts between at least two parties. In the absence of a licence, what you can lawfully do with digital content varies from country to country but it is usually less than is permitted by a licence, so a licence expands rather than restricts what you can do.

Licences for computer software and digital works are sometimes called End User Licensing Agreements (frequently abbreviated to **EULA**).

Primary license acquisition



This license restricts the use of this book to personal use: these terms are clearly unsuitable for a library!

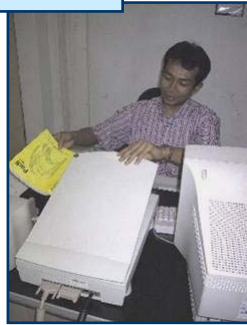
Licences can also impose contractual obligations. It is therefore essential to **read the small print** of licences.

Libraries should beware of acquiring digital content on **unacceptable or unsuitable terms**. Many publishers have developed licences that are closer to library requirements, but they don't always grant everything that you might want. Libraries often benefit from the collective work of their national library associations, or trade associations, or bodies such as IFLA, to improve the terms on offer from publishers.

Because the acquisition of digital content requires negotiation not just of the purchase price but also the accompanying EULA, **acquisition becomes more complex in the digital world**. Many libraries collaborate and improve their negotiating position by forming or joining consortia.

➔ **Research Task 2 (see research_tasks.pdf)**

Secondary license: obtaining permission



After acquisition, requirements can emerge which weren't foreseen at the time the primary licence was negotiated.

One major requirement of digital libraries is the need to **scan print-on-paper content** so that it can be made available digitally. For these purposes, you need to obtain the permission of the copyright holder.

Obtaining permission to do more with acquired content can be a very time-consuming business; It is therefore better to ensure at the time of acquisition that your agreement covers all the rights you might require.

Scanning for the purposes of digitisation is, however, a use that probably wasn't foreseen at the time of acquisition!

Secondary license: obtaining permission

Why are many copyright holders very reluctant to permit scanning?

This is because the resultant digital content may then find its way into unprotected internet sites and could damage sales.

These fears are justified: popular books are often available in so-called 'pirate' digital versions very soon after publication; on the other hand, more specialist material may produce a more marginal economics of publication, so that the effect of unauthorised copying may be more damaging.

Nowadays, in many countries, governments are looking for appropriate ways to deal with this issue under copyright law. It is for this reason (amongst others) that the digitisation projects of many of the world's major libraries have started with the oldest material, which is out of copyright and for which permission is not required.

Secondary license: obtaining permission

Anyway, how to obtain permission?

The most straightforward way is **to contact the author or publisher concerned**. Sometimes this is the only method possible. However, it has many problems:



The address of the publisher may be unknown

Not all publications contain the full publisher's address; and in any case, addresses change, publishers go out of business (but the work remains in copyright); they sell their 'lists' to other publishers.

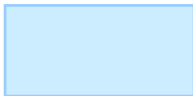
For example, the UK publisher Methuen has long since ceased to exist as an independent organisation. The Methuen brand, or imprint as brands are known in the book world, is now owned by several different publishing houses, depending on whether the book is educational, or fiction, or general trade, for example. It requires specialised knowledge of the publishing industry to trace the copyright owner of a book published under the Methuen imprint.

Secondary license: obtaining permission



The publisher may not have all the rights

Often, the author retains the right to authorise secondary uses. Or the publisher may have assigned such rights to a third party, such as a specialist electronic publisher. When works go out of print, it is normal for the rights to revert to the author, so the publisher has to contact the author before giving permission. In some countries, the author always retains the rights.



The response time may be very slow

Even without all the problems, publishers' rights and permissions departments are busy, and it is not unknown for backlogs of permission requests to accumulate. A common source of delay is that a request may take some time to find its way from the sales or distribution department to the person dealing with permissions. It is therefore essential to address any written request to the "Rights and Permissions Department". Even so, publishers' rights and permissions departments are subject to normal commercial pressures, and the cost of administering small-scale permission requests can exceed the likely fee income. Such requests are often accorded a relatively low priority within the department.

Secondary license: obtaining permission

As an alternative to contacting the publisher direct, you may choose to use an agency.

Reproduction Rights Organizations (RROs) represent the interests of authors and publishers in many countries. You should contact the RRO in your country for advice and assistance. RROs issue licences and collect levies for everyday copying, particularly photocopying; some can also assist with obtaining permission for digitisation.

There are also **some commercial organizations** which claim to be able to obtain permission for you. Since not all of these agents are necessarily bona fide, although there are many that are, you should not agree to pay any fee unless and until permission has been obtained.



Secondary license: obtaining permission

More information on Reproduction Rights Organizations (RROs)

The blanket licences issued by RROs solve many of the problems of obtaining permission directly from the publisher. Unfortunately, blanket licences for digitisation are not yet widespread, but this is likely to change quickly in the next few years.

If your country's RRO is not yet fully operational, it may still be able to put you in touch with a publisher.

Your national RRO will help support authors and publishers in your country, and provides a way for them to collaborate with authors and publishers across the world.

For more information about RROs, visit the website of IFRRO, the International Federation of Reproduction Rights Organizations. The IFRRO website will help you find out if there is an RRO in your country; it is at:

<http://www.ifrro.org/>

Secondary license: obtaining permission



Before purchasing digital content, it is wise to determine whether it is protected by DRM (Digital Rights Management Systems), and if so whether this is acceptable. In particular, you should make sure the DRM-protected content can be used by your users **without the need to acquire additional hardware or software**.

DRM is most widely used on so-called "ebooks", that is, books that are published in electronic form. Many ebooks themselves require special software, such as Microsoft Reader or Adobe's ebook Reader. These programs are not interoperable; that is, you need Microsoft Reader to read a book published in the Microsoft ebook format and Adobe's ebook Reader for Adobe ebooks. Both programs are, however, available without charge.

Please also remember that under the WIPO Copyright Treaty, it is unlawful to remove Rights Management Information (RMI), e.g. a digital watermark.

Informing and educating users

Now, imagine you find that a user has infringed copyright in your library. For example, he made unauthorized copies of an entire book using the library's photocopier.

Who is responsible?

- You (the librarian).
- The user.

Click on the answer of your choice

Informing and educating users



A university library in Australia was found to have allowed users to make more copies than permitted, by providing both the works to be copied and the photocopiers for students to use. The university was found liable.

“Authorisation” has proved to be a pitfall for some librarians in the past; therefore, libraries need to **ensure that users are clear as to what may and may not be copied and under what circumstances.**

But this does not mean that the librarian is always liable; it is the person who makes the copy who bears the primary responsibility for complying with copyright law.

Some licences for digital content may try to impose a more onerous burden on librarians, that of policing user's behaviour (**contractual responsibility**). These are examples of licence “small print” which should be addressed as the licences are being negotiated. A reasonable balance can usually be found to have a contract which balances the possible and the practical.

Informing and educating users

Whilst it may be unreasonable to expect librarians to assume full responsibility for everything done by their users, it is not unreasonable to expect them to try to **educate users about copyright.**

The following are some issues you could check...



New User Induction Programme

Is there an induction programme for new library users? If so, does it refer to copyright? Is it clear and simple?



User Handbook

Is there a user handbook setting out the library's policies? Does it refer to copyright?



Warning Notices

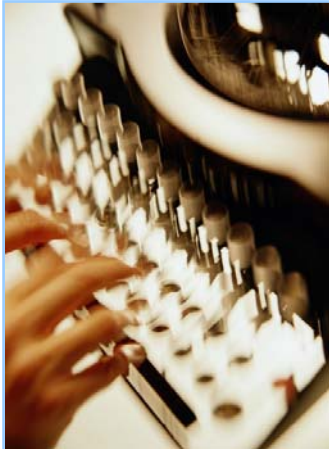
Suitable warning notices, displayed at appropriate points in the library, can help. Certainly copyright warning notices should be displayed near scanners, photocopiers, fax machines and computers in the library.



Login Screens

Another good way of ensuring that users are familiar with copyright is to build some form of copyright notice into the logon-screens used before accessing the digital library.

Informing and educating users



Some library licences for the supply of digital content require the library to address copyright matters in its own rules and regulations. This can help avoid costly legal proceedings as copyright infringement by library users can be dealt with under the library's own disciplinary procedures. Furthermore, the library is less likely to be held liable for authorising the acts of its patrons if it has taken reasonable steps to enforce copyright within its walls.

Any library needs to develop its own policies and rules in the light of its own circumstances (a research library in a commercial organisation will have requirements quite different from those of a busy public library or the library of an educational establishment).

Every library should have a **policy of respect for copyright law**. Most libraries take the general statement one step further and encourage respect for authors and their rights; after all, if it was not for authors (and for that matter publishers), there would be nothing in the library.

Informing and educating users

Lawyers advising your institution are likely to object to any term in your library's copyright policy which sets out to provide a clear **interpretation** of an unclear or ambiguous exception in your country's copyright law. If the interpretation were incorrect, the library could be held liable for authorising copying, so it is usually better simply to refer users to the relevant exception.

If your library becomes aware that a user is **persistently infringing copyright**, it should have the right under its by-laws or policies eventually to bar the user from the library. This is a severe sanction in an educational institution and should clearly be the penultimate resort: the final resort in all cases being suspension or dismissal from the organisation.



Summary

Many national copyright laws have special provisions **for libraries** giving **exceptions or limitations to copyright**. E.g., it is often permissible to make copies for readers, for missing items or for exchanges with other libraries.

Copyright issues depend on the type of content, that can be public, commercial (printed and online), collaborative or derived from traditional knowledge.

Copyright affects many of the day-to-day activities of a library, the more so in an **online or digital environment**.

Libraries have to **acquire contents**, in form of physical copies or licences, and negotiate additional permissions. This process becomes more complex in the digital world.

Librarians have a responsibility to help ensure compliance with copyright law: while it may be unreasonable to expect librarians to assume full responsibility for everything their users do, they should try to **educate users about copyright**.



Exercises

The following five exercises will test your understanding of the concepts covered in the lesson and provide you with feedback.

Good luck!



Exercise 1

What is a work "in the public domain"?

- A work not subject to copyright.
- A work produced by a government.
- A work not subject to author's moral rights.

Select the answer of your choice

Exercise 2

Which is the purpose of the Creative Commons?

- To allow authors to openly exchange their works.
- To protect author's works through copyright laws.

Select the answer of your choice

Exercise 3

A licence sets out the terms on which digital content is sold. As a consequence, it's something that ...

- ... restricts what you can do with a content.
- ... extends what you can do with a content.

Select the answer of your choice

Exercise 4

For which kind of works is the acquisition more complex?

- Digital works.
- Printed works.

Select the answer of your choice

Exercise 5

Why should every library have a policy of respect for copyright law?

- Because the library is usually responsible for copyright infringement by its users.
- Because dealing with copyright infringement under the library's own rules is often simpler.

Select the answer of your choice

If you want to know more...

Online Resources:

The Creative Commons website: (<http://www.creativecommons.org>)

A Soros Foundation initiative to promote open access to scholarship:
(<http://www.soros.org/openaccess/>)

The IFRRO website: <http://www.ifrro.org/>

