

Copyright and archives: some problem spots

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BAAC, Tallinn 6.10.2011

Why is copyright important to archives ?

- Copyright law gives authors and other rights owners the exclusive right to control the uses of their works
- In the old library world, this was not a big problem. Libraries collected books and lent them to their customers. There was a functioning inter-library lending system
- In the world of digital audiovisual archiving, almost everything is related to copyright. Showing a digital file to a user in the library is a public performance. Even the making of a protection copy may be restricted by copyright

What is copyright

- Copyright is a set of exclusive rights granted to creators of original works and producers of recordings. It includes the right to copy, distribute and adapt the work and to perform it in public
- Copyright is born automatically and lasts 70 years from the death of the author(s) or 70 years from the first publication of a recording. Anonymous works are protected 70 years from first publication
- Copyright is universal because of international conventions
- In the EU, copyright is partly EU law and partly national

Orphan works: the black hole of copyright

- Orphan works are works which are still protected, but their author (or present owners) cannot be located
- It is illegal to use protected works without the permission of the rights owners. The fact that the owners cannot be found is no excuse. This can be a problem especially in large/scale digitisation projects
- Example: a newspaper article written in 1910 by a person with a common name. Who was he? When did he die? Who are his present successors?

Libraries and archives do not have any general exceptions in copyright law

- There are two ways to use a protected work: get a license (a permission from the rights owners), or an exception in the copyright law
- There is no general exception for fair use, research or study. The exceptions concerning libraries and archives are very detailed and limited in scope, making international cooperation difficult

Exceptions in Finnish copyright law (some examples)

- Public domain: copyright is limited in time
- Private copying is permitted, but there are limitations
- It is permitted to quote from published works
- Certain libraries and archives named in the law have the right to make preservation copies and show these copies to users on premises
- Some libraries have the right to make their customers copies of written works
- Extended collective licensing

Some success stories

- The national digital library
 - <http://digi.kansalliskirjasto.fi/index.html>
 - Newspapers, journals and ephemera
 - Online access to newspapers up to 1890 only, ephemera until 1944
 - Legal basis: public domain
 - More recent materials can only be used inside the library
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- The living archive (YLE)
 - <http://yle.fi/elavaarkisto>
 - Old radio and television programs, edited content only
 - Legal basis: collective agreements with rights owners
 - No plans to include all content. Domestic rights only

The need to harmonize exceptions

- Rights are universal, but exceptions national (even in EU)
- Copyright law has expanded rapidly, but the exceptions have been kept at a minimum
- We need a harmonization of the exceptions of copyright (and the rules of collective licensing) in order to make possible the co-operation of archives across borders

The universal rights of audiovisual archives?

- The universal declaration of human rights guarantees both the rights of authors and access to information. However, not all access can be free of charge. A hierarchy of rights is needed
- The right to make protection copies and use them in archival work (and break DRM codes if necessary)
- A solution to the orphan works problem
- Online access between research libraries in the EU
- Broader online access to archival materials through collective agreements

The new EU orphan works directive

- The proposed EU orphan works directive is an important admission that copyright law can be too much. It is an attempt to harmonize some exceptions in EU
- The directive has already been criticized from many sources
- It would only apply to writings and cinematographic works. It does not include printed music or sound recordings
- Digitization would only be allowed in the country of first publication. Did Estonia exist in 1910 (or 1950), and what were its borders then?
- Only web publishing would be permitted

What should audio archives demand

- The practical significance of the orphan works directive may be limited. However, printed music and sound recordings must be included in the directive to ensure that our field is taken into account also in the future
- The scope of the directive could also be broader in other aspects
- What is the viewpoint of audioVISUAL archives

What can be done to the directive, and to copyright in general

- Always complain. Changes in copyright law have always been the result of campaigns
- Publish studies and reports of your problems
- Send initiatives to politicians, members of national and European parliaments and the press. The orphan works directive will be decided this year
- Contact sister organizations (such as library associations)
- Contact rights owners and show them that archival use will be a benefit, not a threat
- Be prepared for a long campaign

Thank you for your attention

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