Copyright and the Library

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Background

No library plan is sufficient that does not give consideration to the thickening tangle of legal and financial issues surrounding copyright in the digital age. Originally intended in the early 17th Century to protect authors from unauthorized reproduction of their works by unscrupulous booksellers and printers, copyright has evolved primarily to protect the intellectual property interests of publishers, to the point that authors have to take care not to infringe the copyright of their own work. Before the convenience of electronic storage, internet distribution, and print-on-demand technologies, publishers had to layout considerable fixed costs per publication, having to estimate the size of their press run to amortize those costs over the number of items printed. A large press run lowered the cost per item, but overestimating the market for a publication wasted assets and filled warehouses with unwanted inventory. Because of the risks assumed by the publishing houses in bringing a work to print, authors typically surrendered ownership of their works in return for publishing with a reputable press. Financial remuneration was sometimes possible, but in the case of scholarly works, the chief reward was, and continues to be, the prestige. The presses which conducted “peer review” -- selecting subject experts as referees to determine a work’s suitability for publication-- offered better recognition, and therefore have been the most sought after by scholars and researchers.

The copyright regime in place today is largely designed to accommodate this arrangement whereby the creators of scholarly work or producers of research sign over their copyrights to publishing enterprises that bear the cost of printing and distribution. But as the new technologies for storing and retrieving information have greatly reduced the cost and the risk, the chief justification for signing over copyrights is the “prestige factor” of having one’s work exhibited through a big name publisher. But this prestige comes at a cost which many researchers --and librarians-- find increasingly objectionable. After all, the research is not usually commissioned by the publisher, but subsidized by the research institution. Likewise, the publisher pays little, if anything, for the editorial and peer-review work, as such services are performed by peers for small stipends, or simply for the scholarly renown. And yet, as publishers assume but a fraction of the intellectual labor costs, and as technology has
significantly lowered the costs of disseminating information, the price of mainstream publications has continued to rise for decades—in the case of journals, precipitously.

Libraries supporting research are therefore hostage to pricing schemes which reflect the overhead expenses of copyright-protected monopolies maintaining legacy print infrastructures, but which bear little relationship to the value added by the publishers. Libraries have responded across academia with the only option available to them, cutting acquisitions. Ironically, research materials are being priced out of the reach of the researcher by the researcher’s own adherence to the status quo of peer-review.

The struggle is now on to redefine ownership of intellectual property in the “information age.” In the mean time, the WMU Library must continue to meet the research needs of its patrons—doing so within its means and without antagonizing the traditional publishing interests holding copyright on needed research materials. Neither the library staff nor the legal researchers on the WMU faculty have expertise in the area of copyright law, a situation made even more difficult by the ambiguous status of an international university situated in Sweden but with a collection of printed works and electronic databases owned mostly by non-Swedish publishers. As the WMU Library grows in its collections and extends its international patronage, this situation needs to be redressed. It will be the librarian’s responsibility to develop a set of flexible policies that can protect the university from litigation in state regimes, and to get clarification from IMO and the UN on “international copyright.” The WMU library will meanwhile proceed in developing and sharing its collections according to the best practices available, adopting a liberal but defensible “Fair Use” policy, establishing—with representatives of the publishing industry and through in-house technologies—an equitable system of “digital rights management,” and promoting Open Access journals and repositories as viable alternatives to traditional venues of publication.

**Fair Use**

The university currently pays an annual license fee of about SEK 150 per full-time student (set to increase to SEK 200) to Bonus Presskopia, the Swedish Reproduction Rights Organization. This modest fee is intended as protection against possible publishers’ suits for violation of copyright. In return for this payment, WMU faculty members are allowed to copy up to “15 percent of the pages in the publication, but not more than 15 pages, in the same academic year and on behalf of the same students”, which roughly corresponds with the copying rights granted to individuals by the Swedish Copyright Law. Elsewhere the university posts the rules as permitting 5% of a given work, or one article from a journal issue, or one book chapter, to be copied for personal use for scholarly or research purposes only. But whether or not non-Swedish publishers accept the legitimacy of the university’s
“fair use” payments in accordance with Swedish Law, which recognizes “Kopimism” as a religion, the question for the library is its role in facilitating legitimate “personal” and “scholarly” use.

Library patrons have ready access to copiers and scanners, not to mention smart phones with digital cameras. In the face of this reality, WMU does not have the means to police the percentages of works copied per user or the sharing among users of privately copied materials. Library staff will ensure patrons know the rules, and will enforce those rules in the face of flagrant and open violations. Additionally, in its capacity as custodian of course reserves materials, the library will work with faculty to build and maintain curriculum-based reading collections that pass the “educational purposes” clause of typical copyright law, limiting access to members of the class, and only for the duration of the class. The university should meanwhile continue to pay copyright clearance fees until it is determined that they are not legally required or do not cover the materials being copied. Materials obtained digitally through Interlibrary Loans or commercial document services will be delivered with the appropriate copyright compliance notice.

**Digital Rights Management**

Copyright-compliant access to commercial digital materials is increasingly being handled by the vendors themselves. Journal aggregators provide access to particular titles to library users based on subscription arrangements. Providers of “e-book” services, such as Ebrary, Coutts, Dawson and other book vendors have their own built-in software controls to limit the number of simultaneous readers according to “copies” purchased. Other vendors are using Adobe’s “Digital Editions” for the same purpose. But not all DRM systems are equal. Cancelling an agreement with a vendor could mean cancelling access to books and articles that have been paid for, and prices and number of simultaneous users can vary by provider.

WMU intends to increase its use of these e-content services significantly, particularly in support of the academic curriculum, but also for research collections where appropriate. The Librarian and Assistant Librarian for Bibliographic Services will have joint responsibility for determining the best subscription packages and individual title purchases according to collection needs and library resources.

There are still many online sources of maritime information that do not have DRM systems implemented. In many cases, the library purchases subscription access to premium content web sites, online journals, and databases intended for a single user. As site-licensed access for universities and libraries is generally not offered, getting access for more users means
purchasing more accounts. In the case of e-books, the library also pays for individual chapters and monographs it downloads on behalf of patrons, from sources (such as the IMO) that do not necessarily accommodate transference from the purchaser (library) to third parties (requesting patrons).

It is the library’s position that, should an appropriate DRM mechanism be devised locally or in collaboration with the library community, it would be within the library’s rights to keep and distribute purchased content according to its usage rights at the time of purchase. For example, if the library were to cache *Lloyd’s List* in a daily archive, it should in theory be allowed to provide online access to three users simultaneously per daily issue in its archive, just as it could do with its archive of printed daily issues, because the library has purchased three subscriptions to *Lloyd’s List*. Lloyd’s and other vendors might of course disagree with the library’s claims to electronic access, and no locally-managed DRM system is currently available with such a degree of functionality, but it is important to state the principle as a working premise in the library’s acquisition of commercial digital content.

For the foreseeable future, Digital Rights Management of commercially provided electronic content will be an important part of library collections and services. But of growing importance is a movement among universities and research institutes that has the potential to make DRM a moot point. At the very least, the Open Access movement is revolutionizing rights in favor of the researcher.

**Open Access**

As previously observed, the producers of research and creators of scholarly articles and monographs rarely receive direct financial rewards for their publishing activities. But they are still inspired to have their work reach the widest possible audience. The conventional publishing houses, while reaching the audiences that can afford them, are otherwise an obstacle to the broadest possible dissemination of information. Open Access publications, by contrast, do not charge readers for access. Like most traditional scholarly presses, Open Access publishers also do not pay scientists and authors for their work. In fact, in many cases they require payment *from* the author, or the author’s research funding agency. But this should not be confused with “vanity publishing.” Open Access offers peer-review, and work does not get published simply because the author can fund the publication.

As unsettling as it might be for those accustomed to the traditional publishing regime, when authors fund their own publications in this way it reduces the net cost of bringing the information to the public. The creator makes a one-time payment for the cost of publishing, paying only the actual cost, but access to the published work is then free to the world.
The WMU library will seek out quality Open Access periodicals and endeavor to incorporate them into its collections and indexes. At present, there are only a handful of specifically maritime journals available as Open Access, although conventional publishers, perhaps seeing the handwriting on the wall, are starting to offer sample articles as Open Access for maritime titles that otherwise require proprietary access.

The library staff is also willing and ready to work with faculty on finding reputable Open Access journals in which to make their research and editorial contributions. In time, the library should be positioned to host Open Access journals on the library infrastructure.