

Digital Commonwealth Real Life Copyright

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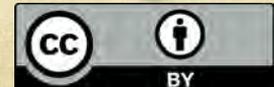
April 8, 2014

Practically Digital: Doing What it Takes

The 8th Annual Digital Commonwealth Conference

Hogan Center at Holy Cross in Worcester

What's
this
thing?



What's it all about?

- overview of copyright
- straight talk about what it's for
- fair use & library exceptions
- ways to think about copyright for content you create as well as using others' work.
- Creative Commons licenses and how they can help you share your collections responsibly.
- What we are doing about it.

What I do.

Leslie Jones Collection

Boston Public Library

Print Collection



Copyright (c) Leslie Jones.



Digital

common wealth

common good

What are you doing about it?

Copyright & Terms of Use

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Collection level & item level information – ‘all rights reserved’. Is this helpful?

speech, expression, inquiry

Thinking about the purpose of copyright & context.

Archives, libraries, museums

Preservation

Fire and politics as forces of destruction

Memory

Copyright as economic driver?

Social bargain of public domain

What is 'Intellectual Property'?

- Copyright
Protects creative expression
- Patent
Protects useful inventions
- Trademark
Protects corporate identities and products
- Trade secret
Protects formulas and processes that are not easily discovered

The Purpose of Copyright

Article 1, Section 8 of the U.S. Constitution

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Expressed in Title 17 of the United States Code

What is copyright?

Copyright is thought of as a bundle of rights.

They can travel together – or apart.

- The right to reproduce the work
- The right to distribute the work
- The right to prepare derivative works
- The right to perform the work
- The right to display the work
- The right to license any of the above to third parties



Donohue rebound against Holy Cross, March 16, 1951
Courtesy of Springfield College, Babson Library, Archives and Special Collections.

<https://www.digitalcommonwealth.org/search/commonwealth-oai:zw12z542h>

17 USC 102 Subject matter

Copyright protection subsists...in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Requirements for protection

- An original work of authorship
- Creativity (not much)
- Fixed in a tangible medium of expression

How long does © last? Where does it come from?

- Exists from the moment of creation
- In the US, life of the author plus 70 years
- ‘Formalities’ - © notice and register with the US Copyright Office
- No longer required but may be advised.
Required for statutory damages, to bring suit, burden of proof

What copyright protects

Copyright protects...

- Writing
- Choreography
- Music
- Visual art
- Film
- Architectural works

Copyright doesn't protect...

- Ideas
- Facts
- Titles
- Data
- Useful articles (that's patent)

102 Subject matter - originality

- Must be a new creation
- 2 people can independently come up with the same creation

102 Subject matter - fixation

- Creation must be tangible
- Must have some permanence



102 Subject matter - limitations

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it described, explained, illustrated, or embodied in such work.

Romeo & Juliet – West Side Story

Pi

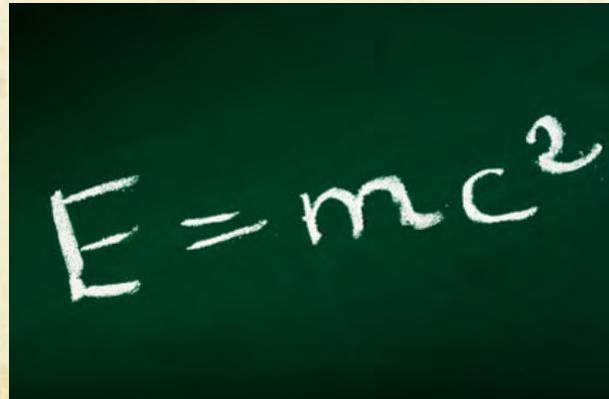
Sterling and Francine Clark Art Institute
No known copyright. 1901
Mary Ann Beinecke Decorative Art Collection



102 Subject matter - limitations

Copyright does not protect ideas or the representation of the ideas themselves.

Mathematical equations

A photograph of a chalkboard with the equation $E = mc^2$ written in white chalk. The chalkboard is dark green, and the equation is centered on the board.
$$E = mc^2$$

Section 103: Derivative works

Translations are part of the bundle.

Is this original?



The Public Domain

Works in the public domain are free for anyone to use.

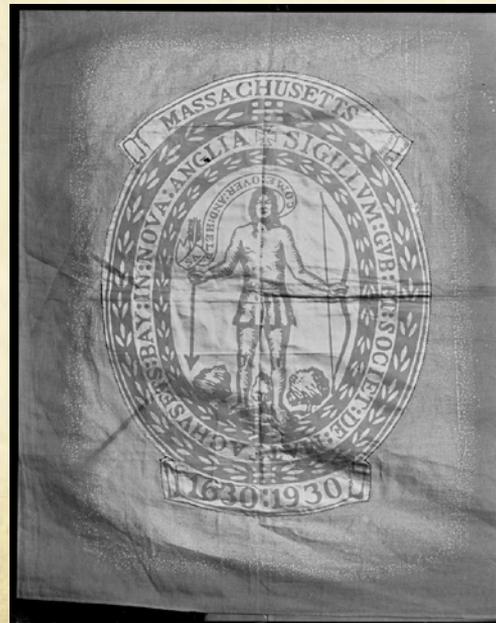
No permission required.

- In the US, works *published* before 1923 (sold, offered for sale, leased...)
- Some works published between 1923 and 1963, but 'publication' complicates determination
- Works by the United States Government

Section 105 - US Government works

Copyright protection is not available for any work of the United States Government, but the USG is not precluded from *receiving and holding* copyrights.

Federal cp State works



Leslie Jones
Collection, Boston
Public Library
Ca. 1917-1934



Article 1, Section 8 of the...?

The Congress shall have the power to...

...To promote the progress of science and useful arts, by **securing for limited times** to authors and inventors the exclusive right to their respective writings and discoveries.

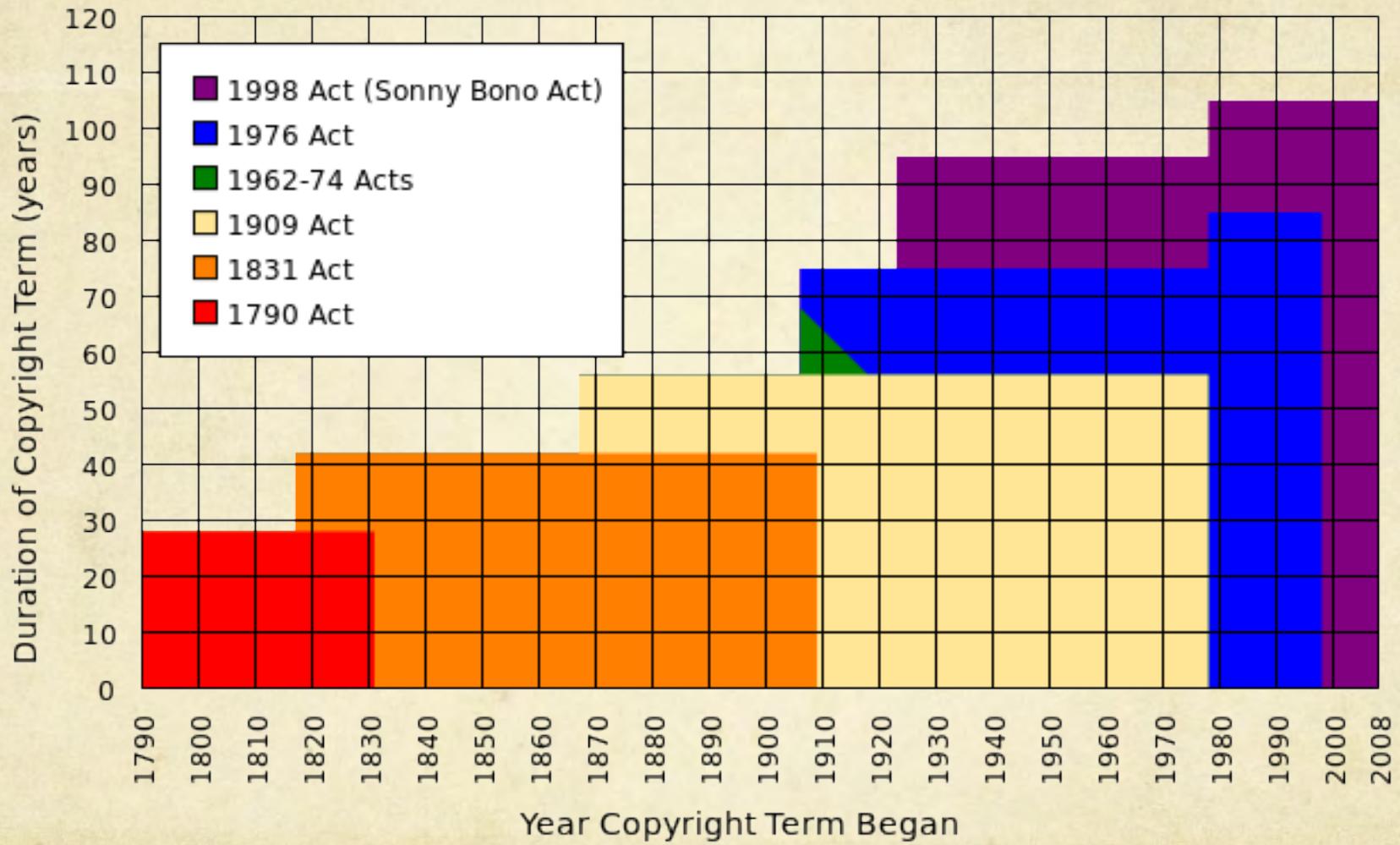
1790 → 14 + 14

1831 → 28 + 14

1909 → 28 + 28

1976 → life + 50

1998 → life + 70



Who is the copyright holder?

- The **creator** is usually the initial copyright holder. Often transferred or assigned by contract or license.
- If two or more people jointly create a work, they are **joint copyright** holders, with equal rights.
- With some exceptions, work created as a part of a person's employment is a **work made for hire**. Copyright belongs to the employer.



Using Copyrighted Work

Important exceptions

Limitations to exclusive rights



Dancing in Public Garden (note Hancock Tower), Back Bay, 1973

Spencer Grant

Boston Public Library, Print Department

©Spencer Grant, All rights reserved.

Fair Use – 17 USC 107

Limitation to the exclusive right of author – 2 steps forward, 1+ steps back

Permits use without permission for commentary, search engines, criticism, parody, news reporting, research, teaching, library archiving and scholarship.

1. The nature of the work (factual, creative)
2. The purpose of the use (educational, for-profit)
3. Amount of the work being used
4. Potential impact of use on the market for original.

Libraries & Archives – 17 USC 108

- Exception for libraries and archives
- Copying for preservation in case of damage, destruction, loss, theft
- Inter library loan
- Very technical.
- Print-centric. ‘The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news...’ unless in a book, journal or the like.
- What to do as technology changes? What is reasonable?
- 108(h)?

108(h) - craaazy

(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

Crazy Lobster, Elias Andrinopoulos, April 2010

Peabody Institute Library

Copyright of Creator, Contact host institution for more information.



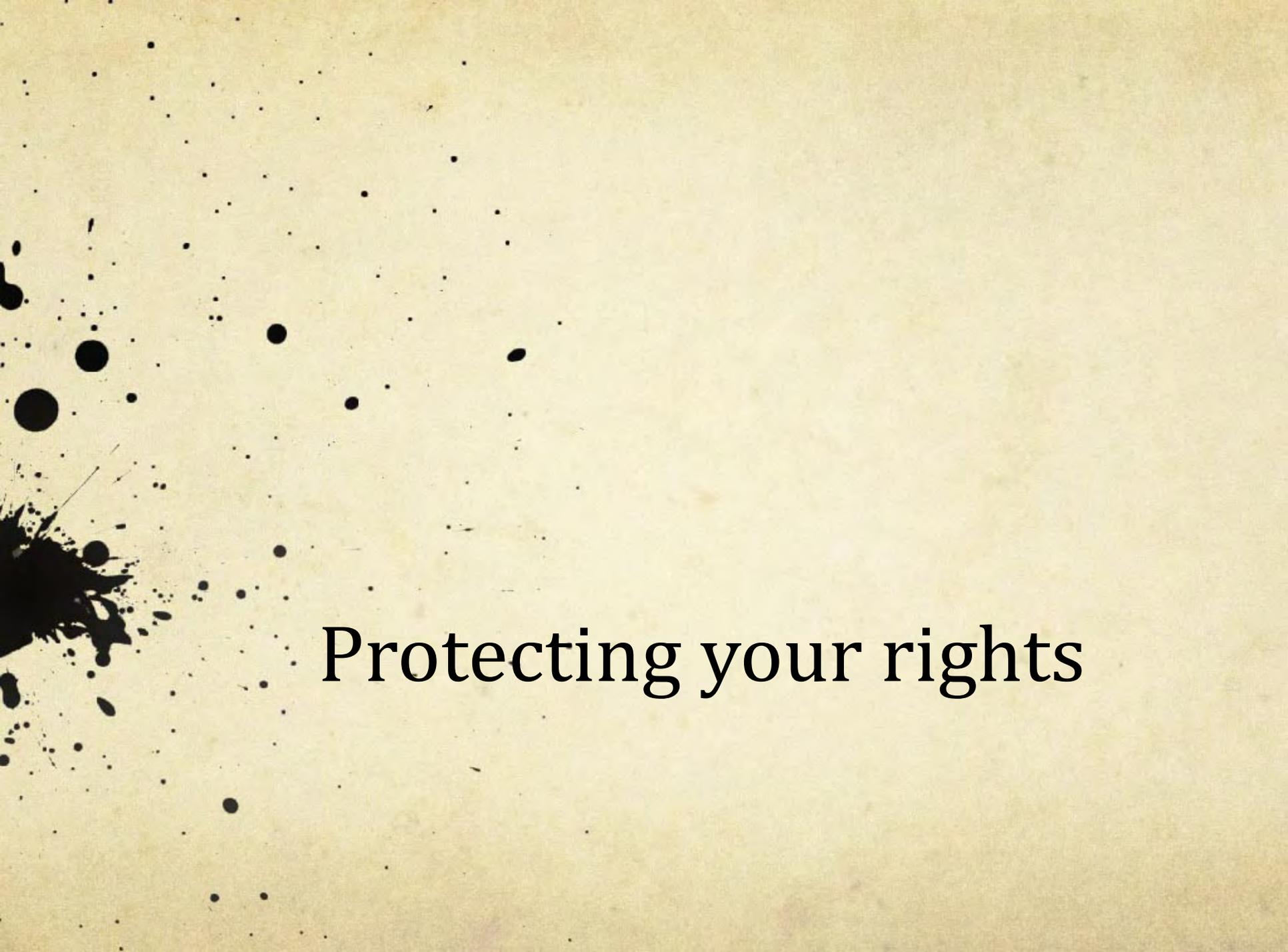
Permissions

- Begin the process as early as possible. Alas, failure to respond is not permission.
- Make your request in the manner preferred by the publisher, even if that manner is fax.
- Provide detailed information about the work you want to use and the way you plan to use it.
- Follow up regularly.

By same token, make it easy for people to get permission from you if its necessary (donor restrictions...).

Orphan works

- Can't figure out who the copyright holder is?
- Can't get a response from the person you think might be the copyright holder? Do you need permission?
- ... orphan work.
- One estimate: 75% of all books are out of print but still under copyright.
- Register's Report of 2006
<http://www.copyright.gov/orphan/orphan-report.pdf>
- Mass Digitization and Orphan Works
<http://www.copyright.gov/orphan/>
- Authors Guild v HathiTrust



Protecting your rights

Protecting 'your' rights

You as an individual. You as a steward.

As individual

Negotiate with the publisher - discuss

Make changes on the form the publisher sends you.

Attach an author addendum

Choose a publisher with a good author rights policy

Find publisher deposit policies at

<http://www.sherpa.ac.uk/romeo.php>

As steward for collections – ideas for acquisition agreements,
collecting info

Research Library Issues, Special Collections and Archives in the Digital
Age

<http://publications.arl.org/rli279/1>

Sharing your scholarship

SPARC has an addendum that requests a limited set of rights (journal articles).

<http://www.sparc.arl.org/resources/authors/addendum>

Other options at:

<http://scholars.sciencecommons.org/>

The aim is to keep the rights you need to be able to use and share your own work.

What is Open Access?

Free, permanent, full-text, online access to scientific and scholarly material, primarily research articles published in peer-reviewed journals.

Know what you sign

Keep track of your rights

ORCID persistent digital identifier – orcid.org

paper files

whatever works

Open Textbooks

Growing politics of textbooks, content, pricing, public policy

California Open Source Textbook Project <http://www.opensourcetext.org/>

Ecosystem of Content in Digital Commonwealth?

Who will use it? How do we facilitate that?



Creative Commons

Tell me what ya what,
what ya really, really want.

Creative Commons provides free legal tools
that let authors, scientists, artists, and
educators easily mark their creative work with
the freedoms they want it to carry.

Prospect House, Croquet on the Commons, 1861
Princeton Public Library, Princeton, MA
Rights status not evaluated.
Contact host institution for more information.



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what I really, really want.

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Lawyer



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Market failure: tragedy of the commons

- What is the tragedy of the commons?
- Rational actors will damage long term interests by depleting common goods in the absence of regulation (air pollution, forests...)
- Solutions?
 - Regulation
 - Encourage privatization
 - Collective ownership
 - Thoughts?

Market failure: tragedy of the anticommons

A breakdown of coordination in which a single resource has numerous rightsholders who prevent others from using it -frustrates achieving a socially desirable outcome.

[Wikipedia]

Multiple owners are endowed with overlapping rights.

Sound familiar?

Orphan works.

You don't get the whole bundle: limitations

- 17 USC 107 Fair Use
- 17 USC 108 Exceptions for Libraries and Archives for preservation, interlibrary loan

For these, you don't need permission and you don't need to pay under US law.

But you do need to know what they are and how to apply them.

Copyright takeaways...

- Protects original expression
- Requires at least a modicum of creativity
- No protection for sweat of the brow
- Important exceptions like fair use
- Layers

Practical Stuff

University of Michigan Digital Library Production Services (DLPS)

<http://www.lib.umich.edu/digital-library-production-service-dlps>

Workflow info here:

<http://www.lib.umich.edu/digital-library-production-service-dlps/starting-digitization-project>

There is a lot of info in the workflow - not just copyright.

Also look at the very simple permission we use for HathiTrust - its for very routine, low risk situations.

Look at the info and forms at:

[http://www.hathitrust.org/permissions agreement](http://www.hathitrust.org/permissions_agreement)

Global is practical.

Europeana - PD0 metadata

EU orphan works directive, October 25, 2012

New Open Government Licenses - opportunity and limits

New UK exceptions - much like fair use

DPLA & Europeana

Rights statements. Right now.

DPLA/Europeana committee

Framework with a set of actionable, usable rights statements

‘Rights’ is a free text field that is often not clear or uses boiler plate contact X institution for permission to use statements.

‘Those are the statements we want to avoid and instead work together to create actionable statements.’

Will have more guidance after committee work starts - that will shape an education campaign

Europeana's 13 rights statements that they use now as an example of actionable statements. <http://pro.europeana.eu/available-rights-statements>

What I'm doing about it.

- Copyright Review Management System and IMLS
 - [Slides for US and World]
- HathiTrust – global, language, collection building aspirations, cultural – different notions
- HathiTrust rights statements
- Improving relevant rights metadata in cataloguing
- Working together

Perspective: 1710

Turmoil.

Fight for control of resources, ideas, power.

Statute of Anne.

Copyright as control in England.

Framers of Constitution immersed in and responding to that world.

Conflict of beliefs, resources.

What would Ben do?



Benjamin Franklin Pulling Electricity from the Sky, (detail) 1816
Benjamin West, Philadelphia Museum of Art
<http://www.philamuseum.org/collections/permanent/57044.html>



We live in their
future.

(digital) common wealth

What they did about it and where its gotten us.

Where will we go from here?

Profiles of the Future, WGBH
January 2, 1961
NAFB Contact host institution for more
information.

