



Copyright in an academic library context: Part 1

Blog post by Kyle Rother
28 May 2014

Understanding the big 'C'

Most people will have at least passing familiarity with the word 'copyright'. Even if you don't really know what it means, you will have almost certainly seen that 'C' in a circle, accompanied by a year, and the words 'All rights reserved', which essentially means 'You shall not copy'. You may even have read a couple of copyright disclaimers – they're near impossible to avoid, but quite easy to ignore. Depending on your line of work, you may have more exposure to the perils of copyright than the average citizen, and it's fair to assume that if you are engaged in the academic circus, you have, at some point, had to make copyright your business.

In the interest of a common understanding, let's define the concept. Copyright forms – along with trademarks and patents – one of the three main pillars of intellectual property, an esoteric branch of the law. It is essentially concerned with providing **exclusive rights** to exploit **material expressions** of **creative products** or **products of the mind**. Unlike both trademarks and patents, however, copyright vests automatically with the creator from the moment of creation, and does not require registration for enforcement.

The point about 'material expression' is essential, as copyright does not protect ideas, only their embodiment in a physical format. This is known as the 'idea/expression dichotomy' and should sound familiar to any librarian as it finds an analogy in the [functional requirements for bibliographic records \(FRBR\)](#) terminology. By this analogy, copyright would vest not in the 'work' as such, but rather in an 'expression' or 'manifestation'. As the maxim goes: "There is no copyright in ideas."

Copyright is technically a bundle of exclusive rights to do or permit to have done with a work the following: distribute it; reproduce it; publish it; perform it in public or broadcast it; adapt it. Basically, this gives a copyright holder the right to prevent other people from doing with their work any of these things without their permission. These are some of the commercial rights, as it were, and as rights of property, any of them can be ceded by the creator to someone else. They are also the subject of civil legislation, in the case of South Africa through the [Copyright Act No. 98 of 1978](#).

Distinct from, but inextricably linked with these are certain so-called 'rights of personality', protected by the common law. These are known as 'moral rights', and vest the creator of a work with the right to be acknowledged as such, and to object to the destruction and/or mutilation, or any other treatment of their work which they deem to be derogatory. I doubt there is a single fresher at university who has not had the fear of plagiarism struck into them, and it is the first of these moral rights which is violated in an act of plagiarism. Unlike commercial rights, moral rights are inalienable, and cannot be transferred.

There are also certain so-called 'limitations and exceptions' to copyright, the most familiar of these being probably the 'fair dealings' which provide for, among other things, the use of copyright works for purposes of research and private study. These are known as 'user's rights'.

As a librarian, it is your job to mediate access to copyright works. You are permitted to do this by the 'doctrine of first sale', which provides that the owner of a legitimate copy of a work is free to use and dispose of that copy as they see fit. This is essentially a limitation on the copyright holder's right to distribute, but not to reproduce.

Academics and scholars find themselves in the interesting position of falling on both sides of the copyright equation. If they are engaged in research, they will most likely be consuming copyright work on a biblical scale. However, they will also most likely be producing copyright work of their own. They will be both a 'user' and a 'creator'.

It is possible for a copyright holder to license their work or certain parts of their copyright to others. This is what happens, for instance, when an academic publishes a book or journal article. They enter into a license agreement with a publisher, allowing that publisher to reproduce and distribute their work. This is where it's important to distinguish between commercial and moral rights, since even by transferring their commercial rights to a publisher, an academic still retains their right to be acknowledged as the creator of a work.

One of the main roles of commercial publication is to provide a means to disseminate works. In the previous/current-but-changing model of scholarly communication, entering into an agreement which allowed a publisher to reproduce and distribute a work in exchange for deriving financial benefit from it was an expedient – if not entirely pragmatic – way of getting research out. This gave rise to the [serials crisis](#) in the early 2000's, in which universities were financing both the creation of as well as access to research. This has been one of the driving forces behind the rise of the [Open Access movement](#) in the last decade.

With the rapid expansion of the internet and the explosion of digital technology, as well as the growth of the Open Access movement, it has increasingly become both easier and more necessary for individuals to make their work available to a wider community, with fewer restrictions. As it became easier to circumvent the conventional publication model, a need arose to protect copyright and articulate licenses outside of the traditional agreements with publishers. There has also been a gradual shift in mindset away from the maximalist, wholesale protection of copyright, towards a more nuanced understanding of the way intellectual resources function within society, and the need for sharing of knowledge. Enter Creative Commons, and that is the subject of part 2.

by Kyle Rother
CC-BY-SA
[Blog post](#)



Add comment

Your name

Subject

Comment *

Text format Filtered HTML ▾

[More information about text formats ?](#)

Web page addresses and e-mail addresses turn into links automatically.

Allowed HTML tags: <a> <cite> <blockquote> <code> <dl> <dt> <dd>

Lines and paragraphs break automatically.

-
- [Home](#)
 - [About Us](#)
 - [Output](#)
 - [Events](#)
 - [Blog](#)
 - [Support](#)
 - [Contact Us](#)

This site and its contents are licensed in terms of a [Creative Commons Attribution Share Alike](#) license, unless specified otherwise - Open UCT 2012.

A [Drupal Website](#) by 2Stroke Interactive