

On copyright

Copyright in the networked world: copyright status facts

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Keywords

Copyright, USA

Abstract

Libraries tend to make assumptions about copyright. The assumption is that any work published since 1923 has copyright protection. This article is about how to discover key facts about the copyright status of a work using Copyright Office publications and the records of the Copyright Office itself. One question for libraries is whether it is worth the time and trouble to check the Copyright Office records. This depends both on the value of pursuing particular projects, and on how likely it is that a particular type of work fell into public domain through some failure to comply with all the legal formalities. A few preliminary statistics are provided.

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Library Hi Tech
Volume 19 · Number 1 · 2001 · pp. 99–103
© MCB University Press · ISSN 0737-8831

Facts that matter

Libraries tend to make assumptions about copyright. In the USA in particular, the assumption is that any work published since 1923 has copyright protection. People debate fair use, educational exemptions, and problems with getting permissions, but neglect to check the facts about whether a particular work genuinely qualifies for protection. For some works, this makes sense. Any original work created since 1989 in the USA has automatic protection from the moment of fixation, regardless of registration, copyright notification, or any other formalities. But earlier works do not. Even works published between 1978 and 1988 could lose their copyright protection under certain circumstances.

This article is about how to discover key facts about the copyright status of a work using Copyright Office publications and the records of the Copyright Office itself. The value of such research varies with the particular work and its date of publication, and the techniques apply only to published works. All unpublished works have statutory protection until at least 2002 for even the oldest items.

The bottom line is that a work that a library wants to reproduce digitally or which a faculty member wants to use on a course Website might well be in the public domain. And it might be in the public domain despite what putative rights holders claim. Too often corporate permissions offices assume ownership rights which they may never have checked and might have trouble proving.

Periods that matter

Exactly which facts matter depends on the publication date. Because of the 1909, 1976, 1988, and 1992 changes to the US copyright law, there are four distinct periods to consider.

1923 to 1963

Works published in the USA between 1923 and 1963 not only required a copyright notice on the work, but also registration and renewal. The first and easiest fact to check is whether a notice

appears on the work. The proper form for a notice is either the word “copyright”, the abbreviation “copyr.”, or the symbol ©, plus the date and name of the rights holder. Courts have, however, shown broad tolerance for minor errors. Omission of the notice puts a published work from this period into public domain. No further checking is needed.

If a notice is there, then the work needed to be registered and renewed. Registration did not have to take place immediately: “Works published with notice prior to 1978 may be registered at any time within the first 28 year term” (US Copyright Office, 2000, p. 4). But registration was necessary, which meant filling out a form and sending it in to the Copyright Office with a fee. The fee varied over time, but might reasonably be considered equal to a dinner for two at a moderate restaurant. It was worth paying for anyone who wanted to protect a work and perhaps earn money from it. The registration process was a waste of time and money for people and groups whose chief interest lay in spreading a message. For commercially published books and journals, the odds of full compliance were probably high. The smaller and more irregular the publisher, the greater the likelihood that forms were neglected and fee left unpaid.

Twenty-eight years is not a period that matches any ordinary and obvious anniversary in American culture. People and organizations that had no reliable reminder system for copyright renewals might well overlook the critical year. Records from 28 years past could also be faulty, especially in an era of paper-based information when folders that old might be misfiled or languish half-inaccessible in remote storage or unused file drawers. Commercially valuable works that generate ongoing profits would certainly get renewed. Works with recent or imminent prospects probably would too. But most protected items would fall into neither category. The trouble and expense of renewal (again, there was a fee) would tend to discourage compliance. This means that such works are well worth investigating.

1964 to 1977

The Copyright Renewal Act of 1992 eliminated the necessity for renewing works published with

a proper notice and registered with the Copyright Office during this period. Omission of the notice or failure to register would still put a work into public domain.

1978 to 1988

The Copyright Act of 1976 made registration unnecessary, but still required a notice of copyright. But a missing notice did not automatically put a work into public domain: “. . . omission could have been cured by registration before or within five years of publication by adding the notice to copies already published in the United States after discovery of the omission” (US Copyright Office, 2000, p. 7). This means that a work published without notice during this period could be worth checking. Again, major commercial publishers were unlikely to have made such an error, but many gray literature items whose distribution was sufficiently public to fit the definition of “published” could.

1989 to the present

Works published in the USA during this period have copyright protection regardless of any formalities. For them, facts about notice, registration, and renewal are irrelevant. But at this point, it is only a short period.

Sources that matter

The primary source is the published work itself. The notice may be on the cover, the title page, the verso of the title page, at the beginning or end of a collective work, or potentially other places plausible enough to meet the legal requirements. It is probably not necessary to check each page of a long text, but acceptable notices are easy to overlook. It may be wise to have more than one person check.

Online

The online files date from 1978. At present they are available via Telnet from the Copyright Web page[1]. One file contains monographs (“Copyright Office History Monographs” or COHM) and another serials (“Copyright Office History Serials” or COHS). The interface uses the mainframe-era LOCIS system, and is less

than user-friendly. But the records appear to be fairly complete and reliable, and are available from anywhere in the world. The monographic file contains both original registrations and renewals. The serials file appears to be “limited” (US Copyright Office, 1999, p. 4).

Print

The *Catalog of Copyright Entries* contains records from 1891 through 1978. Libraries which have a full run of this make it possible to do substantial registration and renewal checking without going to the Library of Congress in Washington, DC. But it has several failings:

- Since the *Catalog* does not include entries for assignments or other recorded documents, it cannot be used for searches involving the ownership of rights.
- The *Catalog* entry contains the essential facts concerning a registration, but is not a verbatim transcript of the registration record. It does not contain the address of the copyright claimant (US Copyright Office, 1999, p. 2).

The latter bullet point is serious flaw for checking whether a work was registered or renewed. It makes the printed work useless in tracking down rights holders to ask permission, if a work complied with all formalities. But the former point is the critical one. Assignments of copyrights are common enough, and the lack of this information makes a negative result of a known-item search unreliable.

Card catalogs

The Copyright Office catalog room is on the fourth floor of the James Madison Memorial building of the Library of Congress, just south of the Capitol. Its hours are limited: currently 8:30 to 5:00, Monday through Friday, except for federal holidays. There are some modest registration requirements before a person is supposed to use the catalog, though in fact persons who know what they are doing can just walk in and begin working, if the bibliographer happens temporarily to be away. No one should attempt this without studying key Copyright Office bulletins, especially No. 23, which explains the peculiarities of each section. Even then, the bibliographer’s specialized knowledge

can be invaluable. It is worth taking the time to make that person’s acquaintance and to explain what is being looked for.

The catalog rooms (there are actually several) have a strong 1970s aura, which means they are not laptop-friendly. It is a massive catalog: 41 million cards (US Copyright Office, 1999, p. 1). Most of the cabinets are over five feet tall. Some have pull-out shelves that are just adequate for balancing a card drawer. Each aisle has a few cabinets the height of a stand-up table, which gives a bit more space to peruse a drawer and make notes at the same time. The rooms have no free tables to use as workspaces, and of course no power outlets for plugging in laptops. A row of computers at the front connects to the online catalog. Lighting is good, and the signage is generous, if not always helpful.

Signage is important because of all the complex divisions of the catalog and the warren-like organization of the space. It helps that the drawers of each cabinet are color coded by time period:

- 1790-1870;
- 1870-1897;
- 1898-1937;
- 1938-1945;
- 1946-1954;
- 1955-1970;
- 1971-1977.

Each period represents a particular filing system. For example, the 1898-1937 period has separate sections for books, periodicals, music, dramas, graphic arts, commercial prints and labels, and renewals. The period 1938-1945 interfiles all of these categories, and includes added entry cards.

There are also filing quirks to observe. The interfiling of Mac and Mc will seem quite ordinary to most librarians of a certain age, but the catalog employs no consistent romanization system, and its cross-referencing will not always catch variants. Multi-part names (e.g. ones with van or de prefixes) could appear under any or all parts. Corporate entities suffer similar problems. Paying local experts to do known-item searches is probably money well spent.

Despite these complexities, the catalog is the best source for authoritative information about

registration and renewal. Some of the cards (especially in the older drawers) appear to be original documents. No search for pre-1978 copyright information can be complete without checking here.

Caveats

Probably everyone who worked in libraries in the days before online catalogs knows some story about a patron tearing out a card to go look for the book. It would be surprising if a publicly accessible facility like the Copyright Office card catalog had not lost entries to a similar fate. Anyone who has ever filed cards in a catalog knows how easily inadvertent mistakes can be made. And even a small filing error in a huge catalog can land an entry so far from its proper location that no intentional search is likely to find it. This is one of the reasons why the Library of Congress uses such cautious language on its American Memory Web site for items believed to be in public domain[2].

Other caveats have to do with search errors. Some are due to misunderstanding the complex divisions of the catalog, others are due to assignments changing the name of the rights holder, and still others are due to inaccurate citations because of inadvertent misspellings, words left out, or words reversed. Human error is also an important factor. I watched as one of the Copyright Office bibliographers looked for works by Aimee Semple McPherson. We both agreed that we were looking in the right place with the right spelling. Later I found entries for her in the same drawer by sheer chance. Were they misfiled, or had we looked in the wrong place? Unfortunately, everything looked right to me both times.

The most important caveat to remember about searching for copyright registration and renewal information is that a negative result is no guarantee that a work is in public domain. It is, however, an important indicator of good intentions in the unlikely event that someone sues. And since libraries almost never get sued for copyright violations, an accidental infringement is likely at worst to result in a letter asking that a work be removed.

Conclusions and further research

Guarantees are almost impossible when dealing with copyright questions. Even a permission from a putative rights holder can be worthless, if the rights in fact belong to someone else. Those who insist on certainty may prefer to avoid dealing with copyright issues.

The real question for libraries is whether it is worth the time and trouble to check the Copyright Office records for information about registration and renewal. This depends both on the value of pursuing particular projects, and on how likely it is that a particular type of work fell into public domain through some failure to comply with all the legal formalities. At present there are no statistics to suggest how likely this is.

On a recent trip to Washington, DC, I looked at a small sample of records to see what kinds of information might be learned. I went card by card through one drawer of the 1955-1970 section, and noted each renewal record. The renewal records were easy to recognize because of the distinctive “R” number. I found 60 of them before my time ran out. No one should imagine that this tiny study offers any scientific validity, but the results were interesting. The breakdown of these 60 renewals by type was:

- (1) Music = 32 or 53 per cent.
- (2) Books = 22 or 37 per cent:
 - Fiction = 8 or ~13 per cent;
 - Non-fiction = 14 or ~23 per cent.
- (3) Plays = 6 or 10 per cent.

The sample consisted of about 75 per cent of one catalog drawer in a set of 6,392 for this period, or 0.011733 per cent of the total, and the idiosyncrasies of these records should be noted. The non-fiction books were almost all chemistry texts which a single author systematically renewed. The plays also came from just a couple of authors. Nonetheless, the striking ratio of music to other works raises questions about whether music was more likely to be renewed than other works – perhaps because of its potential for revival or reuse. Music did not appear to be anything like that proportion of the new registrations.

Clearly more research (and more systematic research) is needed.

Notes

- 1 <http://www.loc.gov/copyright/>
- 2 <http://memory.loc.gov/ammem/wpaposters/res.html>

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