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Copyright, Fair Use, and the Creative Commons in the 21st century

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Abstract

As our daily lives become consumed with the World Wide Web and all it has to offer, I question how we view or engage the notion of intellectual property. Is there a better way to share our ideas in our current technological climate without misusing or breaking the laws of Copyright? Is Creative Commons licensing a solution? This paper will briefly look at the World Wide Web and how Copyright law, fair use, and the Creative Commons apply in the 21st century.

Introduction

The ways in which we communicate in the 21st century have drastically changed with the ease of access to the World Wide Web. We have quickly become a digital nation. In 1996 Koos & Smith-Shank stated, "When the World Wide Web first went mainstream in the mid-1990's people saw it primarily as a place to store and surf for information. Slow dial-up connections took forever to connect and once you finally got online, downloading files seemed to take an eternity. Still we flocked to the web by the millions." [1] Eleven years later, Sheryl Nussbaum-Beach stated, "Web 2.0 tools and services like blogs, wikis, podcasts, media sharing sites, micro blogging, social networks, and virtual worlds are now used daily by millions of people to connect, communicate, collaborate, create, and share with others." [2] Today I feel we live in a world where the Internet has become the latest and greatest quick fix and I am concerned that we have lost sight of how we find, create, and use information. I worry we have become a society of individuals that rely on databases such as Google for all our answers. I question whether we are a society that understands the impact creation has on the Intellectual Commons. Do we understand the laws of Copyright, and how to use and share information in our current technological climate? Are we aware that there are solutions such as Creative Commons licensing? In this paper I will briefly explain the notions of Copyright and the Creative Commons. My hope is that as the World Wide Web continues to prosper, that users of the web will recognize the importance of the Intellectual Commons and the benefits that creation and sharing can have on a society.

Copyright

I think Molly Kleinman, a librarian from the University of Michigan said it best: "Every librarian knows at least one thing about copyright: It's confusing. US Copyright law was written by lawyers for lawyers and that makes it difficult for regular humans to understand. This is particularly troublesome because millions of people deal with copyright every day with the movies we watch, the books we read, the music we listen to, and the web pages we surf, these

are all Copyrighted.” [3] One of the problems often faced in a library is educating patrons about the importance of copyright and intellectual property. I find individuals misreading the library as a place where information is free. Many patrons assume that whatever information or answers they find they may use in any manner they choose. What is often forgotten is that the library does not own any information per se. The library purchases rights to view information and loan out materials so that patrons may use resources in responsible ways. Therefore, it is the responsibility of the individual to know the laws of copyright and to use the laws properly. A few copyright basics can be helpful. “[Copyright] happens automatically and no registration or © is required. Almost everything is copyrighted unless it is very old or a US government document. It lasts a very long time, the life of the author plus 70 years. It comes with a set of exclusive rights that the copy-right holder can keep, give away, or share. There are some exceptions to those exclusive rights that allow for fair use and some education uses. It only protects creative expression. Facts, ideas, titles, and data are not subject of Copyright. Neither are useful objects or those protected by patent.” [3] So if you own Copyright you can prevent: reproduction, distribution, prep derivative works (based on other works), public performance or public display (reading/watching film etc...). [4] When talking about Copyright we cannot forget about Fair Use. Fair use allows individuals to use certain Copyrighted materials without asking permission. Kleinman points out that “there are no hard and fast rules governing Fair Use and that many organizations release guidelines for their employees stating that a certain number of works or pages qualify as Fair Use, but those guidelines are not based in law, they’re based on lawyers’ assessment of risk.” [3]

Instead of clear rules, Copyright law provides four factors that must be considered in determining whether or not a use is fair:

- 1) The purpose and character of the use: is it commercial, or is it non-profit, educational, or a parody? [3]
- 2) The nature of the Copyrighted work: is it highly creative work, like a song, or mostly factual work like a news report? [3]
- 3) The amount and sustainability of the portion used in the relation to the Copyrighted work as a whole: will you be using a small fraction of the work, or do you want to use the whole thing? [3]
- 4) The effect of the use upon the potential market for or value of the Copyrighted work: is your use likely to damage sales of the original work (this can be hardest to determine) [3]

An example of when fair use is permitted would be handing out photocopies in a classroom for educational purposes. However if you continually use the same article, or handouts, year after year, at what point does this become an infringement on Copyright law? [3] If you choose to post a link to a public website, suddenly the entire world has access to this information. However, linking to an article that your library has access to in a password-protected environment would more likely be considered fair use. [3] The important thing to remember is that fair use is not risk free; it’s flexible. Whether you will take the risk and at what level really is the question. [4] I once heard it stated; think about how you would feel if your intellectual property were being misused. But the real issue that we have to keep coming back to is how we can assess damages

in the Copyright world. If it's a rule written by lawyers, aren't they really the ones who decide what is fair and what is not? [4] Let's face it; doesn't this all only apply if you get caught?

Creative Commons

A good solution that I feel we have for dealing with intellectual property and issues of Copyright in the 21st century is Creative Commons licensing. "Creative Commons (CC) is a non-profit organization devoted to expanding the range of creative works available for others to build upon legally and to share." [5] The organization has released several Copyright licenses that are free to the public, and these licenses give creators of information the opportunity to express easily which rights they reserve and which rights they waive so that others may fairly use their information. [5] Although many individuals and organizations use Creative Commons licensing, Wikipedia is one of the most notable web-based projects. [5]

Four major conditions of the Creative Commons are listed below: [6]

Attribution (BY), requiring attribution to the original author;

Share Alike (SA), allowing derivative works under the same or a similar license (later or jurisdiction version);

Non-Commercial (NC), requiring the work is not used for commercial purposes;

No Derivative Works (ND), allowing only the original work, without derivatives.
When using these conditions of the Creative Commons, six major licenses may be properly used including: Attribution, Attribution ShareAlike, Attribution No Derivatives, Attribution Noncommercial, Attribution Noncommercial ShareAlike, and Attribution Noncommercial No Derivatives. [7]

The mission of the Creative Commons is to, "develop, support, and steward legal and technical infrastructure that maximizes digital creativity, sharing, and innovation." [6] As stated on their website, Creative Commons believes:

"the idea of universal access to research, education, and culture is made possible by the Internet, but our legal and social systems don't always allow that idea to be realized. Copyright was created long before the emergence of the Internet, which can make it hard to legally perform actions we take for granted on the network: copy, paste, edit source, and post to the Web. The default setting of Copyright law requires all of these actions to have explicit permission, granted in advance, whether you're an artist, teacher, scientist, librarian, policymaker, or just a regular user. To achieve the vision of universal access, someone needed to provide a free, public, and standardized infrastructure that creates a balance between the reality of the Internet and the reality of Copyright laws". [6]

There is plenty of criticism about the Creative Commons. Some critics support revision of the Copyright act and believe Creative Commons is merely a contractual quick fix that dissuades the public from mobilizing toward a real revision of the Copyright Act and Copyright term lengths. [8] In another critique Jeffrey Harrison believes the Creative Commons system to be too lax, and

cautions against “allowing some of our most precious resources – the creativity of individuals – to be simply tossed into the commons to be exploited by whomever has spare time and a magic marker.” [9] “But really Creative Commons works to counter what the organization considers to be a dominant and increasingly restrictive permission culture. According to Lawrence Lessig, founder of Creative Commons, it is a culture in which creators get to create only with the permission of the powerful, or of creators from the past.” [10] So in the 21st Century, what kind of rights do we have as creators and sharers of information, and should we be seeking out more solutions such as Creative Commons?

CONCLUSION:

As we continue to create and access information daily, we need to think more critically about intellectual property and what role it plays in our lives. We must ask ourselves how we are using the World Wide Web and whether we are properly following the laws of Copyright. Are we using information in a way that is fair, and will that benefit the growth of the intellectual commons? The issues of Copyright and Fair Use must be recognized for the important role they play in our current technological climate. We must look to solutions such as the Creative Commons to help negotiate the laws of Copyright. Finally, we must recognize the benefits that a society gains from communities that share.

Endnotes

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