

## Un-fair Use

United States copyright law was envisioned to promote the increase of knowledge, the progress of science, and the development of ideas. A critical part of the law provides the creator of a work with a bundle of rights to that work for a specific period of time. While these rights enable writers such as J K Rowling to become very wealthy (she is the first person to become a billionaire by writing novels), often they inhibit the advancement of knowledge. As a case in point recently I was helping a researcher in New Jersey obtain a copy of a Vietnam War unit history. The history, printed at a copy store in a small town about thirty miles north of our library, went out of business about two decades ago. The author now in his mid-90s has a last-known address in Florida. Attempts at contacting him by phone were not successful. Our library has the only known recorded copy in World Cat. How much time should the library or the researcher spend trying to track down the owner of this “orphan work?”

Another recent case involving copyright concerns a manuscript collection that consists of typescript copies of civil war letters the original of which are in the Wisconsin Historical Society. An undergraduate student at the University of Wisconsin wanted us to scan the typescripts for his use in a term paper. Note that I said “typescripts,” clearly the original holograph letters had at some point been transcribed by a researcher (maybe for copyright purposes read “reformatted”?) As new generations of students no longer can read cursive writing, these typescripts become a more valuable research tool for undergraduates. Who owns the rights to these letters, the Wisconsin Historical Society or the holder of the typescripts?

Many repositories have large collections of photography. We recently purchased several albums of photographs of missionaries in China in the 1920s and 1930s. While the library owns the photographs, the reproduction rights remain with the photographer.

Thus we have many collections where we own the prints and negatives, but not the rights to these visual images. It’s possible that the missionary’s heirs sold the rights along with the photos, but how do you

know for sure? How can you promote the increase of knowledge of materials that you do not own the rights to?

These questions involve balancing the rights of the copyright holder with that the benefit to society by the transmission of knowledge. Some fair use questions can be answered by the Association of Research Libraries’ *Code of Best Practices for Fair Use for Academic and Research Libraries* (<http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>). However the larger issue of when does “fair use” become “unfair” is not so easily answered. It seems to me that in many cases the copyright law, while protecting the rights of some authors to become billionaires, actually inhibits the free flow of knowledge. Libraries and libraries need additional protection from unfair use suits relating to so-called orphan works. While librarians do not usually attempt to copy entire Harry Potter novels, what about small unit histories, of interest to only a handful of veterans? Should the copyright law prevent these veterans from enjoying the story of their unit? I think we need to go back to original intent of the law, the increase of knowledge, and develop legislation that protects libraries from unfair use claims.

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