Digital Library of the Caribbean (dLOC) Manual
Guide to Permissions & Copyright/Public Domain Review

Introduction

In addition to digitizing materials following preservation standards, dLOC further supports preservation and access by ensuring that all applicable rights are respected and supported by seeking Internet distribution permissions as needed. Internet distribution permissions can be required for cultural and documentary heritage rights, privacy rights, and copyright.

This guide provides an overview of rights and responsibilities related to copyright and moral rights for digitization projects. The guide includes step-by-step procedures used by dLOC partners for evaluating rights and requesting permissions.

Permissions-Based Model

dLOC relies on a permissions-based model. In this model, dLOC members request permissions as the primary method for ensuring compliance with copyright, moral rights, and other applicable rights. Using a permissions model allows dLOC to provide equitable support for rights-holders and the public good. This is especially helpful for dLOC as an international collaborative, with different rights protected and understood in different countries and institutions. The permissions model supports discussing rights as a collaborative opportunity. The permissions-based model complements the process of reviewing materials for their status under copyright or within the public domain.

Rights & Responsibilities

Copyright law has changed dramatically in the US in the last 50 years and even more so when viewed on an international scale. Copyright is a property right that seeks to balance the rights of the creator with the rights of the global society. Copyright is but one of many rights and responsibilities that must be considered when digitizing materials. Digitization makes use of new and emerging technologies, technologies whose use may not yet have applicable laws supporting their use for the global public good.

Moral Rights

In addition to copyright, creators may also retain moral rights to their works. Moral rights are generally the creator's right of attribution and right of integrity for the work, but can include many specific rights depending on the type of work and the law of the country. Moral rights are separate from other rights,

and creators retain moral rights even after transferring copyright or ownership of the work. dLOC supports moral rights by ensuring proper attribution is included for materials, for their creators and the partner institution that contributing materials. Moral rights also grant creators the right to integrity which offers protection for holism of the creator's work. dLOC supports these rights again by ensuring that works are presented and preserved as artifacts. The U.S. does not yet fully recognize moral rights, limiting support only to visual art creators' right of attribution, right of integrity, and right to prevent destruction of their work (1990 Visual Artists Rights Act). The U.S. has a reductive view of moral rights compared to many countries. France offers a counter model where moral rights may survive the expiration of copyright.

Cultural Heritage Rights

In many countries, cultural heritage and public institutions have specific additional rights and responsibilities. These may include provisions to support access, preservation, use in teaching, and use in research. These responsibilities may include rights for certain uses that would otherwise be prohibited by the creator's rights.

Copyright

Copyright law varies from country to county. Though many of the Caribbean Basin countries are Berne International Copyright Convention signatory nations, it is often difficult to determine which set of laws to apply or what the term of protection may be from one country to another or, for that matter, from one year to another.

The copyright laws of the European Union and the United States represent the Caribbean's most challenging and longest lasting copyright protections. When in doubt it is often a safe bet to apply the laws of those countries. For assistance understanding United States copyright legislation and duration of protections see: *Cornell University's Copyright Term and the Public Domain in the United States.*[i]

When an item selected for digitization is scanned in its country of origin, the laws of the country of origin should be understood to apply. However, when an item selected for digitization is scanned away from its country of origin, consider both the laws of the country of origin and the laws of the location from which the digital resource will be made accessible via the Internet and *apply those laws that afford the item the longest protection*. For content providers using the centralized services of the *Digital Library of the Caribbean*, the laws of that location are the laws of the United States. Applying the longest protections may not be to the advantage of archives, libraries and museums, but this policy affords the *Digital Library of the Caribbean* the greatest protection under the international law.

Permissions, Evaluating for Copyright/Public Domain, and Handling for Orphan Works

Evaluating for Copyright/Public Domain

Evaluation for copyright status will vary based on the jurisdiction, type of materials, whether the work was officially published, and whether the work was created by an individual, corporation, or government. International trade agreements have assisted in standardizing many areas to a default length of copyright and for many it is the life of the author plus either 50 or 70 years.[ii] Copyright requirements and length are subject to change based on legal changes.

Overview of Permissions

Because of the collaborative opportunities presented by requesting permissions and the complexities of copyright law, dLOC partners focus on requesting and receiving permissions to support the digitization, online access, and long-term preservation of materials.

dLOC partners frequently work with publishers and copyright owners to request permissions. Copyright owners can grant permissions to dLOC through any partner or by contacting the dLOC Coordinator.

dLOC's permissions process has been refined over the course of many years. Currently, dLOC partners use a template letter as a cover letter to send to rights holders along with a template form for the grant of permissions that rights' holders are requested to sign.

The cover letter template provides basic information: on dLOC, the permissions model wherein rights' holders retain all rights, and the included grant of permissions.

The grant of permissions template is the standard agreement signed by all who grant permissions. The grant of permissions explicitly states that the rights' holder is only granting:

> a non-exclusive grant of permissions for on-line and off-line use for an indefinite term. Off-line uses shall be consistent only with the maintenance and preservation of an archival copy. Digitization allows dLOC to generate image- and text-based versions as appropriate and to provide and enhance access using search software.

To ensure the permissions model is clearly understood, the grant of permissions also specifically states that dLOC is *not* requesting and is *not* being granted permissions for commercial or for-profit uses.

Overview of the Process to Request Permissions

Requesting permissions does require locating the person or entity holding the rights and sending them the permissions request letter and grant of permissions. Most often, simply locating the person is the most difficult part of this process. Luckily, the Caribbean fosters many rich collaborative networks and often other dLOC partners can assist in locating particular rights' holders.

The dLOC cover letter and grant of permissions templates cover most of the information needed, including:
- the scope of dLOC as a collaborative, international digital library
- where and how the work will be used
- any future uses envisioned
- the specific rights being requested

Partners will need to amend the templates to include the specific creator, title, and item information for the item for which permissions are being requested. Placeholder text in red marks where the information needs to be updated in the templates. The templates are included with this guide and are also available from the dLOC website.

Partners will need to, maintain documentation on the process of requesting permissions: when, where, and to whom permissions have been sent; and similar documentation on any responses received from rights' holders.[iii] This documentation is important for internal workflows. Further, if the rights' holders prove to be un-findable, the documentation will show due diligence in the process. With this documentation, some institutions will proceed with digitization. For example, some institutions will digitize orphan works for open access online. The works are displayed with a note stating that the institution believes the use to be acceptable per copyright and other laws and requesting that any concerned parties contact the institution, and then providing contact information.[iv]

Workflow Steps

Evaluating materials for copyright:

1. Review or contact a legal advisor to review the country's copyright laws.[v]
   a. Wikipedia offers a general summary with links to further reading as a first step in this process.[vi]

2. Note: items published before 1900 are often simple to review, and most often are in the public domain.

3. Determine further research requirements, which may include:
   a. What are the copyright terms based on (publication date, author death date, material type)?

   b. For copyright terms based on years after the death of the creator, consult reference materials to determine when the creator died.[vii]

   c. Are there any special considerations?

4. Conduct any additional research needed copyright, and conduct research on other rights when needed.

5. Decide on the next action:

   a. Determine the work is in the public domain.

   b. Determine the work has an unclear status and request permissions.

Requesting Permissions:

1. Determine the appropriate contact for requesting permissions.

2. Locate contact information for the rights' holder or an appropriate group to forward the request.

   a. Scholars and others who have been in contact with the rights' holders are often able to pass on the inquiry and/or to share contact information.

b. For books and published works, the copyright page will usually state who the copyright holder is.

    i. Individuals: individual authors and their estates can often be reached care of their publishers. Well-known authors often have a contact address for copyright contact address listed in an online database[viii]

    ii. Publishers: the mailing address for a publisher can often be found using "Books in Print."

3. Download a copy of the templates:

    a. Cover Letter Templates: http://dloc.com/AA00002863

    b. Grant of Permissions Templates: http://dloc.com/AA00004147

4. On cover letter template (http://dloc.com/AA00002863), update the text in red with the appropriate information:

    a. Date the letter or email is being sent.

    b. Creator, title, and item for which permissions are being requested.

5. Update the text in red in the grant of permissions template (http://dloc.com/AA00004147) to include the item's information.

6. Send the permissions request through mail, email, or in person.

    a. When sending through email: copy and paste the text from the cover letter into the body of the email; and attach the grant of permissions document.

7. Update documentation tracking the permissions process.

    a. Note in internal documentation: date permissions request was sent, where permissions request was sent and include address information (email or physical).

    b. Note any responses for the permissions request as they are received.[ix]

Additional Resources

Cornell University, Copyright Information Center. *Copyright Term and the Public Domain in the United States, 1 January 2011*
http://copyright.cornell.edu/resources/publicdomain.cfm

Peter Hirtle, Emily Hudson, and Andrew Kenyon. *Copyright and Cultural Institutions: Guidelines for U.S. Libraries, Archives, and Museums* http://ecommons.library.cornell.edu/handle/1813/14142

Electronic Frontier Foundation. *Copyright Watch*
http://www.copyright-watch.org/

University of Pennsylvania. *Online Books: Permissions*
http://onlinebooks.library.upenn.edu/okbooks.html#permission

NCECHO (North Carolina Exploring Cultural Heritage Online). *Digitization Guidelines,* "Chapter 3: Legal Considerations"
http://www.ncecho.org/dig/guide_3legal.shtml

OCLC. *Copyright Online Resource Kit* (includes sections: "Risk Management" and "The Permissions Process")
http://worldcat.org/arcviewer/1/OCC/2005/12/27/0000016179/viewer/file88.html

University of Florida Digital Collections. *Rights and Responsibilities*
http://digital.uflib.ufl.edu/procedures/copyright/

National Initiative for a Networked Cultural Heritage (NINCH). *NINCH Guide to Good Practice in the Digital Representation and Management of Cultural Heritage Materials,* "Chapter IV: Rights Management"
http://www.nyu.edu/its/humanities/ninchguide/IV/

Berkeley Art Museum and Pacific Film Archive (BAMPFA). *COPYRIGHT RESOURCES PROJECT: Working with Copyright–Protected Materials in a Digital Environment*, "Case Studies"
http://www.bampfa.berkeley.edu/copyright_project/copyritetoolbox/copyritetoolbox.php

US Government, CENDI. Copyright, Permissions, Data Rights, and Control Requirements & US Government Works
http://www.cendi.gov/activities/10_07_2010_digitization_legal_Issues.html

LLRX, Law and technology resources for legal professionals. *Library Digitization Projects and Copyright - Part I - Introduction and Overview*
http://www.llrx.com/features/digitization.htm

Pennsylvania Newspaper Association. *Copyright Newspaper Handbook*
http://www.pa-newspaper.org/web/2005/10/copyright_newspaper_handbook.aspx

New Jersey Digital Highway. *Copyright Issues for Digital Collections*
http://www.njdigitalhighway.org/copyright_issues_libr.php

Northeast Document Conservation Center (NEDCC). *Handbook for Digital Projects: A Management Tool for Preservation and Access,* "Overview of Legal Issues for Digitization"
http://www.nedcc.org/resources/digitalhandbook/v.htm

Orphan Works

European Commission. *Adopted Orphan Works Directive*
http://ec.europa.eu/internal_market/copyright/orphan_works_en.htm

The European Digital Libraries Initiative. *Sector-Specific Guidelines on Due Diligence Criteria for Orphan Works - Joint Report*
http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/guidelines.pdf

Accessible Registries of Rights Information and Orphan Works towards Europeana (ARROW)
http://www.arrow-net.eu/

Society of American Archivists. *Orphan Works: Statement of Best Practices*
http://www.archivists.org/standards/OWBP-V4.pdf

UNC, University Libraries. *Building a Program for the Large-Scale Digitization of Manuscripts,* "Legal Considerations"
http://www.lib.unc.edu/mss/archivalmassdigitization/index.html?section=legal

OCLC. *Well-intentioned practice for putting digitized collections of unpublished materials online*
http://www.oclc.org/research/activities/rights/practice.pdf

Notes

[i] http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

[ii] Supporting agreements include the Berne Convention for the Protection of Literary and Artistic Works

[iii] Sample form for internal use in tracking permissions process: http://dlg.galileo.usg.edu/pdf/Checklist.PDF

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iv Example of a Fair Use declaration in use by the UF Libraries:
"Digital reproductions of this item from the University of Florida's Special Collections and Area Studies is made available under an assertion of fair use (17 U.S.C. 107) for noncommercial educational and research purposes only. The University of Florida Libraries respects the intellectual property rights of others and does not claim any copyright interest in these materials. Written permission from the copyright owner and any other rights holders must be obtained for any reuse of these images that extends beyond fair use or other statutory exemptions. Furthermore, responsibility for the determination of the copyright status and securing permission rests with those persons wishing to reuse the materials. The Libraries would like to learn more about these materials, and welcomes individuals or organizations to contact UF Digital Library Center (ufdc@uflib.ufl.edu) with any additional information they can provide." Example is based on statement from the University of North Carolina Libraries: http://www.lib.unc.edu/dc/watson/help.php

See also, Europa's directive for orphan works:
http://ec.europa.eu/information_society/activities/digital_libraries/index_en.htm

v General Counsel Offices and other institutional legal advisors should be contacted to inform them of the work being conducted. This establishes a clear line of communication. This may also result in additional support may be available for the review process.

vi http://en.wikipedia.org/wiki/List_of_countries%27_copyright_length

vii Many resources are listed on the University of Pennsylvania's Online Books Page:
http://onlinebooks.library.upenn.edu/deathdates.html

viii Most of these only cover a specific country or region, as with the online Writers, Artists, and Their Copyright Holders (WATCH) database which focuses on the US and UK: http://tyler.hrc.utexas.edu/about.cfm

ix In *Permissions: A Survival Guide*, Susan Bielstein recommends that if permissions are denied, the requestor should publish a record of requested use and the denial. This is based on her recommendation to scholars. Scholars publishing artistic images within their scholarly works are sometimes charged exorbitant rates to use the images, even though the use is scholarly and would appear in a scholarly publication with a limited distribution. For these, Bielstein's book has an excellent example of a gray square with the note beneath the square explaining that the image that should appear in the square could not be used because of the excessively high costs to do so.