Bob Cullen:
We all deal with copyright issues on a regular basis. This was something extensively talked about during August’s open discussion, and several participants strongly recommended at that time that we have at least a couple of TLRs to help address and untangle the challenges surrounding copyright use.

Leighton and I therefore invited Nancy Sims, the Copyright Program Librarian at the University of Minnesota, to give a presentation on this important topic. She graciously accepted our invitation. (Leighton and I greatly appreciate those of you who highlighted Nancy as a potential speaker during the open-discussion forum, with special thanks to Sheila Hatchell for also facilitating my initial communications with Nancy earlier this year.)

Nancy Sims brings a wealth of expertise and insights when it comes to exploring how copyright challenges can impact our work as librarians. Along with being a librarian who serves as the specialist on copyright issues at the University of Minnesota, Nancy is a lawyer. This combination of library and legal experience -- she characterizes herself
as a “lawyerbrarian” -- has given her a broad and unique perspective on the prevalence of copyright concerns in our everyday lives. For more information on Nancy and her background, please visit: 
https://www.lib.umn.edu/about/staff/nancy-sims

For her presentation to our group, Nancy plans to use what she calls a “Copyright Triage” approach. She will discuss the basics of copyright use, focusing on the ways in which copyright is indeed all around us (bringing into play everything from how one becomes a copyright owner to the length of time for a copyright) and also how contracts affect all aspects of copyright.

For the second part of her presentation, Nancy plans to zero in more on both how copyright ownership does not mean absolute control and what we each need to keep in mind when it comes to such considerations as existing works and fair use.
Copyright Triage

Nancy Sims
University of Minnesota Libraries
Your Roles in relation to Copyright

You are a creator of copyrightable works.

You are also a user of works created by others.

Big tendency to want to do “what’s mine is MINE” AND “what’s yours is mine”. People need to be aware that everyone has both interests, and only if you have a ton of money behind you can you be all about protection and control and not at all about pub dom, access, and openness.
Copyright Triage: Three key concepts

Copyright is EVERYWHERE.
Contracts affect copyrights.
Copyright is NOT absolute.
Key Concept #1

**Copyright is EVERYWHERE!**
C is automatic, from moment of creation.
“But it has to have a © sign!”

“And it has to be registered!”
Copyright owners have...

Rights to do/authorize others to: 17 USC § 106

– Reproduce (make copies)
– Distribute (sell, rent, lend copies)
– Perform or display publicly
– Prepare derivative works (translations, adaptations)
If you create a work today, and die in 2035, when will the copyright in that work expire?

1. 2039
2. 2067
3. 2085
4. 2105
What kinds of things are copyrightable?

• “Original works of authorship” 17 USC § 102(a)
  – (1) literary works;
  – (2) musical works, including any accompanying words;
  – (3) dramatic works, including any accompanying music;
  – (4) pantomimes and choreographic works;
  – (5) pictorial, graphic, and sculptural works;
  – (6) motion pictures and other audiovisual works;
  – (7) sound recordings; and
  – (8) architectural works

Also – FIXED – improv doesn’t count.
“Original" works of authorship
Photos: pose, lighting, framing, etc. NOT “mere mechanical reproductions”
Painting by J.A. Duplessis in 1783; Engraving by H.B. Hall in 1868
Also not sweat of brow.
But technically “modicum” pretty damn small.
Burrow-Giles – est that photos could be CP-able, but only because of the authorial choices of lighting, pose, composition, etc! Some photos are “mere mechanical reproductions” and fail originality.
Reproductions are *not* independently copyrightable.

Why does this matter?
<table>
<thead>
<tr>
<th>Country</th>
<th>United States</th>
</tr>
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<tbody>
<tr>
<td>Contributing Institution</td>
<td>Anoka County Historical Society, 2125 Third Avenue North, Anoka, MN 55303</td>
</tr>
<tr>
<td>Rights Management</td>
<td>This image may not be reproduced for any reason without the expressed written consent of the Anoka County Historical Society.</td>
</tr>
<tr>
<td>Local Identifier</td>
<td>Mississippi River 5-62</td>
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Metadata and use of digitized copies.
Copyright excludes

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.
17 USC § 102(b)
Copyright excludes

In no case does copyright protection for an original work of authorship extend to any idea, **procedure, process, system, method of operation**, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 USC § 102(b)

These are the kinds of things we think about as patentable; long since decided that patent & copyright serve different purposes, & shouldn’t overlap. (Except for software, where we’re just confused.)

Image, incidentally, is from a 1913 Russian book called “Physics for Entertainment” by Yakov Perelman, turned into clipart by “Johnny_Automatic” on site openclipart.org
In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 USC § 102(b)

These are things we think shouldn’t be subject to gov’t-granted monopoly at all (though under certain cases, protectable via trade secret or patent)

Plagiarism related but separate issue, governed by complex cultural norms abt attribution and borrowing. IDEAS/FACTS NOT PROTECTED BY US LAW most of the time.
Key Concept #2

Contracts Affect Copyrights
Contracts and licenses can change the copyright game for creators *and* for users.
FOR CREATORS:
Employment can have an immediate effect on ownership, BTW
U of M Copyright Policy – Nuts & Bolts

• Faculty and faculty-like individuals own their academic works.
  – Works produced “on the clock” by non-faculty individuals are owned by the University.
• University owns all administrative works.

Lots of flexibility for unit-level determinations. (Default rule is employer owns!)
They can restrict your rights to use things – assuming every work in the gallery in question was public domain to begin with, the museum can, by contract/license, restrict your right to reuse.
But they are not an all-or-nothing game. Can also share rights among parties – many authors negotiate contracts to be able to share their work.
For users:
“You already have permission.”

And they can also create new/additional rights!
USAGE RULES

(i) You shall be authorized to use iTunes Products only for personal, noncommercial use.

(ii) You shall be authorized to use iTunes Products on five iTunes-authorized devices at any time, except for Content Rentals (see below).

(iii) You shall be able to store iTunes Products from up to five different Accounts at a time on compatible devices, provided that each iPhone may sync only one iTunes-authorized device at a time, and syncing an iPhone with a different iTunes-authorized device will cause one iTunes Products stored on that iPhone to be erased.

(iv) You shall be authorized to burn an audio playlist up to seven times.

(v) You shall not be entitled to burn video iTunes Products or tone iTunes Products.

(vi) iTunes Plus Products do not contain security technology that limits your usage of such products, and Usage Rules (i) - (v) do not apply to iTunes Plus Products. You may copy, store, and burn iTunes Plus Products as reasonably necessary for personal, noncommercial use.

(vii) You shall be able to manually sync a movie from at least one iTunes-authorized device to devices that have manual sync mode, provided that the movie is associated with an Account on the primary iTunes-authorized device, where the primary iTunes-authorized device is the one that was first synced with the device or the one that you subsequently designate as primary using iTunes.

(viii) An HDCP connection is required to view content transmitted over HDMI.
Your institution agrees to contracts on behalf of itself \textit{and} its users.

Library subscription licenses usually authorize \textit{only} personal use by individuals.
Linking to things is almost always okay!

True for stuff on public web, AND via library subscriptions.
Making copies may violate contracts even where copyright laws would allow it.

True for stuff on public web, AND via library subscriptions.
What kinds of restrictions on our own rights, and those of our users, are we agreeing to in our contracts?
Thank you for attending!
Join us May 10, 2018

Copyright Triage Part 2
Nancy Slms

For Past Episodes, Visit the TLR Archive at:
https://ntl.bts.gov/networking/tlrarchive/index.html