

## Trustee Tip: Trustees and Copyright Legislation

### (A CALTAC Trustee Tip)

**Introduction:** Trustee Tips are intended to supplement CALTAC's Board Development materials. They may be used to stimulate a more-in-depth discussion of a topic included in Training sessions, or to cover topics pertinent to trustees beyond those included in the training curriculum. Also, as an option available to Board Presidents and Library Directors, a Trustee Tip may be used as a 10 minute topic for stimulation of discussion on a regular Board agenda, or they may be used as handouts at one meeting with an opportunity for comments and questions at the beginning of the next meeting.

*This Trustee Tip was written by Mary Minow. (Nov, 2003)*

As libraries increasingly depend on electronic resources instead of print, the copyright balance, carefully crafted by Congress and the Courts over the course of decades has changed. Copyright law allows libraries and library users to copy materials freely under most circumstances. Today, licensing agreements and encryption make it difficult or impossible in many cases to continue this practice.

To get up to date, trustees might want to read this backgrounder and learn how to stay current.

#### I. Background

"A lot of us feel like this is the environmental movement before 'Silent Spring,' says Jonathan Zittrain, a Harvard Law School professor.<sup>1</sup>

In the past, copyright law gave certain rights to content owners, and others to content users. For example, originally, copyright terms lasted for 14 years and were renewable for another 14 years. How long do you think copyright terms last today? (Answer in the text below). New legislative initiatives are shrinking the public domain, restricting use, and even criminalizing copyright violations.

Libraries, under copyright law, have specific rights to use copyrighted materials, under the right conditions, for interlibrary loan, preservation and replacement. It is worth taking a moment to read the library section of the copyright law at

17 U.S.C. Section 108 <http://www4.law.cornell.edu/uscode/17/108.html>

#### II. Current developments:

##### Copyright Duration: Twenty Year Term Extension

The Sonny Bono Copyright Term Extension Act (1998) added twenty years to copyright terms, which had already been extended 11 times since 1962. This means a copyright now lasts the author's *lifetime plus 70 years*. Anonymous and corporate works last 95 years from the date of publication. All works that had been scheduled to enter the public domain over the course of those twenty years are now frozen in copyright until the year 2019.

The law makes an exception to this term extension for libraries that make copies for preservation, scholarship or research, *unless* the works are subject to "normal commercial exploitation."

---

<sup>1</sup> Amy Harmon, "Challenge in Copyright Case May Be Just a Beginning," New York Times (October 14, 2002, Page C4).

The U.S. Supreme Court upheld the additional copyright terms enacted by Congress, stating that the wisdom of Congress' action was not within its province to second guess, yet the legislation remained within the Congressional domain, as set forth in the Constitution.

Activists are working on the "Eric Eldred Act," a proposal that would require copyright owners to pay a small tax after 50 years (such as \$1), or forfeit the work to the public domain. See <http://eldred.cc/>

### **Contract Legislation**

An increasingly important means for electronic content owners to protect their works is by private contract. Databases do not have a great deal of protection under copyright law, particularly those composed of facts and compilations.

Contract law is state based, and in an aim for consistency across state lines, the National Conference of Commissioners of Uniform State Laws (NCCUSL) drafted the Uniform Computer Information Transaction Act for each state legislature to consider. Unfortunately, it would have given a great deal of bargaining power to vendors and almost nothing to consumers and libraries.

In 1999 UCITA was sent to all 50 state legislatures for their consideration. Only two states, Virginia and Maryland, have ratified UCITA. On February 13, 2003, the American Bar Association withdrew its support of UCITA. NCCUSL has said it no longer intends to support the proposed Act. For more, see <http://www.ala.org/washoff/ucita/index.html>

For a website to pass along to your librarians to help them negotiate digital content licenses, see liblicense from Yale University - it gives sample clauses, definitions and other pointers for librarians. <http://www.library.yale.edu/~llicense/index.shtml>

### **E**ncryption and Digital Rights Management



Another increasingly important method that content owners use to protect their works is through encryption and other forms of digital rights management.

License agreements bind only the parties that sign the agreement, and not third parties, such as library patrons. Thus, content vendors have seen the need to go beyond legal agreements and reach into "self-help" methods.

"Digital Rights Management" refers to self-help technology that controls access to digital content, such as encryption (a method that converts plain text to secret code), passwording, Internet Protocol (IP) address authentication (ensuring that the patron is using an approved computer) and the like. Significantly, an added layer of legal protection was added to these technological protection measures by the Digital Millennium Copyright Act of 1998, making it a *criminal offense* to tamper with ("circumvent") them. 17 U.S.C. §1201 <http://www4.law.cornell.edu/uscode/17/1201.html> Subsections (a) and (b) are provisions of the Digital Millennium Copyright Act, passed in 1998. These provisions make it a crime to manufacture or sell devices designed to overcome digital rights management.

In a closely watched criminal case, a federal jury in San Jose, California, found a Russian company innocent of criminal charges pressed by the U.S. government under these provisions in *United States v. Elcomsoft*.

## I. Staying current

Library trustees can keep apprised of pending legislation of interest to libraries by checking <http://www.ala.org/> and then clicking on "issues and advocacy" and then on "copyright." They may also subscribe to the American Library Association's free irregular newsletter from the Washington Office, ALAWON, by composing an email to [listproc@ala.org](mailto:listproc@ala.org), leaving the subject line blank, and sending the message

subscribe ala-wo your\_firstname your\_lastname



Trustee tips are brought to you by the California Association of Library Trustees and Commissioners (CALTAC). This trustee tip was written by Mary Minow, Policy Analyst and Past President of CALTAC.

*The Trustee Tips are supported in whole or in part by the U.S. Institute of Museum and library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian.*