

Copyright Law and Intellectual Delusions

It is quite clear that even in the Library Community there exists a common delusion concerning Copyright protections and Public Domain materials. While it is very common for publishers (for example 'Dover') to reissue materials which have long since passed into the public domain and attach misleading copyright notices to these publications implying that the reprinted publication falls under their copyright protection as a derivative work; such practices seem to be endemic within the library community, particularly with respect to the proliferation of digital collections based upon a particular libraries possession of public domain materials donated to them by some benefactor (or in many cases anonymously). All sorts of mechanisms are often used such as watermarks, banding, fuzzification of images and various attempts to bastardize images so they cannot be used for other purposes. Such attempts to undermine and wreck the statutes governing Public Domain materials are unprofessional at best and ethically fall into behavior which could be considered as criminal.

The idea behind passing materials no longer (or never) in copyright, into the Public Domain, was to make them freely available to the public once their creators had enjoyed the benefits of the restrictive copyright period allowed within such legislation. Or in the case of materials released under the Creative Commons License (URL: <http://creativecommons.org/>), everyone should have unrestricted access to such materials in addition to their public domain status. Even though derivative works can be made from both Public Domain and Copyrighted Materials, the statutes are very clear in describing exactly what a derivative work is:

"17 U.S.C. Section (103)(b):

... The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material. "

Both statute and case law are very clear in defining a 'derivative' work as one which substantially changes the content of the original work. And the new copyright protection then applies only to that part of the 'content' of original work which is changed. Merely reformatting the original work does not create a derivative work and thus cannot be considered as falling under the protection of the Copyright Statutes.

What this means is that the tens of thousands of items which libraries and universities are currently digitizing and placing in Digital Collections do not fall under the protection of the Copyright Statutes particularly if the works were

originally within the Public Domain. Digitizing or reformatting materials do not fall under a creative act. They merely become republishing of the original material. If a description, meta-data set, introduction, or translation is involved, only those particular additions fall under the scope of copyright protection.

For example, if a library digitizes a postcard printed and mailed in 1903, and places it in a database; the meta-data and other descriptive materials can be copyrighted; but the actual image cannot and does not receive any copyright protections. The Meta-data and descriptive materials can be considered as a derivative part of the original material (the post card itself); but anyone is free to download that image and use it for whatever purpose they would like. Such proclamations, such as "not to be used for commercial purposes" or "contact the owner of this site for permission to use this image" cannot be legally enforced and are misleading at best, since they do not fall under the letter or the intent of the Copyright Statutes.

It is particularly galling to see commercial Database services attempt to place public domain materials under their copyright protections with such misleading proclamations. They do not own the images of public domain materials, even if they created them, just as they do not own the image of a copyrighted document which they may have been given permission to publish in their database. In both cases, ownership devolves back to the original owner; IE. The public in the case of public domain materials; and, the copyright holder in the case of copyrighted materials.

Librarians in particular should have an understanding of what the ethical and moral functions of librarianship are. Specifically their duties to the public, which has a reasonable expectation to the unfettered and unrestricted access to Public Domain materials, an expectation which was given to the Public both in the Proclamations of the founding Fathers of this country and within the Copyright Statutes themselves as passed by the Congress and established as law throughout the land. Public Domain means exactly what it implies; 'belonging to the public' not to some corporate or government entity which thinks that it has the right to monopolize and control ownership and access to Public Materials.

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