



Coping with Copyright

Sound Practice in
Confusing Times



Presenters

Joan Dalton

Assoc. University Librarian, University of Windsor

Margaret Ann Wilkinson

Professor of Law, Western University

Victoria Owen

Head Librarian, University of Toronto at Scarborough

Objectives & Outline

- Back to basics – fundamentals of the law.
- Answers are for members in their professional capacities as librarians working within a library, not as private users of copyrighted materials.
- We'll explore basic tenets of the law by tackling four simple questions.
- Save audience questions to end of session.



Q.1 Can we paint a mural of Dumbo on the wall in the children's section of our library?

Works in which Copyright may subsist

in every original literary, dramatic, musical and artistic work

- books
- scholarly articles
- poetry
- plays
- motion pictures
- songs
- webpages
- graphs
- photographs
- paintings
- software
- sculptures
- choreography
- drawings

Copyright – “bundle” of rights

“copyright”, in relation to **a work**, means the sole right

- To produce
- To reproduce
- To publish
- To perform in public
- To translate
- To convert (dramatic - non-dramatic)
- To produce and adapt as a cinematographic work (film)
- To communicate to the public by telecommunication (analog or digital signal)
- To present at a public exhibition
- To reproduce or rent out a computer program or song recording

Copyright – exceptions to rights

Balance interest of copyright owners and user interests

- Fair Dealing
- Educational Institutions
- Libraries, Archives and Museums

Trademark & Copyright together

- “Dumbo” is a character created by Disney and released to the public in the 1941 movie of the same name
- Merchandizing was not such a big part of children’s entertainment then as it is now. The artwork which lies behind the animation of the elephant Dumbo carries copyright protection, as we have been discussing...
- Modern characters, such as SpongeBob SquarePants, will definitely also carry trademark protection...in Canada, there does not need to be any special marking to identify a registered trademark – so absence of TM or ® does not mean there is not a registered trademark in a symbology
- Using them in association with your library programs might be seen as trying to associate yourself with their popularity and this might be viewed as infringement of trademark (if the marks are registered) or passing off (if they are not registered)

Trademark & Copyright together

- OLA has its own trademarks for the Forest of Reading program
- No one can use its symbols in connection with reading programs except as given permission to do so by OLA
- OLA will also have acquired copyright rights in the artwork involved in its trademarks
- OLA could decide to sue an infringer in copyright or trademark or both



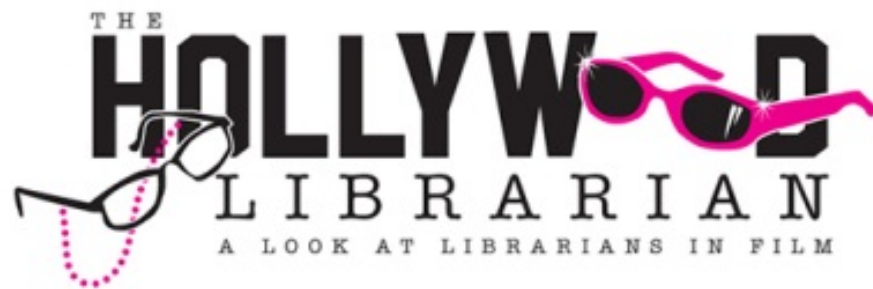
Good Practice

Q.1 Can we paint a mural of Dumbo on the wall in the children's section of our library?

NOT WITHOUT PERMISSION

- To 'reproduce' a work, whether manually or mechanically, is the sole right of the copyright holder (where exceptions don't apply).
- To use a character in such a way that it might be taken to imply association with the goods and services of the person owning the trademark rights in that art is problematic without trademark permission.
- Seek permission of both copyright and trademark holders (often the same company) OR change your art to an original piece where the artist can give you permission and there is no commercial reputation involved so trademark is not involved.

Q.2: Does my library need a public performance rights license to show "Hollywood Librarian" next Thursday night?



What rights are in a film?

- The making of a film involves many steps – and most of those steps involve the use or creation of copyright interests
- The script is a literary work, the costume and set designs are artistic works, the score involves copyright in musical works, and so on
- The film itself becomes a dramatic work, as a cinematographic work

Works & other subject matter

- In discussing Dumbo, we looked at the rights the Copyright Act gives to “works” –
- The Copyright Act also gives a more restricted set of works in association with “other subject matter”
 - Sound recordings,
 - Performers’ performances, and
 - Broadcasts
- The first two, and usually, eventually, the 3rd, are all involved in making movies (as well as the works involved in the movie which we have already discussed)

Showing a film

- Producers bring together the necessary rights to all the underlying copyrights and rights in other subject matter that go into the making of film – and then they make arrangements for the legal distribution of the film, which involves making available licenses for different types of viewing – these licenses are copyright licenses
- If the copy of the film that you have does not carry with it the right to “perform the work in public” or to “communicate the work to the public by telecommunication”, you cannot show it in your library and you cannot transmit it digitally to the web or to anyone.

cont'd

Showing a film

- Showing the film in the library (no matter what type of library it is) for patrons is “in public” and you cannot do it without permission
- Copies of films bought for private home viewing do not carry performance rights and therefore cannot be used this way, although they can typically be lent to patrons for the patrons’ own private viewing.

EXAMPLES: Without further licensing, 5 of the 8 films may be shown in class at Western; only 1, under certain conditions, can be posted

Film	Situation at Western
Milgram Experiment Tough Guise Brown Eyes, Blue Eyed The Angry Eye	UWO has purchased, with rights to show but not post (see Media Booking Service, Western Libraries)
Why Ordinary People Do Evil... or Good	TED Talk – covered by Creative Commons license to show and post if conditions met...
Who Gets In	National Film Board – UWO has rights to show; rights to post available from NFB by license
Human Behaviour Experiments	YouTube – not for reproduction or display without prior written consent
Media and Society – Track 3, The Corporation	Pearson Publishing Canada – not for distribution or copying without license

Good Practice

Q.2: Does my library need a public performance rights license to show "Hollywood Librarian" next Thursday night?

Yes.

- Purchase your copy of the film from a reputable distributor who has bundled the PPR with purchase of film OR
- Purchase rights as blanket license for your items in the collection from each Canadian distributor authorized by the given production companies to sell public performance rights to that set of works OR
- Purchase a transactional license for that showing from the Canadian distributor authorized to give it.
- The National Film Board, for example, handles its own distribution – no one else can give you permission to show its films: <http://www.nfb.ca/explore-all-films>



Q.3: Can my library link to the *Canadian Cancer Society* webpage from our catalog of health resources provided on our webpage?

Good Practice

Finally, we can give you an unqualified YES!

The Supreme Court, this year, in a case called *Crookes v Newton*, released October 19, 2011 has held that providing a link from your website to another website cannot constitute publication in the context of libel law.

While the Copyright Act speaks about publishing, it does not define it, so the interpretation given by the Supreme Court to publishing in the context of libel is important to indicate what we might expect if the Court had to interpret publishing in the context of copyright.

Most of the judges felt that hyperlinks are like references in the traditional world: they point the user to other content but do not make that content directly available to the user **“a hyperlink, by itself, is content neutral”** [Abella, para.30] **“Making reference to the existence and/or location of content by hyperlink ... is not publication of that content.”** [Abella, para.42]



Q.4: If we purchase ebook readers for our library users, can they download and share their e-copies?

E-book Matrix

	Library ebook	User purchased ebook
Personal e-reader	A	C
Library e-reader	B	D

E-book Matrix

	Library ebook	User purchased ebook
Personal e-reader	A	C
Library e-reader	B	D

"B" library e-reader + library e-book

- Library controls e-reader and e-book. E-reader has only library e-books on the device.
- Public Libraries – TPMs used to control loan period
- Academic Libraries – licenses control the terms of use
- E-book can circulate with the library material on the device.
- Why? Material has been selected and licensed by the library.

	Library ebook	User purchased ebook
Personal e-reader	A	C
Library e-reader	B	D

“D” library e-reader + e-book purchased & loaded by user

Responsibility rests with the user who accessed and downloaded the e-book. Look at the license to the user.

License can specify use by a single user.

License can specify a personal device.

Library must be mindful that:

The e-book copy could violate the license, or could be an illegal copy of the e-book, or contain material that could be classified as obscene or confidential.

Content loaded by user may contain personal data of the purchaser – library would violate law on personal data protection.

	Library ebook	User purchased ebook
Personal e-reader	A	C
Library e-reader	B	D

"A" personal e-reader + library e-book

- Library owns/licenses content
- Violation of terms use is the individual's responsibility. It is not the library's violation
- Note to content selectors:** get your licenses to indemnify library against patron abuse.

	Library ebook	User purchased ebook
Personal e-reader	A	C
Library e-reader	B	D

Good Practice

Q.4: If we purchase e-book readers for our library users, can they download and share their e-copies?

Wipe library e-readers clean of all e-content between loans to users.

Questions?

OLA Copyright User's Committee

Joan Dalton, University of Windsor

Margaret Ann Wilkinson, Western University

Victoria Owen, University of Toronto Scarborough