

The screenshot shows the Infopeople website with a navigation menu (Home, Training, News/Events, Search Tools, Partnerships, Events, Contact) and a search bar. The main content area features a webinar announcement for 'Copyright Law Update 2011: Ebooks, Google Books, Patron Requests and New International Developments' on Thursday, June 9, 2011, from 12:00pm to 1:00pm PCT. A 'Join Webinar' button is visible. A sidebar on the left lists various training and webinar options. Below the webinar title, there is a photo of the presenter, May Morrow, and a list of topics to be discussed.

Legal Disclaimer

- Legal information
- **Not** legal advice!

The image shows two hands in dark suits shaking in a firm grip, symbolizing agreement or partnership.

Agenda

Ebooks

- Legal Framework
- Print disabled
- Lending
- Google Book search and orphan works

More Cases and legislation

- User generated content
- E-reserves (Georgia State)
- Sound recordings (pre 1972)
- Public domain (*Golan v. Holder*)

International

- Print disabled
- Library
- Traditional cultural expression

Copyright Analysis

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graph TD
    A{Public Domain} --> B{Specific Copyright Education}
    B --> C{Fair Use}
    C --> D[Get License]
  
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Ebooks Legal Framework Control Content – not just Copyright

Physical (old days – physical books)

Copyright

License can override copyright

Encryption and Digital Rights Mgmt can be illegal to tamper with DRM

DMCA Programmer arrested at conference after speech on hacking ebooks DRM (2001) For violating Digital Millennium Copyright Act. Acquitted.

Copyright: Public Domain and ebooks

No restrictions

2 million at OpenLibrary.org

<http://berkeleypubliclibrary.libguides.com/content.php?pid=175015&sid=1473142>

Go to Google, click on books to get to "Free Google eBooks"

Copyright Law: Specific Provision (Section 109) allows Libraries & Friends to:



Loan books

Sell used books

also known as "First Sale" doctrine

...the owner of an authorized copy may sell or otherwise dispose of...



17 U.S.C. Sect. 109

Horizontal lines for notes.

Not everywhere.

Public Lending Right

Table with columns: Established P.L.R. Countries, Year, and Description. Lists countries like Australia, Austria, Belgium, Canada, etc.

Public Lending Right = libraries pay authors when books are loaned



From Bill Depina/2004. Some Rights Reserved. Attribution-NonCommercial-ShareAlike 2.0 license www.flickr.com/photos/meluna/2023855/

Horizontal lines for notes.

Recent Interpretations of First Sale (2010) favor rights holders

1. Costco v. Omega (Supreme Court 2010)

- Does not apply to copies manufactured abroad
• May libraries lend books manufactured abroad?
• Library Content Alliance memo says likely YES
- Specific allowance of five copies for educational purposes 17 U.S.C. Sect. 602(a)(3)(C)
- Allowance for books bought in U.S. (Drug Emporium)
- Implied license and fair use



The Impact of the Supreme Court's Decision in Costco v. Omega on Libraries, Library Content Alliance memorandum by Jonathan Band (February 2011) http://www.arl.org/news/pr/costcoupdate31jan11.shtml

Horizontal lines for notes.

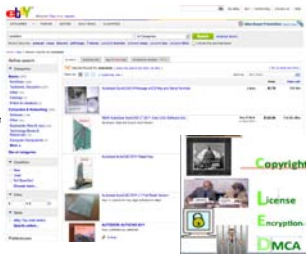

License Trumps Copyright

2. *Vernor v. Autodesk* (9th Cir. 2010)

Owning physical copy of software doesn't mean you own the software. **A license, not a sale.**

Man bought sealed software at garage sale and then sold it on eBay. Sued by licensor. Man lost.

LIBRARIES? Even if someone donates a "used" ebook, *license likely to prevail.* Limits uses.



Vernor v. Autodesk, 2010 U.S. App. LEXIS 18957 (9th Cir. Wash. Sept. 10, 2010)

Patrons with Print Disabilities Copyright specific exception (Section 121)

"Chafee amendment"

Authorized entity may copy and distribute published works (except plays)

specialized format
notice of no further distribution

Library of Congress Fact Sheet <http://www.loc.gov/oh/reference/factsheets/copyright.html> 17 U.S.C. Sect. 121

DAISY format


National Library Service for the Blind and Physically Handicapped (NLS) users qualify.

2 million DAISY
150,000 modern ebooks



http://openlibrary.org/subjects/accessible_book

Initiative to OWN not License ebooks



Douglas County Libraries (CO) buys ebooks

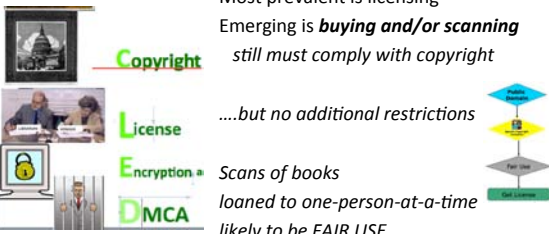
Open Library (Internet Archive)



Launched February 22, 2011
<http://blog.openlibrary.org/2011/02/22/get-thee-to-a-library/>

100,000 modern ebooks
 plus 2 million public domain
 Contact: robert@archive.org

Lending ebooks



Most prevalent is licensing
 Emerging is **buying and/or scanning**
 still must comply with copyright

...but no additional restrictions

Scans of books
 loaned to one-person-at-a-time
 likely to be FAIR USE

Twist on older ebooks: authors may own copyright, not publishers

- Default: author owns copyright
- Sells (in whole or in part) to publisher
- If publisher contract silent, electronic rights generally remain with author
- Implications for libraries negotiating directly with authors



New York Times Co. v. Tasini, 533 U.S. 483 (2001)

Google Book Search and Orphan Works



10 million books scanned
 2 million public domain (full text)
 2 million publisher consent (some text)
 6 million in proposed settlement
 (snippets now / 20 % proposed)

Book Search today
 Right now, you can search over 80% of our vast archive of scanned books.

originally
Scan and Snippets

Whenever you do a Google web search, you're also searching our books in our search & the three signs and open when to appear in Page!

Book search on Google.com

Book page on Book Search

The books in Google Books come from two sources:

The Library Project
 When entered with www.google.com around the world; include text extracted in Book Search. For Library Project books that are still in copyright, our results are for a redaction; we show you with most the text and generally, in the context of their identity our search term in context.

For Library Project books that are not in copyright, however, you'll see and download the entire book.

Shared view of in-copyright book. Full view of out-of-copyright book. Preview of Orphan Project book.

Authors Guild v. Google Inc., 05-CV-8136, U.S. District Court, Southern District of New York (March 22, 2011)
books.google.com/googlebooks/agreement/

Settlement shifted to

- up to 20% display
- *online bookstore (in cloud)*
- *library subscriptions to full text*

In the end, I conclude that the amended settlement is not fair, adequate, and reasonable.
 – Judge Chin, March 23, 2011

books.google.com/googlebooks/agreement/

Parties re-negotiating
 Next court date
 July 19, 2011

Comprehensive coverage at
<http://blog.thepublicindex.org/>

Orphan Books Legislation

- 110th Congress bill not helpful to libraries
- Library Copyright Alliance recommends clean slate

Some options:

- extended collective licensing (Nordic model)
- authorized preservation
- allow snippets

LIBRARY COPYRIGHT ALLIANCE STATEMENT ON COPYRIGHT REFORM (May 16, 2011) http://www.arl.org/bm~doc/la_copyrightreformstatement_16may11.pdf

Pamela Samuelson, Legislative Alternatives to the Google Book Settlement <http://people.ischool.berkeley.edu/~%7Epam/LegislativeAlternativesTOGBSS.pdf>

More Cases and Legislation



New wave of lawsuits based on **users** posting newspaper articles

...easy to protect yourself by filing \$105 form

<http://www.wired.com/threatlevel/2010/10/dmca-righthaven-loop-hole/>

Notice Designation of Agent to Receive Notifications of Claims of Infringement

Full Legal Name of Service Provider _____

Alternative Name of Service Provider (including all names under which the service provider is doing business) _____

Address of Service Provider _____

Name of Agent Designated to Receive Notifications of Claims of Infringement _____

Full Address of Designated Agent to which Notifications Should be Sent, if Different from the above _____

Telephone Number of Designated Agent _____

Facsimile Number of Designated Agent _____

Email Address of Designated Agent _____

Signature of Official or Representative of the Designating Service Provider _____

Type of Service Provider and Title _____

NOTE: This Service Designation Must be Accompanied by a Filing Fee*
 *Make Payment to the Director of Copyrights
 *Check, Cash and Credit Card are acceptable for the Filing Fee unless you are a copyright owner or www.copyright.gov/notice.html

Filed for Filing on: _____
 Copyright Office
 1077 G Street, NE
 Washington, DC 20540

Sample website language:
 Peninsula Library System

www.plsinfo.org/features/copyright.htm

Form - www.copyright.gov/onlinesp/agent.pdf
 Info and directory of agents www.copyright.gov/onlinesp/

Copyright Agent



Designate agent to receive copyright complaints

File simple form with Copyright Office

Put agent contact info on your site

... Limits your copyright liability for user content

\$105 one time fee

*Chinese New Year 4704 (2007) by FaceMePL5 (via Flickr). CC BY license.

Can Provide Safe Harbor from Lawsuits

Why register?

User posts infringing content (say, from someone else's article)



www.noaa.gov/postcards/postcard3_w200h.jpg

- ▶ Must have no knowledge or direct financial benefit
- ▶ Copyright policy
- ▶ Notify users of policy
- ▶ List agent for complaints

17 USC § 512

Georgia State University E-Reserves



Closely watched trial in Atlanta

Publishers asking for injunction to stop e-reserves without licensing fees

<http://dockets.justia.com/docket/georgia/gandce/1:2008cv01425/150651/>

Sound Recordings (Pre- 1972)

Copyright Office roundtable June 2, 2011



Protected by state common law, not federal copyright law

- Library impact
- Federal law could impose stiff penalties
 - Stifle digitization projects

REPLY COMMENTS OF THE ASSOCIATION OF RESEARCH LIBRARIES AND THE AMERICAN LIBRARY ASSOCIATION, before the Copyright Office, Docket No. 2010-4 (April 13, 2011) http://www.copyright.gov/.../sound/comments/reply/041211-arl-ala-reply_comments.pdf

Public Domain – Big Case

Golan v. Holder (2011) Supreme Court will hear
Can Congress RESTORE copyright to public domain (foreign) works?

2009 – District Court NO
2010 – Appellate Court YES

Significant impact on library digitization projects

Erodes certainty of public domain

Examples of copyright restoration:
Gorky, Nabokov, Solzhenitsyn, Shostakovich

U.S. argument: comply with international treaty (URAA to Berne Convention) and ensure American authors reciprocal protections



<http://cyberlaw.stanford.edu/node/6543>
see Internet Archive amicus for examples

International

Print disabled
Traditional cultural expression
Library

Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives
NOVEMBER 2011



DRAFT Working Document Version 3.0
5 April 2011

TABLE OF CONTENTS

Preamble	
I. General Provisions	
Article 1:	Relationship with Other Agreements
Article 2:	Beneficiaries and Scope of Provisions under this Treaty
Article 3:	Nature of the Exceptions
II. Rights for Libraries and Archives (Mandatory Exceptions or Limitations to Copyright and Related Rights)	
Article 4:	Right to Parallel Importation
Article 5:	Right to Cross-Border Uses of Works and Materials Reproduced Under an Exception or Limitation
Article 6:	Right to Library Lending
Article 7:	Right to Library Document Supply
Article 8:	Right of Preservation of Library and Archival Materials
Article 9:	Right to Use of Works and Other Material under Related Rights for the Benefit of Persons with Disabilities
Article 10:	Right to the Use of Works for Education, Research and Private Study
Article 11:	Right to the Use of Works for Personal and Private Purposes
Article 12:	Right to Access Nonprint and Web-based Works Published in Databases or on Websites
Article 13:	Right to Use of Orphan Works
III. Additional Provisions	
Article 14:	Obligations to Respect Exceptions to Copyright and Related Rights
Article 15:	Obligations Concerning Technological Protection Measures
Article 16:	Liabilities on Libraries and Archives
Article 17:	Other Exceptions and Limitations Not Mandated by this Treaty
Article 18:	Provisions on Implementation and Enforcement of Exceptions and Limitations
IV. Administrative and Final Clauses	
Article 19 - 20	

DRAFT Treaty on Copyright Exceptions and Limitations for Libraries and Archives

Page 1 of 20

<http://www.ifla.org/en/publications/draft-treaty-on-copyright-exceptions-and-limitations-for-libraries-and-archives>

Questions?

Thanks for making
it to the end!