Rights issues for digital video

Rutgers University has made this article freely available. Please share how this access benefits you. Your story matters. [https://rucore.libraries.rutgers.edu/rutgers-lib/21211/story/]

Citation to Publisher
Version: No citation available.


Terms of Use: Copyright for scholarly resources published in RUcore is retained by the copyright holder. By virtue of its appearance in this open access medium, you are free to use this resource, with proper attribution, in educational and other non-commercial settings. Other uses, such as reproduction or republication, may require the permission of the copyright holder.

Article begins on next page
RIGHTS ISSUES FOR DIGITAL VIDEO

- LEGAL LANDSCAPE
  -- Copyright
  Treaty and National Law

- TECHNICAL LANDSCAPE

- HOPEFUL SIGNS IN THE MARKETPLACE

- SUGGESTED NEXT STEPS FOR HIGHER ED
RIGHTS ISSUES FOR DIGITAL VIDEO

International Treaty

WPPT

WCT

WBT

National Law

DMCA

Contract / License

State Law
World Intellectual Property Organization (WIPO)

WIPO Copyright Treaty (Geneva 1996)

- Provides legal protection and remedies against the circumvention of technological protection measures that protect the exercise of author’s rights or restrict uses that are not authorized by authors or permitted under law.
World Intellectual Property Organization (WIPO)

WIPO Copyright Treaty (Geneva 1996)

- Provide legal remedies against any party that knowingly removes or alters rights management information, defined as “information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work.”
WIPO Performances and Phonograms Treaty (WPPT) (Geneva 1996)

- Addresses only fixation of sounds or sound representations, other than sounds fixed in a cinematographic or other audiovisual work.

- Performers’ rights
  
  Exclusive right to authorize fixation, public performance, broadcasting, reproduction and rental of their performances fixed in phonograms.
WIPO Performances and Phonograms Treaty (WPPT) (Geneva 1996)

- Producers’ rights
  
  Exclusive right to authorize broadcasting, reproduction, public communication and rental of their phonograms

- WPPT provides to producers but not performers that right to control secondary uses of performances in broadcasting, cable casting, etc., however performers have the right to compensation for use
WIPO Broadcasting Treaty
(in draft)

- Provides performers with rights to authorize fixation of their performances; reproduction, distribution, rental and broadcasting/public availability of performances.

- Provides producers with right to authorize reproduction, distribution, rental, rebroadcast and retransmission, public availability of broadcasts.

- Defined as wireless means of transmission. Distinction between broadcast and cablecast. Both are addressed.
RIGHTS ISSUES FOR DIGITAL VIDEO

WIPO Broadcasting Treaty
(in draft)

- Current draft recognizes distinct copyright rights between the separately copyrighted content and the broadcast itself.

- Current draft proposes variations of language to support exceptions for private use; libraries, archives and educational institutions to preserve and share the broadcasts; excerpts for news broadcasts and exceptions for underlying content that was not copyright protected.

- 50 year term of protection from date of first broadcast.
Digital Millennium Copyright Act (1998)

- Act of circumvention prohibited for TPM that prohibits unauthorized access but not unauthorized copying

- Allows circumvention of TPM by nonprofit library, archive or educational institution to determine whether they want to obtain authorized access.
Digital Millennium Copyright Act (1998)

- Limits liability of nonprofit institutions with respect to infringing activities of faculty and graduate students.

- Safe harbor limits for Internet Service providers for the infringing activities of their clientele.

- Ability for nonprofit libraries, archives to make a replacement copy for an obsolete format.
Rights Issues for Digital Video

Technology, Education and Copyright Harmonization (TEACH) Act of 2002

- Conditional exemptions for accredited educational institutions to use copyright-protected resources in the classroom and in distance ed.
  - Digital transmission is included
  - Approval of copyright holder is not needed
  - Requires institutional policies and technologies to limit use of resources to classroom or course use, for the duration of the course.
Digital Transition Content Security Act of 2005 H.R. 4569

- Would require all consumer electronics digital devices manufactured more than 12 months after law passes to recognize rights signaling from two required technologies: Video Encoded Invisible Light (VEIL) and Content Generation Management System—Analog (CGMS-A), which would be embedded in broadcasts and other analog video content

- Signals provide: copy prohibited; copy unlimited, no redistribution, copy one generation, no technical protection.

- Introduced, sent to Committee 2005-12-16
Public Domain Enhancement Act HR 2408

- Allow abandoned copyrighted works to enter the public domain after 50 years. Requires affirmative action from copyright holders to maintain copyright after 50 years
Digital Media Consumer Rights Act of 2005 (HR 107)

- Restore fair use – Not a violation of DMCA Section 1201 to circumvent a technological measure to gain access or use a work if the circumvention does not result in an infringement of copyright or to manufacture, distribute or make non-infringing use of hardware or software that enables significant non-infringing use of a copyrighted work.

- Ensures proper labeling of “copy-protected compact disks.”

- Referred to House Judiciary May 2005
Family Entertainment and Copyright Act of 2005 P.L. 109-9

- **Criminal** penalties for unauthorized recording of a motion picture in a motion picture facility and criminal infringement to prepare a copyrighted work for distribution

- Exemption from infringement for skipping audio and video content in motion pictures

- Reauthorizes National Film Preservation Board and supports utilization of LC Audio-Visual Conservation Center to store and make available preserved films, consistent with copyright
Family Entertainment and Copyright Act of 2005 P.L. 109-9

- Incorporates the Orphan Works Preservation Act as Title IV. Removes the exception for pictorial, graphic, sculptural, motion picture or audiovisual works under Section `08(h)

- Section 108(h) – Libraries can create copies of copyrighted works for preservation, scholarship or research that are no longer commercially exploited and not available at a reasonable price in last 20 years of copyright term.
Orphan Works Act of 2006 (HR 5439)

Limits remedies for copyright infringement if infringer performed and documented a good faith search to locate copyright holder and obtain permission.

Limits remedies to removal if the infringement is performed for no commercial advantage for a primarily charitable, scholarly or educational purpose and if infringer ceases the infringement expeditiously upon notice.

Other Rights Issues

- **Right of Publicity** – Right to the commercial exploitation of the “persona” or the attributes that create identity
  - Between state law and common law, protected in all states. Not limited to celebrities!

**Underlying Rights**

- Copyright protection of the content exists separately from the copyright of the fixed form (cinematographic work, broadcast)
- Layered underlying rights. For musical track in a motion picture – synch rights and publishing rights
Other Rights Issues

- **Who is the author?**
  - Treaty leaves this to each member state to decide
  - Performers rarely seen as rights holders, except for initial fixation of performance. However, treaty law allows compensation for subsequent use. Contracts, such as SAG General Contract, may apply.
Technological Issues

- Contradiction between “the perfect copy” and containment of infringement by users.

- Two main categories of copy protection or DRM technologies

  - **Encryption**
    - Content Scrambling System (CSS) requires key in the device for authorized use (DVD players)
    - Trusted computing relies on transmission of secured (encrypted) content between trusted devices in the chain
Technological Issues

- **Marking**
  - Simple marking, digital watermarking, digital fingerprint
  - Broadcast flag is simple marking
  - Forensic marking to support tracing of origin of protected work through infringing uses
RIGHTS ISSUES FOR DIGITAL VIDEO

Device-Based DRM Needs

- Implement a renewable protection strategy – software upgrades, not device replacement
- Make it optional to use – “opt out” for device mfgrs and users.
- Require upgrade for new content or new functionality
- Require notification for users of all encrypted DRM installed on device and all limits to use of device based on DRM
Software-Based DRM Needs

- Require notification for users of all encrypted DRM downloaded to consumer’s playback device and all limits to device use.

- Notify users of all communications between software mfr/distributor and consumer’s software implementation/device.

- Enable users to “opt out” of communications or to select communications (e.g., automatic software upgrade but not usage statistics)
DRM is a “given” for new CE technologies

- HD DVD and Blu-ray players support High-Bandwidth Digital Content Protection and the Image Constraint Token, which reduces quality of the video card and monitor are not HDCP enabled. Both employ AACS encryption. Movie studios are apparently in agreement not to include ICT flog until at least 2010-2012.
- SD Memory Card
  - Bridge between different kinds of equipment
  - Does not require a PC to be one of the devices.
  - Can play audio and video without a drive mechanism
  - supports CPRM – Content Protection for Recordable Media, that controls copying, moving and deletion of digital media files. CPRM from 4C Entity uses Cryptomeria cipher.
Digital Video DRM Implementations

- **Windows Media DRM**
  - Secure delivery of content supporting server, portable devices for offline use and streaming protected content to networked devices.
  - Renewable DRM

- **RealNetworks Helix DM**
  - Utilizes CPRM
  - provides secure media packaging, license generation and content delivery to a trusted player
Rights Issues for Digital Video

Digital Video DRM Implementations

- **FairPlay** (Apple)
  - Built into iTunes.
  - Allows copying to another iPod, playback on a specified number of computers, copying to a standard CD, and limited number of copying of a playlist to a CD.

- **MPEG-21**
  - Management of the content distribution chain, includes digital object identification, rights management and rights expression. ADORe
RIGHTS ISSUES FOR DIGITAL VIDEO

Hopeful Activities in the Marketplace

- National Geographic Digital Motion
  www.ngtlibrary.com

- BBC IMP
  - Catch up on video up to 7 days after broadcast for reasonable subscription
Hopeful Activities in the Marketplace

Creative Archive

- BBC, BFI, Channel 4 and Open University
- Archival content available for download under CA license, using P2P technology
- Restricted to UK users. Other license restrictions include for noncommercial use, sharing of created work under terms of CA license ("share alike") and attribution, including use of CA logo
Hopeful Activities in the Marketplace

- Center for Social Media at American University:
  
Next Steps for Higher Education and Libraries

- Document rights holders in sharable directories (e.g., LDAP). Durable connection to rights holder rather than movement of copyrighted work from one repository to another.

- Develop and promote model deeds of gift and licenses for Higher Education IP

- Durably link deeds of gift, permissions, licenses, and terms of deeds of gift, permissions and licenses to each work.
Next Steps for Higher Education and Libraries

- Clarify resource usage definitions for the public;

**Public Domain:** Not protected by copyright. Copyright may have expired or may be voluntarily relinquished.

**Open Access:** Provide for unrestricted or lightly restricted use; retain copyright.

**Information Commons:** Communal or collaborative use of resources, based on shared values and goals. Can include public domain, open access and even restricted resources.
Next Steps for Higher Education and Libraries

- Positive definition of “public domain” and encouragement for IP in higher education and IP from commercial entities to participate in the public domain.
  - Document and study usage and economic impact of public domain and open access.
- Develop best practices for fair use of digital video, similar to the best practices that emerged for journal articles in the ILL environment.
Next Steps for Higher Education and Libraries

- Develop best practices for good faith, reasonable efforts to locate copyright holders for orphan works.
- Document good faith, reasonable efforts in metadata audit trail.
- Encourage better record keeping from publishers.
- Encourage improved rights clearances for moving images.
Rutgers RUcore metadata documents copyright status, availability status, publication status
Rights holder contact info
Transfer of rights in deed of gift documented in rights metadata. Deed of gift is linked to metadata for rights event.