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On Copyright Law: What Technical Communicators Need to Know

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WHAT TECHNICAL COMMUNICATORS NEED TO KNOW

by

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ABSTRACT

Copyright law, in general, is a multi-faceted and sometimes difficult to understand process. Although it is law, it is often not straight-forward and cannot be applied universally. While the concepts of copyright infringement and plagiarism may sometimes overlap, many confuse one for the other or think they are the same offense. This thesis is intended to serve as a primer to some basic aspects of copyright law for technical communicators, including issues surrounding public domain works, the fair use doctrine, the copyright clearance process, as well as why we should be concerned about our current copyright laws.

Over the past few decades, Congress has increased the number of copyright extensions, and these extensions are pushing out works that were to expire into the public domain. This thesis provides details about the growing copyright reform movement to explore the possibilities of making our culture more egalitarian and democratic when it comes to the exchange of ideas and information. Those who support copyright reform believe current copyright laws increasingly favor corporations and special interest groups rather than the public, and insist on a balance in copyright laws to loosen some of the restrictions.

This thesis illustrates the importance of the knowledge of copyright and its associated laws for technical communicators especially in these current times. With the growth of the Internet within the last 20 years, some of the core concepts of how copyright works for the analog age present some challenges when translated into our digital age. Young professionals – particularly those working in web-based media – are faced with some contradicting ideas on copyright, sharing, and piracy, especially when surrounded by peers who perpetuate incorrect

notions about these topics. Technical communicators also need to be aware of the risks they run if they choose to ignore the law (or choose to remain ignorant of it), but, on a deeper level, they also need be prepared to deal with the philosophical and ethical inquiries that tie into the concept of copyright. This thesis also provides practical applications of the knowledge of copyright laws for technical communicators.

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CHAPTER ONE: INTRODUCTION

In 1996, Tharon Howard wrote in an essay about writers and copyright that "the issue of intellectual property isn't something [most people, including writers] usually consider particularly problematic," and that most writers "tend to subscribe to the view that authors 'own' their texts" (398). However, Howard also prophesized that as technology advances and more collaborative environments flourish, matters of copyright and intellectual property will soon be something that writers will need to know.

It has been more than 15 years since Howard's initial essay, and although he may have foreseen the general idea that advanced technology would play a greater role in technical communicators' lives, it is certain that he could have not predicted *what* sort of technology writers would be faced with these days. Collaboration with others is easier than before with the advent of teleconferencing, the rapid exchanging of digital data, and online collaborative workspaces through websites and software. The formats and media that information is distributed through have also evolved; information is now distributed through websites, news aggregators, blogs, wikis, tweets, online audio and videos, in addition to the traditional print medium.

Purpose

My study focuses on why knowledge of copyright and intellectual property laws is important for technical communicators.[1] One of the aims of this thesis is to ensure that technical communicators do not commit acts of copyright infringement, but they should also know the ramifications for those who do. Another major purpose of this thesis is to provide context as to why copyright laws are what they are now. When copyright laws were first codified in 1790, it is unlikely that our forefathers knew what was to develop over the next two centuries. The notion of fair use is a relatively new one and one that is either misunderstood or forgotten about completely. The ongoing trend of copyright terms being continually extended through additional acts of Congress is also occurring. The explanation of these topics will help the technical communicator better understand both the history and, more importantly, the true purpose of copyright. This thesis seeks to create a unified document of what technical communicators need to know about copyright.

Background and Context

The concepts of authorship and ownership is stronger than ever. Rebecca Howard states that "prior to the modern era, mimesis was the means whereby Western writers established their authority" and that "the pre-modern writer did not need to cite his sources" (789). The notion that imitation was the sincerest form of flattery and that ideas were floating in the ether (and were owned by everyone) were pervasive thoughts. However, it was the invention of the printing

[1] This thesis will also only discuss copyright laws as it applies in the United States.

press that caused a paradigm shift: as a result of this invention, it was much easier to broadcast our ideas and text to others, and this "gave rise to the possibility of making a living as a writer" and not having to rely on a system of patronage that was likely unreliable and self-serving to the patron (R. Howard 790). The concept of copyright was born from these early claims of authorship, and the first sort of copyright laws came about 300 years after Gutenberg's press, when Great Britain's Statute of Anne was codified in 1710. This statute was government dictated, and gave specific copying and reproduction rights to the author of the work (instead of printing companies, which had created and held the exclusive power to print prior to this statute), and these works under copyright would expire into the public domain after a set length of time. The Statute of Anne formed the basis of modern copyright laws, including those in the United States.

Technological advances have made the publishing business a much more straightforward – and more lucrative – business than it had been in the eighteenth century. If only few could actually have their works printed by a printing press due to a lack of resources, then surely, the web has resolved some of those problems. The web is now the platform for the people, and not simply for text and writing. Pictures, music, and videos are now transmitted with ease to others. Even if we think of the modern web as an "anonymous" place, we often still use screen names and pseudonyms to maintain authorship. At the same time, because of the ease of information transmission, authorship is sometimes lost or discarded when re-posted or copy-and-pasted. This is why, more than ever, authorship is of such importance for those using the web as their primary publishing platform.

Of course, with the ease of publishing on the web, threats of copyright infringement and takedown notices by intellectual property holders are also easier to disseminate. Whether a legitimate complaint is being lodged or not, it is easy for an authority to intimidate potential copyright infringers (even if no copyright infringement actually occurred). Legalese (or pseudo-legalese, even) has become simple to generate even if a person has no law background. Companies and corporations are also capable of auto-sweeping the Internet for potential infringers and sending the hosting site a template takedown notice, sometimes inadvertently requesting a takedown on themselves.[2] It is important to be able to distinguish between an actual threat of copyright infringement versus a bogus one.

Legitimate requests for takedowns due to copyright infringement do exist, however. A notable example occurred in 2011, when Matthew Inman, creator of a webcomic called "The Oatmeal," discovered that his comics (protected under his copyright) were appearing on another website called FunnyJunk. FunnyJunk is a user-driven website relying on uploads of files from the public to create a repository of comedy pieces and pictures, but the content on the website is often pulled from other creators. Not only does copyright infringement occur on the website, but the authorship of pieces is sometimes stripped completely (sometimes cropping and stripping watermarks entirely), and the site usually features no credit to the original author. Inman was also upset that advertisements were used on the site, and that essentially, FunnyJunk's "creators" were profiting off the work of others. Inman posted his grievances about FunnyJunk on his own

[2] See Techdirt's Microsoft Sends Google DMCA Takedowns For Microsoft's Own Website.

website, but days later, he received a barrage of abuse from FunnyJunk users about his "threat" to "sue" (even though Inman did not threaten legal action in his original post).

Inman had a right to be defensive, as he did not allow duplication of his copyrighted material on FunnyJunk, and almost certainly did not allow the modification of his creative works to remove his attributions. The reactions of some of FunnyJunk's users towards Inman ranged from unreasonable to juvenile, and are indicative of the issues of the public's perceptions toward copyright laws. The most bizarre twist in this story happened one year later, in 2012, when Inman received a letter from attorney Charles Carreon (who represented FunnyJunk) stating that the accusations of copyright infringement in his original post from 2011 constituted as defamation and that FunnyJunk requested $20,000 in damages from Inman.[3] Carreon and FunnyJunk were mocked by most of the Internet populace, but Carreon, a lawyer who specializes in Internet law, took this more seriously than ever. He began to systematically attack those who criticized him, and continued to add additional plaintiff parties to the absurd lawsuit that began with only Inman.

Carreon's reputation was tarnished and he was required to pay Inman's legal fees after Carreon voluntarily dismissed the suit. This presents another facet of why the knowledge of copyright law is important: ignorance puts both a person's reputation and money at risk. Because of Carreon's misguided attacks, many of the first dozen search results that return when web searches of his name are completed include news articles or webpages publicly shaming him. Of

[3] See Electronic Frontier's Foundation's coverage of Carreon v. Inman.

course, we hope that even if someone makes a mistake that the notoriety does not extend so far on the Internet as Carreon's has, but we have to consider his story as a cautionary tale.

In academia, it is common for students to learn that plagiarism is unethical and they are often taught ways to avoid it. However, very rarely do questions of copyright infringement come up in the classroom. (Perhaps one reason is that most of the work produced by students – particularly undergraduates – is intended for educational use only, so their work is rarely disseminated outside the classroom.) Plagiarism is a different offense than copyright infringement, and it is important for writers to make that distinction. We can commit one offense without committing the other: we can plagiarize a Shakespeare sonnet and pass it off as our own, but since Shakespeare's works are in the public domain, the usage would not have infringed on Shakespeare's copyright. Conversely, we could use a copyrighted image for a book cover and also attribute credit to the cover image all throughout a book, but if the copyright was not cleared with the intellectual property holder, copyright infringement would have been committed.

Issues like these, where there is only a vague familiarity with what copyright infringement actually entails, or (as illustrated in the example above when Inman was attacked by FunnyJunk's fans) a general defiance towards copyright laws, are pervasive throughout the general public. In a poster presented at the American Society for Information Science and Technology Annual Meeting in 2011, Carlos Ovalle and Philip Doty found that among their undergraduate students, many were frustrated or even disrespectful towards copyright laws, with one student stating that "copyright is not about providing incentives for creation, but a means of control over the use of creative works" (1-2). It is also possible that there is an outright disregard

for copyright laws, if people know that "everyone else is doing it," so to speak. In a 2003 survey, Geary-Boehm cites that "college students polled believed that even if it was illegal, downloading music and other copyrighted materials did not violate any ethics" and that "they viewed the act as more like sharing" (91).

Takedown or cease and desist notices are usually easy to comply with, but if a technical communicator did not clear the rights to a picture used, for example, in a vacuum cleaner manual that has already been packed and distributed to consumers, fines into the millions of dollars (depending on how many instances of copyright infringement occurred) could be levied. In more severe infringement cases, imprisonment is even possible. Even in cases of ignorance, or non-willful infringement, damages can still be awarded to the plaintiff.

Writers should not be necessarily discouraged from using copyrighted material in their works, as long as they know that they must clear the usage with the rights-holder. This thesis discusses what the copyright clearance process looks like, and will also discuss fair use of copyrighted material and some of the complications surrounding claims for fair use. This highlights other implications of copyright for technical communicators: often, technical communicators will work for companies or corporations "for hire," so it is also important for writers to know whether they have any sort of claim to copyright when work is completed for a company. The concept of who owns copyright might also be confusing for book writers, many of whom have to sell the rights to their work to a publishing company in order for the book to be published.

Perhaps an understanding of copyright is needed to truly appreciate its value. In some ways, copyright is viewed as a selfish right, one that prevents others from gaining credit from their creative works. However, the U.S. Constitution states that Congress can enact laws to "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" (U.S. Const., art. 1, sec. 8, cl. 8). Although implicit, one of the goals of this clause is to "[prioritize] the advancement of learning and knowledge creation" for the public (Herrington, "Copyright, Free Speech…" 48), and from this, the idea of public domain was created. Since ownership of a creative work was only supposed to be given to the creator for a limited time, as that ownership expires, the work "becomes part of the public domain, thus enriching the public base of knowledge and creative forms" (Gurak 331). It can be argued, then, that copyright laws ultimately encourage the public sharing of a creative work, so that the populace can benefit from them.

However, since the first established copyright law that was enacted by Congress over 220 years ago, the idea of what a "limited time" of ownership is has been stretched and twisted, most notably in the Copyright Acts of 1909, 1976, and most recently, 1998's Copyright Term Extension Act. Many works that were due to fall into the public domain in 1998 or later now received an extension; copyrights for individuals would now last 70 years after the death of the creator, and corporate authorship copyrights were extended as well.

The 1998 Act was a small blow to advocates of the public domain, many of whom are writers, academics, and artists who may rely on public domain resources to supplement their works. Even though recent works will now take a couple more decades to appear in the public

domain (unless another act of Congress says otherwise), legal scholar Stephen Fishman notes that there are currently "billions of creative works – including books, artwork, photos, songs, movies, and more – in the public domain" (4), and "anyone is free to use them any way they wish" (5). Besides works in which the copyrights have expired, works created before the establishment of copyright laws are considered in the public domain.

Some argue that copyright extensions defeat the purpose of copyright, and that the current copyright laws in place are too restrictive. There is a clear movement for copyright reform – such as the free culture movement advocated by Lawrence Lessig and others – but there is also potentially mainstream support for it as well. For example, in November 2012, House Republicans released a policy brief detailing the need for copyright reform and the reasons for it, only for it to be retracted less than a day later by the same group stating that the paper did not undergo "adequate review." Rampant speculation arose that House Republicans were bullied by pro-IP (intellectual property) lobbyists to pull the paper as it was unusual for a paper to be retracted for what blogger Cory Doctorow (of technology and lifestyle blog Boing Boing) says was a "mealy-mouthed" reason. This silencing should worry writers and any creative artists (or at least make them more aware of the many varied stakeholders in copyright, such as corporations and the government), and perhaps this incident is also reason to believe that this censorship of copyright reformers happens more often than we think.

There is also a necessity for technical communicators to know how copyright laws apply in our current times. Many of the published books on paper (which is probably not a surprise) that discuss how writers should understand and handle copyright law are sorely out of date. Even

lawyer and academic Jessica Litman's oft-cited book *Digital Copyright* was published in 2001, and is now more than a decade old. (Perhaps something ironic can be said about this thesis, which will no doubt be uploaded to an academic database and will remain there, unchanging in content, so I acknowledge that what is discussed herein may only be helpful for so long.) As our technology evolves, we have to try our best to apply our copyright laws (that were written for traditional "hard" media like books, records, and films) to our new advances. The best resources for writers to understand copyright today exist across the web, but these pieces are scattered and sometimes disjointed.

Copyright in new media presents some new challenges that have not been faced before in "traditional" settings. Part of the reason these challenges occur is that the web is a more fluid medium, and it also must be understood that copyright laws may not be able to be applied with a broad brush. For example, is the HTML code on a website copyrightable? What if software was used to build this website – does the copyright belong to the software creator, or to the person using the software? These questions open up more philosophical inquiries on the role of technology in ownership and authorship in our present day.

Organization

The remainder of this thesis is divided into three chapters. Chapter Two covers in detail copyright issues for technical communicators, including who owns the work that they create (individual versus corporate authorship). It also covers the use of others' copyrighted material in a new work, what constitutes fair use, and the public domain (the end stage of copyright

protection). The benefits of the public domain and why the presence of the public domain is important for technical communicators (and all creators) are also discussed.

Chapter Three discusses the efforts to prolong copyright (such as the 1998 Copyright Term Extension Act), as well as the attempts to stop or stall our copyright culture. It contrasts the ways that IP holders and some lawmakers have tried to negotiate copyright and the constitutionality of these efforts. Further discussion in this chapter includes copyright reform, including entities such as Creative Commons and the broad free culture movement, and the benefits and drawbacks for technical communicators supporting these movements.

Chapter Four connects the concepts of the role of copyright as defined by the government and courts, and the possible need for copyright reform. The balance between the two will need to be better established. I also discuss application-based approaches that technical communicators can take to apply the knowledge discussed in this thesis to their own work. This last chapter will look to further research or advocacy that is necessary for both the field of technical communication and our culture as a whole.

CHAPTER TWO: COPYRIGHT, FAIR USE, AND THE PUBLIC DOMAIN

When an artist or author creates an original work, we usually believe that they own and are responsible for this creation. Their work is an extension of themselves and their mind, so it is a natural instinct for them to be able to retain their association with their work. The reason that artists display their work to the public is to be able to broadcast their thoughts and knowledge to the public – perhaps they wish to make people think or begin a discourse, or perhaps for monetary gain, or perhaps they want to leave a legacy that will continue to transmit their message long after they have passed. Whatever financial or philosophical motivations an author might have, the moment they publish a tangible work, it is released to others for some sort of consumption or reaction. This chapter illustrates copyright issues for technical communicators (including work for hire), the copyright clearance process, fair use, and the role of the public domain.

Copyright and Work for Hire

There tends to be a belief that copyright is a "property right" (as in, "I can do whatever I want with my property because I own it"), but Tharon Howard points out that copyright is actually a *privilege* provided to us by the government: "as with a driver's license, the government gives writers license to 'operate' texts in the public domain" (400), that is, copyright holders are given the privilege of having the exclusive rights afforded by copyright. Howard continues to say that because this "license is so easy to obtain…we seem to forget that we're dealing with an issue of privilege rather than of natural right" (400). For the most part, when an

author publishes an original work in the United States, copyright is automatically applied and there is no need to file any additional paperwork to claim copyright. One of the reasons that copyright exists is to allow the creator to financially benefit from their works and to establish authorship officially so that others cannot claim credit or distribute another person's work for their own gain, but copyright law does not ever mention that monetary compensation is something guaranteed of copyright, either.

When artists and authors release works on their own and not through a company, as an individual, they retain copyright over their work. However, many technical communicators often complete works for hire as an employee of a company or corporation. Work for hire "covers those works created by an employee in the course of his employment" – and to be more precise, works that were created within the scope of the employment (Kozak 23). Although the "employer-employee" relationship is not perfectly defined by the government, the U.S. Copyright Office states that "the closer an employment relationship comes to regular, salaried employment, the more likely it is that a work created within the scope of that employment will be a work made for hire" ("Circular 9").

The copyright for works for hire belongs to the employer and not the individual, and it is important for technical communicators to understand the difference. Lawyer and academic TyAnna Herrington rightfully points out that "the law never is static" and that even determining whether something was created as a work for hire may be difficult, particularly for those working in academic settings ("Who Owns…" 126). Even in non-academic settings, she states that "…technical communicators who consider themselves independent contractors should be aware

that despite common presumptions to the contrary, in cases where they are determined to be employees creating intellectual products within the scope of employment, they do not retain the rights to their work" ("Who Owns…" 129).

This means that when work is explicitly created for hire (even as a freelancer or an independent contractor), the "creator" does not retain the right to copy, redistribute, modify, or take advantage of any of the other rights that copyright affords, unless the corporate author has given explicit written permission to do so. However, technical communicators should know that for those that create works for hire as a freelancer or independent contractor, the employer must have a written and signed agreement (by both parties) that indicates that the work was made for hire ("Circular 9"). In some cases, particularly if the employer has an informal relationship with the independent contractor (for example, working for a family business) and does not draft up written documentation of the work for hire, this lack of a formal declaration may lead to complications for who owns the copyright and may also open up possible litigation if the copyright ownership is disputed. In *Community for Creative Non-Violence v. Reid*, the Supreme Court upheld the rights of the independent contractor (in this case, sculptor James Reid) by stating that the work that Reid had completed for CCNV was not a work for hire piece, mostly in part because there was no explicit work for hire agreement that was written ("Who Owns…" 31). Reid was allowed to retain copyright of his work, but from this case, the Supreme Court also further clarified agency law to better define the employer-employee relationship in determining whether a work can be considered work for hire.

While work for hire might sound restrictive, it is nonetheless a common practice across many different industries. Work for hire is also necessary: "without the work made-for-hire doctrine, newspapers, magazines, and other businesses could not function" (Strong 31). It is prudent for employers to officially declare any works for hire as such, particularly to protect dissemination of sensitive or privileged information. In situations where a technical communicator is hired as an independent contractor, it is advised that documents created as work for hire have an accompanying written and signed statement from the writer and the employer to ensure that there is no possible future legal turmoil. It is best practice for both the writer and employer to spell out exactly that what is completed should be considered work for hire, particularly if the writer freelances across several different companies or creates works outside the scope of their employment. However, in certain cases, Herrington also suggests that "[technical communicators] can best protect interests in their own intellectual products by creating and cosigning with employers clear contracts that allow retainer of copyright by the creator even if work for hire status exists" ("Who Owns…" 150). There is no formal or dictated process to transfer copyright from an owner to another party. The U.S. Copyright Office advises that "transfers of copyright are normally made by contract" ("Circular 1"), and in William Strong's *The Copyright Book*, he supports the same practice with a written agreement that is signed by both the employer and the employee (30).

Because the copyright on works for hire belong to the employer, it is of utmost importance for writers to know that if they did complete a work for hire that they need to avoid infringing on the employer's copyright. This means that they may not copy, distribute, and make

derivative works on their previous work, and writers should be cautious when they work on future projects (particularly with a different employer) so that they do not infringe on those rights. Another item for writers to note is that corporate copyrights have slightly different length of terms than those of individual copyrights. Under current U.S. copyright laws, individual copyright protects the work for the life of the author plus 70 years, while corporate copyright expires 95 years from the date of publication or 120 years from the date of creation, whichever comes first ("Circular 1").

Public Domain

These terms are what the government deems reasonable to provide exclusive rights to intellectual property holders by giving rights holders the ability to copy, modify, or distribute their own works (and not allowing others to have those rights) during this time frame. Copyright is an incentive for those to create original works, and at its core, is intended to encourage proliferation of new creative works, and not to stifle others. The reason why copyright expires, however, is that the end cycle for all creative works is for them to end up in the public domain. Supreme Court Justice Louis Brandeis, in writing the dissent for *International News Service v. Associated Press*, stated that "the general rule of law is, that the noblest of human productions – knowledge, truths ascertained, conceptions, and ideas – become, after voluntary communication to others, free as the air to common use" (qtd. in Goldstein 10).

This sort of philosophical debate is what causes some to forget about the purpose of the public domain. Paul Goldstein of Stanford Law divides the two main schools of thought of copyright: there are the "copyright optimists," who believe that artists and authors should get

every possible amount from their works as long as there are those who will pay to get copies of these works, and the "copyright pessimists," who believe that artists should have those exclusive rights as an incentive, but "would like copyright to extend only so far as is necessary to give this incentive, and treat anything more as an encroachment on the general freedom of everyone to write and say what they please" (11). Copyright optimists are, as well, a major reason why copyright terms continue to be extended. In the 20th century alone, individual terms of copyright jumped from 28 years (at the beginning of the century) to life of the author plus 70 years in 1998. Although there is credence behind extending the terms (such as the fact that humans, in general, have longer lifespans and that technology since the early 1900s has affected the way we receive information), some copyright pessimists argue that it has gone too far. By not allowing copyrights to expire, our public domain will remain stagnant; if nothing populates the public domain, they argue, we will not have the freedom to use knowledge that has not yet entered, and cannot build upon that knowledge. (Further discussion of copyright extensions and the efforts to do so will be covered in the next chapter.)

Besides building upon knowledge, the public domain is important in many ways. Works in the public domain allow creators to make "new" works for a new generation to learn from. The public domain allows students to learn from the ancient philosophers without having to ask permission to obtain the knowledge. From a practical standpoint, many older film and music reels from the late 19th and early 20th centuries are "literally disintegrating," and the only way to preserve them would be to digitize (that is, to make a copy) of the work. If the work was under copyright, however, copies would not be able to be made without asking for permission ("Why

the Public Domain Matters"). Society enjoys works created from public domain works on a daily basis, even if we don't realize it. For example, because of the public domain, Disney is able to make and produce multi-million dollar earning movies like *The Little Mermaid* and *Beauty and the Beast*, since the authors of both of these fairy tales have long been deceased and their copyrights have expired. (Of course, the irony in this is that Disney's versions of these stories are under copyright, and their versions cannot be freely distributed, copied, or built upon. If there was an attempt to recreate Hans Christian Andersen's mermaid story, there should be an effort to make sure the new version deviates greatly from Disney's version – which might be a difficult endeavor – lest one wants to be on the receiving end of Disney's legal team.)

Because of a number of revisions to the copyright law, the U.S. public domain has remained stagnant – some might even characterize it as "shrinking" as works that should have entered the public domain have been kept out due to retroactive and convoluted copyright laws. Even figuring out whether a work is in the public domain is sometimes not as straightforward as we might think. Many authors and creators often sign their copyrights away to a publisher when they have their work published, so that even though the authorial rights lie with the actual creator, the publisher retains the copyright to distribute and copy the work as they please. For example, John Steinbeck, in publishing his books, signed away the copyright to his works to his publisher. Although Steinbeck passed away in 1968 (making it seem like all of his works would enter the public domain by 2039, 70 years after his death), the copyright of his works varies because many of them are considered to have been works of "corporate" authorship (which expires 90 years after initial publication), or the copyright on a work was renewed (in this case,

the copyright on *The Pearl* was renewed by his widow in 1974, so now this will expire 70 years after *her* death at the earliest). This is a demonstration of how legal quagmires are keeping works from entering the public domain as it is intended, and anyone wishing to make an adaptation of *Of Mice and Men* or *The Grapes of Wrath* for stage or screen would need to ask the Steinbeck estate for permission (which usually means paying fees) for the next several decades. If only the richest can pay these fees and secure permission, it certainly does not make copyright and the public domain feel like an egalitarian construct, and knowledge can only seemingly lie with and be distributed by the rich.

To give some further perspective about how the public domain should benefit the common people: Martin Luther King's "I Have a Dream" speech is copyrighted, as is King's image, but corporations like Mercedes-Benz and the former Cingular Wireless have been licensed by King's estate (by paying large sums) to use snippets of the speech and his image in their advertisements (Williams par. 4). Meanwhile, the common man – the same people that King pled his dreams of fairness and equality to – would not be able to reproduce the speech without facing possible legal consequences from his estate. Even if the full speech was to be viewed in the classroom (as fair use allows copyrighted works to be used for educational purposes, which will be detailed later in this chapter), it is hard to find a copy of the speech online as videos of the event on YouTube are continually flagged and removed for copyright violations (Williams par. 13).

Public Domain and Technical Communication

For technical communicators, the public domain is invaluable in numerous ways. Technical communicators might be asked to insert images, copy and paste excerpts, and, in a world that is increasingly reliant on hypertext technologies, adding music or video clips to a webpage or program to supplement their writing. Without works in the public domain, the writer would have to either create their own original works, or go through a lengthy permission obtaining process that is likely time-consuming and costly. Even a simple thumbnail of a picture of a flower on a report or a short five second musical flourish when an action was successfully completed in a program would require permission from the creator unless it was in the public domain. To complicate things, as we grow more dependent on the web, we might think that the exchange of information might have loosened to facilitate this new medium. However, academic Laura Gurak does not believe so: "As more and more corporations, including those who employ technical communicators, discover the power and potential of doing business via the Internet, increased regulations and stronger protections in favor of intellectual property holders are sure to follow" (332).

Copyright Clearance

Ultimately, if an employer wants or needs a specific creative work that is not in the public domain to be used, permission from the copyright holder will need to be obtained. Attorney Rich Stim, in his book *Getting Permission: How to License and Clear Copyrighted Materials Online & Off*, outlines a five step process in getting permission for a copyrighted work:

1. Determine if permission is needed.

2. Identify the owner.

3. Identify the rights needed.

4. Contact the owner and negotiate whether payment is required.

5. Get your permission agreement in writing. (Stim 1/3)

In general, works published in the U.S. since 1923 are under copyright, unless rights on the work were surrendered completely to the public domain in some way. With this guideline, for the most part, figuring out whether a work is under copyright (at least for the next decade or so) should not be difficult if it was published from 1923 onward. As part of this first step, Stim also asks the writer to consider whether permission is needed at all, since fair use provides some exceptions as to how copyrighted material can be used without permission (further discussion of fair use will follow later in this chapter). Most commercial works will need to seek copyright clearance, however.

The second step is to identify the owner of the copyright, which can either be a straightforward process or a complicated one, depending on the media. Many printed materials like books and periodicals will have copyright notices in the front matter indicating the copyright owner. However, music and films may have copyrights that are spread out amongst different entities – for example, a record label may own the rights to a particular recording of the song, while the music publisher own the rights to the actual song (that is, the arrangement of the notes/lyrics on paper), and still another entity might own the rights to perform the song (Stim

1/4). Depending on the use, permission may need to be sought from all copyright holders before their material can be used in the new work.

As the third step, Stim suggests that the rights that are needed be identified – that is, how the creative work is intended to be used and how it would be displayed. It is vital to be exact on how the work will be used, since "you don't want to pay for more than you need, but you don't want to have to return for a second round of permissions" (Stim 1/4). At this stage, the writer should determine whether he or she needs exclusive or non-exclusive rights (exclusive rights would mean that others who might seek permission may not use the work in the same way), how long the work needs to be displayed, and in what regions of the world the work might be used or seen. Knowing exactly what sorts of rights are needed will make the negotiating process more manageable.

The next step is to contact and negotiate with the rights holder, but, as a caveat, Stim warns that the clearance process should always be planned ahead of time to obtain permission as the contact and negotiating process may last several months. For time-sensitive projects, the rights clearance should be done at the beginning of the project and considering back-up plans (such as using public domain works or obtaining the rights to a more accessible work) is recommended, particularly if the intellectual property is of some high value (while it is certainly not a rule, it is likely harder to contact and receive a response from the estate of John Steinbeck versus a local writer with a smaller distribution).

One might be fortunate and simply receives the necessary permission from the rights holder without any exchange of money (as Stim notes, particularly when the work is an

"educational or nonprofit effort"), and the writer can then move onto the next step. However, depending on whether the rights holder wants the exposure that the new work will provide, it should not come as a surprise that a fee needs to be paid. At this point, the writer and the rights holder can discuss and fine-tune the terms of the use – for example, the rights holder can stipulate that they do not want the text of their work to appear on the dust jacket of the new work, but they are fine with it appearing somewhere in the new book. Stim states that "generally, permission fees are linked to the size of the audience your work will reach…Commercial uses, such advertisements [sic], cost more than nonprofit or educational uses. The fees for website uses may depend upon on the number of visitors to the site" (1/6). As stated in the previous step, establishing exactly how and where the work will be used will help the rights owner understand and perhaps be more willing to offer permission versus receiving a broad statement like "I would like to use your song in my movie."

Finally, if permission is received by the rights holder, Stim highly suggests that this permission is obtained in writing, as "relying on an oral agreement or understanding is almost always a mistake" (1/6). The rights owner and the person seeking permission may have misunderstood or misremembered the terms, and this can lead to legal disputes (which is the very thing a writer would be trying to avoid if going through the trouble of obtaining copyright permission, of course).[4]

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[4] Richard Stim's *Getting Permission: How to License and Clear Copyrighted Materials Online & Off* (Nolo, 2004) offers invaluable advice about obtaining permissions for all mediums, including text, artwork, and

Fair Use and Its Problems

In some limited situations, obtaining permissions might not be necessary. U.S. Code Title 17, Section 107 states that fair use of copyrighted material in the cases of "criticism, comment, news reporting, teaching, scholarship, and research" is allowable (17 USC § 107). For example, including a brief quote from King's "I Have a Dream" speech in a news article about the observance of Martin Luther King Day likely constitutes fair use. Showing a *Doonesbury* comic strip in a classroom to show instances of satire and symbolism is most likely an instance of fair use. However, it should be noted that fair use is used as a legal defense, and only a federal court can determine whether something can be considered fair use. Fair use should not necessarily be used as preemptive protection, as fair use can only be tested in the courts. Claiming preemptive fair use does not excuse from legal entanglements, and one should be prepared to defend their use with the fair use doctrine if it is strongly felt that it is, indeed, an instance of fair use.

The trouble with fair use is that it is not perfectly defined and is open to interpretation. Although many high-profile cases of fair use claimants have resulted in the Supreme Court siding with the defendants (refer to *Campbell* v. *Acuff-Rose Music, Inc*. or *SunTrust Bank* v. *Houghton Mifflin Co.*), it is still up to the claimants to prove that their use (or in the above cases, appropriations of the originals as they were both decisions on whether parody is considered fair use) of copyrighted material falls under fair use. Many writers and academics may be familiar with fair use claims for educational use, but that claim will certainly not be viable if the technical

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music. While this thesis serves as a primer of copyright laws for technical communicators, his book is highly recommended if the need to obtain copyright permissions should arise.

communicator is working on a commercial project. As well, simply crediting or citing the original creator of the copyrighted material does not constitute fair use. The U.S. Copyright Act of 1976 established four factors that are considered when determining fair use:

1. The purpose and character of the use.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used.
4. The effect of the use upon the potential market for the copyrighted work. (17 USC § 107)

The first factor is probably the most important factor in determining whether the use of a copyrighted work is a fair one. Commercial uses of copyrighted material are certainly almost never covered under fair use. Purely making a duplication of a work without any commentary or context of why the copyrighted work illustrates whatever point the author wants to make is likely not considered fair use, either. (On a related note, parodies are covered under fair use, and this first factor is usually used to determine whether a work can and should be considered a parody or not.) Essentially, the courts will look to see if the new work was "transformative" – Richard Stim asks, "Was value added to the original by creating new information, new aesthetics, new insights, and understandings?" (9/3). If so, then it *might* be fair use, but the standard to determine that is not clearly defined.

The second factor in determining fair use is establishing the nature of the copyrighted work. Was the material used factual, or was it a creative work? Since facts are not covered under copyright, it is likely the courts would determine the use of facts from a copyrighted work to be

fair use. For example, facts about a particular person in a biography might stand the fair use defense versus using material from a creative work of fiction. Courts also favor fair use when the material is taken from a published work rather than an unpublished work, as "the scope of fair use is narrower for unpublished works because an author has the right to control the first public appearance of his or her expression" (Stim 9/3).

The courts look to the amount of work that was used for the third factor for determining fair use. The less that is taken from a work, the more likely it would be considered fair use. There are some instances where courts have rejected to hear fair use cases because the use of the copyrighted material is so small that it is considered *de minimis*. An example of *de minimis* use includes out-of-focus copyrighted photographs or posters appearing the background of a scene in a movie for a few seconds (see *Sandoval v. New Line Cinema*, in which the courts ruled in favor of New Line for their *de minimis* use of Sandoval's photographs in their movie *Seven*).

The final factor in determining fair use is analyzing whether the use of the copyrighted work would cut into the potential market share of the original work. Does the use deprive the rights owner of income because it is in direct competition with the original work? If so, it is likely that the use is not a fair one. The U.S. Copyright Office states that "the distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission" ("FL-102").

Plagiarism versus Copyright Infringment

Many writers understand what usually constitutes plagiarism (at least to some degree), but we may encounter a hazier area of what a writer might perceive as "plagiarism" for those who choose to include copyrighted works that they did not create in their work. This notion is supported by Jessica Reyman, who states that "students entering the workplace may find it difficult to distinguish between 'allowable copying' versus plagiarism, which they know to be disallowed" (62). To be sure, although there are some ethical overlaps between plagiarism and copyright violations, they are not the same offences. While plagiarism tends to be the lack of attribution of a creator's words or expressions and passing them as their own, copyright violation tends to be an issue of intellectual property theft. If a client requests an illustration or a picture of a dog to accompany their pamphlet about leash laws, it is certainly tempting for the writer to search on the web for a picture to use. However, using search engines such as Google Images is not effective; although the search engines return a sizeable number of graphics and pictures (even allowing filtering by color or size), unless the images are clearly watermarked, it is usually difficult to tell who owns the copyright to the images. Coupled with the fact that images on the Internet tend to be reproduced and reposted on a number of websites (and often the credits and attributions are lost in the reposting), it does not seem unreasonable that the writer may not realize that copying and pasting a photograph of a dog by famed photographer William Wegman into that pamphlet would be a violation of copyright, which could lead to severe consequences that could result in legal trouble and hefty fines. Worse, it is also an ethical violation that could possibly tarnish a writer's career.

Although items in the public domain and the writer's own creations that are used in another work do not legally *require* attribution and credits, it is generally good practice to do so. Lack of attribution for a public domain work or even an image released under a license that does not require attribution may be perceived as an act of plagiarism (that is, passing off another person's work as their own). A student may copy a Shakespeare sonnet without attribution for a poetry assignment, but this does not absolve them of plagiarism. Depending on what style guide a writer might be using, the writer may want to consider a credits list, placing the credits/attributions directly under the copyrighted work, or otherwise following what is legally required in terms of proper credits when using the copyrighted work. Proper attributions, particularly for public domain works, may also allow others to realize the existence of the public domain and encourage further use of these valuable resources.

Types of Works Covered Under Copyright

It has already been established that facts (for example, there are twelve inches in one foot) and ideas cannot be copyrighted. What is copyrightable is the tangible form of the original ideas that an artist or creator might have. The U.S. Copyright Office divides works into eight major categories: literary works, music works, dramatic works, pantomime/choreography, graphic/sculptural works, film, sound recordings, and architectural works. The work must be "fixed in a tangible form of expression," so even if a musician has a melody in their mind, until it is notated or recorded, no copyright can be claimed ("Circular 1"). Brand slogans and company symbols are not covered under copyright but rather a similar concept called trademark. The U.S. Patent and Trademark Office defines a trademark as "a word, phrase, symbol or design, or a

combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others." Although this thesis does not cover trademarks, it is to be noted that they are a different entity than copyrighted works. Trademarks require registration (and paying a fee) with the USPTO, and also require the owner of the trademark to do prior research to ensure that their trademark is unique. Copyrights are attached automatically to an original artistic or literary work upon being fixed in a tangible state, and do not require formal registration.

Although it is most likely that technical communicators will end up completing work for hire rather than make an individual creative work, technical communicators should also be accustomed to the establishment of copyright on their original artistic works. They should also be familiar with the rights afforded to them for their own copyrighted work.

CHAPTER THREE: COPYRIGHT EXTENSIONS AND COPYRIGHT REFORM

As discussed in the previous chapter, ownership of a creative work is given to the creator for a limited time; as that ownership expires, the work "becomes part of the public domain, thus enriching the public base of knowledge and creative forms" (Gurak 331). In 1790, Congress enacted the first federal copyright laws that allowed (only) registered maps, charts, and books to obe allowed exclusive rights, as long as a specific statement was recorded and the author paid a fee to receive the copyright ("Copyright Act of 1790"). The terms lasted for 14 years, and allowed a renewal for 14 more years as long as the author did so within 6 months of the expiration of the original fourteen-year term. Thus, this first copyright law covered a limited range of media for a maximum of 28 years, and only upon registration. This chapter discusses the numerous copyright extensions that have occurred since 1790 and attempts at copyright reform.

First Changes

The first changes and revisions to copyright law occurred after the earliest copyrighted works from 1790 began to have their copyrights expire. Because copyright protected such a narrow genre of works and the process also required the author to submit a formal registration of copyright, law professor Julius Marke speculates that revisions were needed since "authors…considered the copyright protection under the [1790] Act so ineffective that many of them hesitated or failed to apply for copyright" (123). In 1831, the first revision of the copyright law was made; the changes of note were that musical compositions were now included as

copyrightable works, and that the term of protection was extended to 28 years, with an optional renewable period of another fourteen years (Rudd 138). Within 40 years of the copyright law taking effect, the maximum copyright term went from 28 years to 42 years[5]. The terms that were indicated in the 1831 revision stayed in place until 1909, when the third revision of copyright laws enacted some major changes, including the terms of copyright being lengthened by another fourteen years (a first term of 28 years from date of publication was provided, and another optional renewable term of 28 years was also provided), along with not needing to register the work with the U.S. Copyright Office, but rather, provide a notice of copyright on the published work ("An Act to Amend…"). These three changes, although with increasing copyright terms after every instance, still provided time for many works published during those periods to "expire" into the public domain.

Copyright Extensions

The most significant changes to U.S. copyright law came in 1976[6]. First, copyright terms were no longer based on publication dates, but rather, the life of the author plus 50 additional years (on works published from January 1, 1978 onward), and there were no longer optional renewal terms on new published works. Because the copyright terms were no longer fixed (in the sense that prior to 1976, the maximum amount of coverage that any copyrightable work could

[5] In 1870, another Congressional Act "extended copyright protection to paintings, drawings, sculpture, and models or designs for works of the fine arts", but no term lengths were changed (Rudd 140).

[6] Also of note, the Copyright Act of 1976 also established fair use guidelines, which were discussed in the previous chapter.

have was 56 years), works published from 1978 onward could potentially have copyright terms as short as 50 years to over 100 years. However, one of the distinct differences between the 1976 Act and the earlier Acts was that it also extended the copyright of pre-1978 works that were still under copyright. The renewal term for pre-1978 works that were not in the public domain was extended to 47 years (and with the automatic first term of 28 years, this provided a combined 75 years of copyright coverage). Works that were set to expire into the public domain under the 1909 Act were now provided nineteen more years of copyright protection (Karjala, "What Are the Issues…").

What is surprising, and perhaps less known, is that starting in 1962, Congress enacted no less than nine "interim extensions" for works published between September 19, 1906 and December 31, 1918 that were not already expired into the public domain ("Circular 92"). If we have been keeping count, a work published in 1910 would have been given an initial 28 year term, and then provided an optional renewal term of 28 more years. If that work was renewed, the copyright should have expired in 1966. However, these nine interim acts extended the works in the above designated time frame for one additional year for a total of nine years, into 1976. Of course, it may come as no surprise that the Copyright Act of 1976 continued to extend the copyright of these pre-1978 works. Given the example above, a work published in 1910, which should have expired into public domain by 1967 (with a requested second renewal), was now allowed nineteen more years of copyright coverage, even though the Copyright Act that provided these additional nineteen years did not officially go into effect until 1978.

The House report (HR 94-1476) disseminated the details of the Copyright Act of 1976 and provides the reasoning behind these new changes. Accordingly, they state that:

> During the past half century a wide range of new techniques for capturing and communicating printed matter, visual images, and recorded sounds have come into use, and the increasing use of information storage and retrieval devices, communications satellites, and laser technology promises even greater changes in the near future. The technical advances have generated new industries and new methods for the reproduction and dissemination of copyrighted works, and the business relations between authors and users have evolved new patterns. (47)

While the advances in technology in the late twentieth century might provide justification for extending copyright terms for works created from that point onward, it does not necessarily give a clear explanation for the retroactive copyright term extensions for the pre-1978 works (particularly works from the beginning of the century) as noted above. For the most part, the public was not involved or asked for their opinion on copyright: "the 1976 Copyright Act…depended upon officially sponsored meetings among those with vested interests in copyright" (Litman, *Digital Copyright* 36). These parties, of course, meant intellectual property and rights holders, who were now increasingly made up of record companies, movie studios, and other corporations.

In 1992, Congress removed the requirement of renewal registration for works published between 1964 and 1977. (As a reminder, works published during this period was afforded an original term of copyright coverage of 28 years, with the optional second renewal for another 28

years.) Works published in 1964 that would have expired into the public domain in 1992 (if the rights holder did not renew the copyright) were automatically given a second "renewal" of another 47 years ("Circular 15"). Even if the author might have wanted their work to expire into the public domain after the initial 28 years (and had no intention on renewing the copyright), these works during this timeframe were provided this automatic extension. Once again, a number of works that could have entered the public domain in 1992 were pushed out in the final hours by Congress.

A mere 22 years after the 1976 Act came the most recent change to our copyright laws. In 1998, the Copyright Term Extension Act (CTEA) amended the Copyright Act of 1976 by extending copyright terms yet again. As the law was initially spearheaded by the late Sonny Bono (former entertainer and U.S. House Representative), it is also known as the Sonny Bono Act. Copyright terms were extended to what we are familiar with now; copyright covers the life of the author plus 70 years (20 additional years from 1976's Act) and corporate authorship would last for 120 years from creation or 95 years after publication (whichever comes first) ("Circular 1"). These new terms affected all works created from 1978 onwards that were still under copyright. Much like the 1976 Act, it also retroactively added 20 more years of copyright coverage to pre-1978 works still under copyright, moving the now automatic "second renewal" term to 67 additional years (for a total of 95 years of copyright coverage). Figure 1 shows a visual representation of all of the discussed Congressional copyright term extensions.

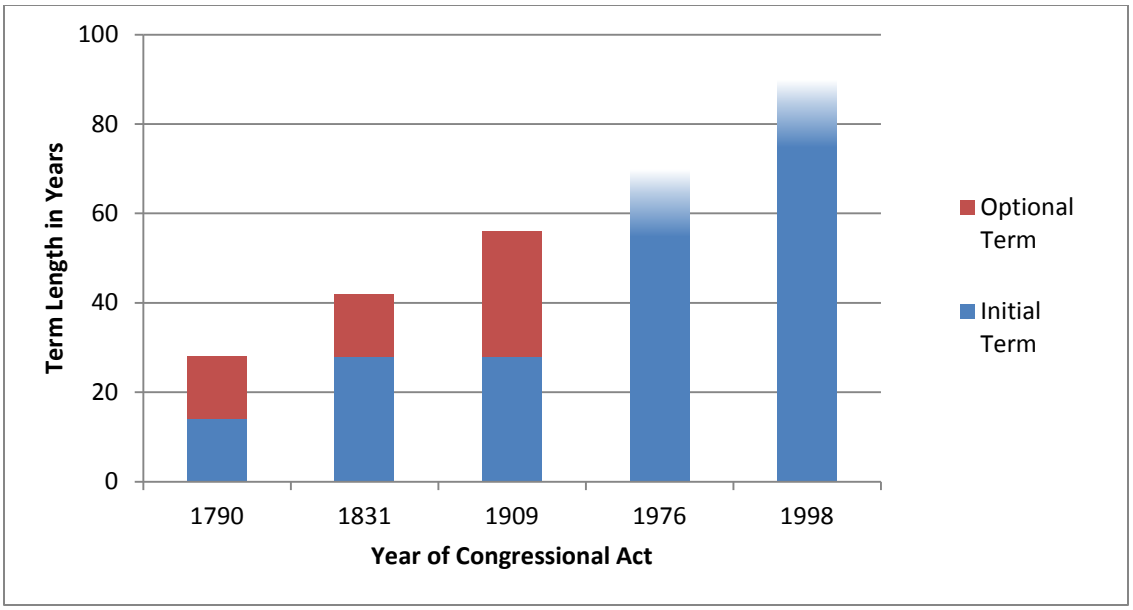

Figure 1. Extensions of Copyright Term Lengths Through Congressional Acts.

Source: Mariana Chao

For many "copyright pessimists" (as referenced in the previous chapter), 1923 is a watershed year (at least for the near future). This year is now the date in which they have to begin calculating the effects of Congress's continual changes to copyright laws. In 1923, an author published a work with the knowledge that they would get 28 years of coverage (to expire by 1952), with an option to renew for another 28 years (to expire by 1980). The 1976 Act provided 19 more years to the renewal term (to expire by 1999), and then the 1998 Act extended it by another 20 years (to expire on January 1, 2019).[7]

[7] Any works published before 1923 would have had even their longest possible copyright expired by January 1, 1998, before the 1998 CTEA was enacted. Thus, all works published before 1923 in the United States are considered to be in the public domain, no matter whether a copyright renewal occurred or not.

The Stagnant Public Domain

The 1998 CTEA effectively pushed even more copyrighted works that were set to expire *out* of the public domain and provided benefits to very few members of the populace. Dennis S. Karjala, Professor of Law at Arizona State University, points out that "heirs and assignees of creative composers from the 1920's have already enjoyed millions of dollars of extra royalty income as a result of [the 1976] extension. The 1998 term extension provides these noncreative recipients with another 20 years of such royalties, all paid out of the pockets of the public" (Karjala, "What Are the Issues…"). It is probably of no surprise that the major supporters of the 1998 CTEA included entities like American Society of Composers, Authors, and Publishers (ASCAP) and the Walt Disney Company who were likely seeking to protect their intellectual properties from entering the public domain. In short, it is indeed about making continued profits for these entities; academic and activist Lawrence Lessig states that "valuable copyrights…are responsible for terms being extended" (221). What is troubling is that very few of the works created in the first half the twentieth century or so "has any continuing commercial value" – Lessig estimates this to be only 2 percent of works published between 1923 and 1942, but it was "the copyright holders for that 2 percent that pushed the CTEA through" (221). Concerned that corporations are looking to their own interests instead of the interests of the public, Lessig bemoans our current state of affairs by stating that "never in our history have fewer [of the public] had a legal right to control more of the development of our culture than now" (170). These continual blows to the public domain worry Karjala and others, who believe that before January 1, 2019 comes around (this will be when the earliest works that are being protected by

the CTEA will be released to the public domain), "we can be sure that Disney will be back prior to that to try to extend the term again" (Karjala, "What Are the Issues…").

Perhaps even more troubling is that our government has possibly lost sight of the purpose of copyright and the public domain. Mary Bono, the widow of Sonny Bono who took over his Congressional seat and duties after his death, delivered what might be a very disturbing view of copyright to the House in 1998: "Sonny wanted the term of copyright protection to last *forever*. I am informed by staff that such a change would violate the Constitution" (9952, emphasis added). It is troubling to see that perhaps given the chance, Congress can (and will) continue to stop and stall our public domain, even in the face of possibly violating Constitutional rights.

The idea of the "limited times" of copyright coverage as provided by the Constitution has been challenged on several occasions, particularly after the 1998 CTEA. *Eldred v. Ashcroft* argued the 1998 CTEA was unconstitutional because the "limited times" portion of the copyright clause was being violated. Dennis Karjala, who had earlier argued against the passing of the CTEA, deliberated over the same hypothetical questions that troubled plaintiff Eric Eldred (an Internet publisher of public domain works): "does the 'limited times' requirement mean any term of years that is mathematically finite (like one million or one billion years)? Or do we determine how long is 'limited' by looking at the constitutional purpose 'to promote the progress of science'?" (Karjala, "Challenge to Constitutionality"). Eldred argued additionally that the CTEA violated First Amendment rights, "on the basis that it was outside Congress's power under the 'promotion of progress of science' clause" (Karjala, "Challenge to Constitutionality"). Unfortunately, even with high-profile support from Lawrence Lessig and Boston law firm Hale

and Dorr, the Supreme Court ruled that CTEA did not violate the Constitution. Once again, it might be of no surprise that those who filed *amicus curiae* briefs in support of the U.S. Government in this case included copyright-protecting organizations such as ASCAP and the Motion Picture Association of America (MPAA).

Copyright Reform

If we are worried that Congress will continue to extend copyright terms, particularly for the benefit of corporations and not of the public, what are we to do about our stagnant public domain? Although not much can be done to reverse copyright terms, academic Laura Gurak "[illustrates] the need for more activism and attention […] in regard to copyright and fair use; toward what Andrea Lunsford (1995) called 'copyleft' and away from the corporate paradigm that threatens to reshape copyright law" (330). Gurak points out that the copyright law of the past never anticipated where we would be now: "[…] copyright law, based on the idea of physical property rights, where boundaries are clear, is now against a new terrain of documents" (332), and that technology itself has muddled copyright. While the Web has offered us easier access to information and has given us much more freedom in expression than ever before, Gurak argues that "increased regulations and stronger protections in favor of intellectual property holders are sure to follow" (332), and that fair use arguments will be more and more difficult to hold up in court as corporations get larger and create a more dominating presence. This potential harassment by rights holders is what is leading to our "shrinking" public domain. Gurak also advocates for professional organizations to lobby against copyright legislation unless we are comfortable with the state of public domain as it is now.

It should be stressed that there is nothing inherently wrong with rights holders wanting to protect their intellectual property, and there is also nothing wrong with making or maintaining monetary benefits from a work that is under copyright. But why does Congress seem to continually extend copyright terms and prevent the public domain from flourishing? We can recognize that there are certain intellectual properties that are more "valuable" than others, but the works that are most hurt by these copyright extensions include orphaned or anonymous works, works that are out-of-print, and works that are no longer commercially viable – to reference Lessig's earlier point, these are the 98% of the works published between 1923 and 1942. There is obviously no perfect solution in this case: we cannot have individual copyright laws based on whether a work is "valuable" or not, as this is not equitable. However, it might not seem fair to apply copyright laws broadly (as they are done now) that protect very few valuable entities while keeping many others locked up. We cannot discount the benefits of copyright, though – reducing copyright terms back to what we had in 1790 would surely discourage some (if not many) artists and authors from creating new works.

It is not a radical notion that copyright today in the United States could go through some level of reform, or at least, be seriously re-examined at the federal level. It is also much too simplistic to say that copyright is "bad" and that is the reason that it needs to be reformed, because that is not the case. In Chapter One, I mentioned that in November 2012, House Republicans released a policy brief about the issues with our current copyright laws, and the need for balance between rights holders and the public. Of course, the unusual outcome of this brief was that it was retracted less than a day later because it did not undergo "adequate review."

No further comments or revisions to the paper were ever made, and the author of the brief, Derek Khanna, was fired. Timothy Carney of the *Washington Examiner* states: "This paper upset some powerful interests…[including] angry objections from Rep. Marsha Blackburn, whose district abuts Nashville, Tenn…Blackburn received more money from the music industry than any other Republican congressional candidate…Lobbyists for the music and movie industries also called the [Republican Study Committee] to express disapproval" (par. 6-7).

Many in the technology-based communities online declared the policy brief to be sensible and reasonable: TechDirt's Mike Masnick, prior to the retraction, stated that "this document really is a watershed moment. Even if it does not lead to any actual legislation, just the fact that some in Congress are discussing how copyright has gone way too far and even looking at suggestions that focus on what benefits the public the most is a huge step forward from what we've come to expect" (par. 19). What is troubling was not that the brief was retracted, but the fact that more likely than not, politicians were swayed (or silenced) by groups who were looking out for their own interests, and not the public's.

The entire nine-page paper[8] exists on various sites that have archived and mirrored it for posterity. Many of the points that were argued in the paper have been argued by those seeking copyright reform for years already. It emphasized that the "limited times" clause was being stretched and twisted, and going with a strict interpretation of the Constitution, that the purpose of copyright is to promote the progress of science and useful arts, not entitle the creator to

[8] The title of this brief was "RSC Policy Brief: Three Myths about Copyright Law and Where to Start to Fix it."

monetary compensation. The paper did not argue for the abolishment of copyright but addressed the need for balance: "with no copyright protection, it was perceived that there would be insufficient incentive for content producers to create new content…and with too much copyright protection, as in copyright protection that carried on longer than necessary for the incentive, it will greatly stifle innovation" (3). It goes on to boldly state that "today's legal regime of copyright law is seen by many as a form of corporate welfare that hurts innovation and hurts the consumer" (4).

Besides pointing out our current copyright flaws, Khanna also makes suggestions for policy change, including expanding the definition of fair use, reducing statutory damages resulting from copyright infringement ("willful" infringement awards $150,000 per violation – and "evidence suggests that the content holder almost always claims that it is willful"), and returning back to an optional copyright renewal term system and creating disincentives (such as requiring a fee) for renewal (7-8). Essentially, the argument that is being made is that copyright is lasting longer than it probably should and that "our Founding Fathers wrote the Constitution with explicit instructions on this matter for a limited copyright – not an indefinite monopoly" (8).

Tailoring Copyright for Today's Society

Even with or without our current copyright laws, rights holders have already come up with ways of dealing with technology and its impact on copyright. Potential copyright violators are discouraged with digital rights management (DRM) tools such as file encryption (so that only the person who bought the work has the right to view, listen, or use it), subscription or user license-based services (for example, think of all the academic databases that require a

subscription to view – at most major universities, this is subsidized by tuition and fees, and students are allowed access to these databases), or requiring proprietary software or devices to view the work. It is completely acceptable for companies to protect their work from "piracy" (that is, taking someone's copyrighted content and selling it for their own profit)[9], but when it starts to hurt legitimate consumers, it is worth asking whether DRM is actually effective. For instance, it may be that every member of a family owns an e-reader, and it may be common for them to share books in this household. However, the family members might be prevented from "sharing" the book as they may not be able to transfer the file from one device to another due to DRM restrictions. With a physical book, it is easy to simply hand the book from one person to another in order to share. It is clear that rights holders have managed to protect their intellectual properties with the use of technology, which is the same reasoning that has allowed copyright terms to be extended.

Obviously, the idea is that once works enter the public domain, no DRM can (or should) block the public from accessing the work, but as previously discussed, it may seem like copyright could potentially last for the rest of our lifetime. It is troubling that nothing appears to be expiring into our public domain anytime soon. To help counteract the lack of public domain works, entities like Creative Commons have started up. Only a decade old, Creative Commons is

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[9] Historically, the definition of piracy was "the unauthorized taking of other people's content within a *commercial* context" (Lessig 62, emphasis added). Only recently has the definition been adapted by rights holders to include other instances of copyright infringement, such as file-sharing (where no money is being exchanged for the product).

a non-profit organization created in 2001 committed to "[providing] a free, public, and standardized infrastructure that creates a balance between the reality of the Internet and the reality of copyright laws" ("About – Creative Commons"). Creative Commons created a set of licenses that allows for more flexibility in retaining copyright while benefitting the community. Releasing any work under any of the Creative Commons licenses gives permission for others to copy, distribute, display or perform the work as long as attribution is given, but the creator of the work also can stipulate whether derivative works can be created based on the original work and whether the work can be used commercially. It is ultimately up to a creator to make the decision to release their work under one of their licenses, but the Creative Commons licensor never loses the legal copyright to their work.

As previously stated, one of the problems contributing to our stagnant public domain is that we must wait until copyright terms expire on works before we can freely use the works. Moreover, there is no defined way (at least in U.S. law) that allows a copyrighted work to be "surrendered" to the public domain before expiration. Creative Commons' solution to this issue was to create "CC0 – No Rights Reserved" category for an author to waive his or her claims to copyright on a work. It is important to note that in light of the fact that there is no prescribed way to relinquish copyright on an original work in U.S. law, "no tool, not even CC0, can guarantee a complete relinquishment of all copyright and database rights in every jurisdiction" ("About CC0"). Of course, the government does not necessarily recognize Creative Commons as an entity who can change or modify copyright laws, so for the most part, their licenses are only bound by people's respect for one another. However, based on the number of works that have

been released under Creative Commons' licenses (in 2011, it was estimated that over 400 million works were under a CC license), it can be surmised that even these artists and authors might feel that copyright – as it is now – is antiquated and possibly even restricting their own freedoms.

To take the idea to an even more extreme view, some might say that the complete loosening of copyright laws is what we need to advance our society and culture. At the forefront in helping to usher in a new age of looser copyright restrictions, Lawrence Lessig advocates the idea of "free culture" in his book *Free Culture*. Lessig states that "the opposite of a free culture is a 'permission culture' – a culture in which creators get to create only with the permission of the powerful, or of creators from the past" (xiv). While much can be said about Lessig and his radical idea, the general concept of free culture is that the creators should freely distribute their creative works or allow others the freedom to modify those creative works and distribute them as well. However, the twenty-first century seems to bring more restrictions than the twentieth century did.

The Internet and our advances in technology have changed the way we communicate and transmit information. Even in 1996, "netwatcher" Misha Glouberman (now an organizer for many wide-ranging "participatory events") had this to say: "What we're seeing on the Net is popular culture becoming something that people participate in, instead of *passively absorb* […] People are expressing their own creativity through these icons, and these copyright skirmishes are undoing the progress" (qtd. in Silberman par. 11, emphasis added). Certainly, if this issue was recognized at least 15 years ago, this is not a novel idea. Our current culture is participatory, not passive.

Technical Communicators and Copyright Reform

In Laura Gurak's 1997 paper on technical communication and the shrinking public domain, she states that "despite copyright's tacit, and sometimes explicit, persistence in our professional lives, few in technical communication studies truly understand copyright, fair use, or the implications new technologies and new legislation will have on legal decisions about copyright" (329). She maintains the same concerns that have been spelled out in this chapter about our current copyright laws: "current trends in copyright legislation are very much out of balance, favoring the author or creator (increasingly, a large edutainment corporation – not an individual or scholarly publisher) over the public" (330).

Chapter Two already established the benefit of the public domain to technical communicators, but it is also important to see how issues of "copyright" are twisted to discourage even legitimate claims or uses of copyright work. Take, for example, major copy service stores like FedEx Office (formerly Kinko's). There have been reports of customers who have brought public domain works or their own work (that they own the copyright to) who have been hassled or turned away from their copy services because of FedEx's fear of potential copyright infringement, or at least, being a liable party who helped partake in potential copyright infringement. Imagine a technical communicator who relies on having printed work completed by services like FedEx Office to sustain their work, and is turned away because of "copyright infringement." Even worse, there are instances where free speech is stifled under the guise of "copyright infringement," and it is necessary for technical communicators to recognize these instances and not be threatened into silence.

Misunderstandings of copyright can be resolved with education, but part of this requires that the public better understand copyright and it also requires advocates for copyright reform to point out the flaws in our current system. It should worry writers that very few entities are controlling our access to works, or that they can be bullied by those that twist copyright into ways they see fit. Technical communicators should never be afraid of using, displaying or transforming public domain works. At the same time, it must also be realized that the public domain has remained stagnant, and the stillness is attributed to legislation that is considered by many to be excessive.

As technical communicators are particularly concerned with clarity, it is important for them to advocate for copyright laws to be clearer and less ambiguous than they are. Law professor Michael Madison, in promoting copyright reform (particularly in the area of fair use), notes that "there is the lack of clarity in the relationship between [the fair use doctrine] and other statutory exceptions to infringement" (402) and supports a revision of our current fair use doctrine to remove redundancies, ambiguities, and to broaden the scope of fair use. Legal scholar and Judge Pierre N. Leval notes that the provisions for fair use have been murky as well and that the "courts had failed to fashion a set of governing principles or values" (1105). Leval states that the law "provides no guidance for distinguishing between acceptable and excessive levels" (1106), and is worried about the abuse of ruling against fair use when these levels are ill-defined: "fair use should not be considered a bizarre, occasionally tolerated departure from the grand conception of the copyright monopoly […] to the contrary, it is a necessary part of the overall design" (1110).

Placing works under a Creative Commons license also opens up the dialogue of copyright reform, although in a subtle way. Much like how the works in the public domain can benefit technical communicators, allowing others to share or modify a work also provides the sort of same benefit, except that we do not have to wait for copyright to expire. Through this method, the newest and most innovative ideas can be shared and expanded upon, and often for the greater good. If there is an opportunity to release a work under a Creative Commons license, technical communicators should consider doing so if they wish to allow others to share and copy their work. There are certainly instances where it would not be appropriate to release a work under a Creative Commons license (perhaps you or your employer absolutely needs to make profit on whatever work that is created), but unlike copyright, where a work is automatically "opted-in", Creative Commons allows the freedom to opt-out.

To be sure, there is always a time and place for copyright laws, and these laws serve a very noble and appreciated purpose. It is crucial for technical communicators to recognize that copyright is to be respected as well. Unless we are working with Mr. Lessig himself, it is likely that many employers may think the idea of "free culture" is too extreme to embrace. But perhaps mentioning to an employer how beneficial it might be to release a white paper under a Creative Commons license might open up a conversation about freely sharing information and collaboration with others, which in turn, contributes to the notion of copyright reform in general. Taking small steps instead of a huge leap is certainly a more amiable way to approach a topic that is considered to be a complex and volatile one.

CHAPTER FOUR: CONCLUSION

The challenges concerning copyright are even more prevalent today. Jessica Litman comments that "we have never had a mechanism for members of the general public to exert influence on the drafting process [of the copyright] statute… The design of the drafting process…excludes ordinary citizens from the negotiating table" ("Revising Copyright Law…" 21). Laura Gurak adds "clearly, technical communication studies has much at stake in the copyright battle. The shape of our entire communication infrastructure has become increasingly tilted toward privatized intellectual property, ignorance of fair use, and a deterministic attitude about corporate ownership and control" (337).

While Litman points out that the general public has never been invited to the negotiating table, Gurak illustrates why it is important for technical communicators (and the public at large) to be able to have a voice at that table. Both authors go on to offer potential solutions or how to further advocate for copyright reform, some of which will be expanded on in this chapter. This final chapter describes the need for a balance in copyright laws and reform, why and how technical communicators should support copyright reform, practical applications of copyright and the public domain for technical communicators, and a view towards the future of our copyright laws and what can be done for the future.

The Balance of Copyright Laws

To begin, there are some things that should be made clear. There is nothing wrong with Disney, or the existence of any other corporation, or granting copyright on works created by

these entities. There is nothing wrong with wanting to make profits on an original creative work. There is nothing wrong with the concept of copyright in general; as I and others have established, copyright is a privilege that should be afforded whenever possible. There is also nothing wrong with intellectual property holders preventing others from theft or unauthorized duplication of their works while under copyright, especially if it results in commercial piracy. In Chapter One, I bring up the case of cartoonist Matthew Inman, who attempted to stop another party from commercially benefiting from his works since his livelihood is dependent on his work.

What I have done here is to bring to light the *excessiveness* of our current copyright laws. Of course, we know that many aspects of copyright laws are open to interpretation, particularly in terms of fair use. In that sense, I advocate for a flexible set of laws that adapts depending on the situation. For example, a bootlegger who sells stealth recordings of the latest movie on the street and a young teen who sings a cover of a copyrighted song that is posted to YouTube are both treated as copyright violators. One party made an unauthorized duplication of the work, and the other performed the work without permission, or even arguably, made a derivative work from the original. However, unlike the bootlegger, it is likely that the teen did not upload her cover in order to take away from the market share of the original content (see the fourth factor in determining fair use). I suggest that intention be one of the primary factors in determining copyright infringement, but also concede that it is not a perfect method as a measurement tool.

I am certainly not advocating for technical communicators to use copyrighted works without permission to see if they can get away with it, or place their blind faith on using fair use

as a defense. Do not try to reason that instead of using a 5" x 5" version of a copyrighted picture that a 1" x 1" version might be more "acceptable." This is dangerous, costly, and career-damaging. As the Society for Technical Communication outlines in its organization's ethical principles, "we [technical communicators] observe the laws and regulations governing our profession. We meet the terms of contracts we undertake. We ensure that all terms are consistent with laws and regulations locally and globally, as applicable, and with STC ethical principles." By all means, writers should obey the laws even as they are now. If you must use copyrighted material, obtain and receive permission or use works that your employer owns the rights to. Use works in the public domain whenever necessary, but provide credit for these works as well when they are used.

While we should obey our current laws, there is reason for technical communicators to be advocates for copyright reform. As stated in the previous chapter, there are many reasons why technical communicators should support copyright reform. However, it is also imperative for the general public to be educated about the issues surrounding our copyright laws and the possible dangers of letting our government (or more transparently, those who lobby for these sorts of changes, such as corporations and artist alliances) control the legislation without public input. It is also much too shortsighted (for both copyright supporters and reformers) to say that copyright laws are not fair because they do not allow someone to make copies of media that they have purchased, or to render them down to simplistic issues like file-sharing or piracy (which arguably, many tend to think about when copyright is even mentioned). These sorts of arguments are only a small aspect of copyright laws, and they happen to garner more exposure in the media

than some of the other parts of copyright laws that are equally (if not more) important. Much more is at stake, particularly our public domain, and even issues of free speech and maintaining our constitutional rights are tied into our copyright laws.

How Technical Communicators Can Support Copyright Reform

TyAnna Herrington, in writing about the impact of the decision of *Eldred* v. *Ashcroft* and its impact on technical communicators states that "[technical communicators] are unique in their roles as producers of communicative materials that may reach or affect large numbers of readers, viewers, and users…It is possible that their authorship of these materials may allow them to influence society and, by doing so, further participate in the process of democratic interaction" (66). She argues that instead of viewing the technical communicator as someone who merely transmits or translates information (often working under a corporate model), that the technical communicator should be viewed as an author. Because of many work for hire clauses, the technical communicator loses legal authorship and protected speech (68). Although Herrington does not go as far as to advocate for employers to disregard work for hire clauses completely, she suggests that works created by technical communicators should not be viewed as merely commodities, but as works of authorship through which writers can influence the democratic process. Although the discussion of the literary concept of authorship (the sort that philosopher Michel Foucault defines) is outside the scope of this thesis, technical communicators Jennifer Slack, David Miller, and Jeffrey Doak also argue that as technical communicators, we provide meaning (and not simply transferring information) through our duties, and in turn, should be provided both power and authorship (168).

Technical communicators can also advocate for copyright reform through publishing in journals, bringing these issues to classrooms, as well as joining or supporting organizations that support copyright reform. Even if a writer produces a journal article for publication that has nothing to do with copyright laws, Laura Gurak suggests that "…we, as authors, should not sign away our rights each time we publish an article. Instead, we should negotiate with the journal or press for one-time rights or to keep the copyright to our own work" (338). Although groups such as the Electronic Frontier Foundation, Creative Commons, and Fight for the Future are promoters of copyright reform (particularly for our digital age), even professional organizations such as the Conference on College Composition and Communication (CCCC) have committees or subgroups that bring awareness to copyright and intellectual property issues.

Practical Applications for Technical Communicators

Technical communicators are sometimes faced with situations where they may need to make a decision about using another author's copyrighted work. It is most likely that technical communicators are asked to insert images (or in the case of electronic-based media, videos and sound) or text into their work. They may be asked by their employers (under ignorance of copyright laws) to simply pull something off from the Internet to include in the work. There tends to be this thought that if it is available to view or hear on the Internet, then surely, it is meant to be shared and no one can "own" the digital bits that the image or audio is encrypted in. Obviously, we know this to not be accurate, and we can even be deceived in our efforts when we attempt to obtain legitimate "free" material to use. A writer might simply search for a "public domain gallery" on the internet and find many tempting repositories of millions of images or

video clips to use. However, we should tread carefully – some of these websites simply copy media found on the internet (with the rationale that since the "public" can view these pictures on the original websites that this falls under "public domain"), and "often, these sites contain statements that the images are 'presumed,' 'deemed,' 'believed,' or 'assumed' to be in the public domain" (Fishman 316). Writers should be especially vigilant of these sorts of statements that are made and avoid using resources that cannot positively verify that the media contained are indeed in the public domain.

Technology has also complicated understanding of copyright in many ways. With the advent of recording devices (even going back to the 1960s and 1970s), our copyright laws have been adjusted to accommodate these changes. In a society where it is now very easy to cut and paste digital media (even in the form of "reposting" and "sharing" information and media via social networks), it is enticing to follow the lead of others who might be doing the same, even it means violating copyrights. Just because the process of sharing media today is easy does not make it legally right, and technical communicators should be cognizant of the impact that technology is making on our perceptions of copyright.

Opportunities for Further Research

Many technological territories have not been well explored when considering copyright for new media. In Chapter One, I proposed a hypothetical question about whether the source code (written in HTML) on a website is copyrightable. When I first posed the question, I was hoping that over the course of my research that I would find a clear answer to this question. Unfortunately, very few resources cover website code, and the issue has never been tested by

courts. We certainly know that the original text and images that are seen on a web browser are copyrightable, but can it be argued that the way that these items are laid out on a page is copyrightable? It is plausible that you can register your website with the U.S. Copyright Office as a "literary work." But if that is the case, at which point in the source code are the lines copyrighted? We cannot ask to copyright HTML elements or tags, obviously. The U.S. Copyright Office seems to imply that formatting code can be registered (but notes that this "does not automatically cover any visible or audible copyrightable elements that are generated by the code" and that visible elements need to be submitted as a separate entity), but it is unclear whether the formatting code is actually covered under copyright ("Circular 61"). If technical communicators are faced with this challenge, it would be advisable for them to make sure that (at the very least) all of the individual elements of a website (such as text, images, and sounds) are copyrighted.

I had also asked whether using a HTML editor, particularly one that uses WYSIWYG interfaces that may insert code that the writer did not know to put in themselves, would require that copyright or authorship would be given to the software as well. While the answer to this is not clear, it seems that it would be hard to argue for legal author status for the software since that would also mean that artists and designers would need to share copyrights with Adobe Photoshop or Illustrator when they create their works with those programs, or writers would share copyright status with Microsoft Word when submitting their works for publication. Technical communicators should not be afraid to use these tools, of course, but the closer a program comes to creating files in a proprietary file format, the more the lines of ownership are

blurred. I would advise that whenever possible, technical communicators create their files in open formats (for example, the Portable Document Format, otherwise known as PDF, is now an open format).

Public Domain and Other Resources

As described in Chapter Two, the public domain enriches our lives and is intended to promote artistic freedom and not stifle it. With that said, though, it is sometimes hard to find public domain resources. Stephen Fishman states that "there is no list or database of all the works that are in the public domain [and] it would be impossible to create one since so much material is in the public domain" (10). He further adds that "you have to determine whether a work is in the public domain yourself by understanding and applying some basic copyright rules" (10). If we recall, works published from before 1923 in the United States are guaranteed to be in the public domain because all possible copyright terms have expired at this point. However, works from 1923 onward require some deeper research to determine whether the work is still under copyright or not. Peter Hirtle of the Cornell Copyright Information Center provides a very thorough chart on CCIC's website (http://copyright.cornell.edu/resources/publicdomain.cfm) that details the conditions for public domain inclusion for works published from 1923 onward.

An important contributor to the public domain is, perhaps surprisingly, the U.S. Government. Many (but not all) "works of authorship created by U.S. government employees as part of their job are ordinarily in the public domain" (Fishman 158). These include photographs taken by employees of NASA, the U.S. Fish & Wildlife Service, National Oceanic & Atmospheric Administration, among many other government entities. Often these organizations

have websites with large image/text repositories, providing a useful resource for anyone seeking the use of public domain works. Even though the government does provide the public with an enormous inventory, one important thing to keep in mind is that there are sometimes exceptions to the government's contributions to public domain; for example, "photographs of federal government agency seals, logos, emblems, and insignias may not be reproduced on articles without government permission" (Fishman 159).

As a caveat, although resources are provided below, I cannot fully guarantee that every item that is uploaded to these sites is in the public domain or freely usable. However, these sites act on good faith that the works included are in the public domain or freely usable. As always, it is prudent for you to check on the copyright status of any media that you wish to use.

For texts/writings:

- Project Gutenberg (http://www.gutenberg.org/)
- Bartleby.com (http://www.bartleby.com/)
- The Internet Archive – eBook and Texts (http://archive.org/details/texts)

For images/videos:

- Library of Congress Prints & Photographs Reading Room (http://www.loc.gov/rr/print/)
- Wikimedia Commons (http://commons.wikimedia.org/wiki/Main_page)
    - Note that the media Wikimedia Commons hosts can range from works in the public domain to copyrighted works that are released under a Creative Commons license.

- Flickr's The Commons (http://www.flickr.com/commons)
- The Internet Archive – Moving Image Archive (https://archive.org/details/movies)

Beyond using public domain or Creative Commons works, I also advocate for technical communicators to exercise their creative abilities and consider the do-it-yourself method, whether it be taking photographs or drawing simple illustrations in an image creation program. One of the main benefits of DIY work would be the avoidance of messy copyright issues (since the creator of the work would hold the copyright); in addition, the writer can edit images to their liking or need. The downside to this method is that the quality of work would be entirely dependent on the writer's skills as an artist or what resources they have nearby to shoot, as well as it being a possibly time-consuming process. Also, common sense should prevail: we cannot claim copyright on pictures of company logos or a photograph of a photograph (unless the original is in the public domain). After the photograph is shot, image creation and manipulation programs can digitally "post-process" and clean up the pictures; some free and open-source programs include GIMP (http://www.gimp.org/) and GNU Paint (http://www.gnu.org/software/gpaint/). There are ample tutorials (both in video and text/image formats) on the internet to show users how to use the programs, and many user forums dedicated to these programs. Commercial programs such as Adobe Photoshop and Corel Paint Shop Pro can sometimes provide more powerful functions than their free and open-source counterparts, and may be worth investing in if a writer will be doing heavy graphics creations and image manipulations in their works. DIY work can be extremely rewarding, and it is worth technical

communicators' time to learn some basics of photography and digital drawing for their works in general, particularly since there is the notion that technical writers should have a working knowledge of the overall aesthetics of layouts anyway. Most of all, a first-hand experience of the image creation process may let the writer begin to fully appreciate the benefits of copyright, or inspire the writer to release their creations in the public domain or under a Creative Commons license. Mark Frauenfelder, editor-in-chief of MAKE Magazine, says it best about DIY: it provides "an opportunity to use your hands and your brain", but also provides "a path to freedom" ("The Courage…").

Other Considerations

While this thesis was intended to serve as a basic primer to copyright laws, there are many intricacies that were not discussed and would be outside its scope. One of the major considerations for technical communicators (especially in our global society) is copyright laws on foreign works. To even begin this discussion would require an intimate knowledge of every country's copyright laws – something that requires extensive research and the ability to translate laws through different languages. Stephen Fishman, in his book *The Public Domain*, dedicates an entire chapter of the book to public domain works outside of the U.S., but acknowledges that "to explain the rules of copyright around the world would take a whole book" (290). Because of the complications surrounding copyrights for foreign works, those who find themselves working with non-U.S. entities are advised to familiarize themselves with the copyright laws that govern that particular country.

It has already been established throughout that copyright law is not static and is often murky. Not until court cases have been tested would we know where the boundaries might be. I hope that I have at least begun to scratch at the surface of some of the issues surrounding copyright laws for technical communications, and that the next time we see a copyright symbol on a work, that we know it carries both a history *and* a future. We should also learn to question our copyright laws and bring to surface those sorts of ambiguous situations (for example, is a photo of a public domain work under the copyright of the photographer?) so that we can have further clarity on our muddled laws. Copyright is not a black and white issue; it requires deeper analysis and it should not be treated as a topic to be avoided or for others to determine for us.

As anti-climactic as it may be, we will need to wait and see what happens. Based on the history and the precedents that have been set by the government, we should not be surprised if there is legislation coming down the pipeline to extend copyright terms again. However, it may be possible that with the public's input, our laws may change for the better. At a fundamental level, our challenge to or questioning of copyright laws allows us to exercise the basic tenets of democracy. As technical communicators, we must do our best to help restore balance through advocacy: "…ours should not be an effort to destroy copyright, because we ourselves are also copyright holders and do not want to see our ideas unfairly used during the limited term of our copyright. But, at the same time, we do not want to see copyright shift so far in favor of the holder that there is nothing left of our public intellectual spaces" (Gurak 339). Without these intellectual spaces, we cannot possibly have an informed society or culture.

Law should not punish our future generations. Even before our first copyright laws were codified, Thomas Jefferson, in writing to James Madison, stated "'that the earth belongs in usufruct to the living': that the dead have neither powers nor rights over it. The portion occupied by an individual ceases to be his when himself ceases to be, and reverts to the society." Although he was referring to lands as property, the point that he makes is that property (and we should consider intellectual property as such) should be something that can be shared by the living – and that the dead should not necessarily govern what happens to things in the present or the future. It will likely be a long journey for us to reach a point of rightful balance, but in the meantime, we need not sit idly waiting for others to change our future.

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