Assessing Copyright Risk Tolerance for Large Scale Digitization Projects

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Large Scale Digitization Projects
Risk Management: Quantifying Tolerance

Consequence

- **Reputation** (negative media attention): intensity, duration; brief to >2 wks
- **Infrastructure** (financial losses): negligible <$250K to high >$5M
- **Education/Research** (cannot provide): time and number of people affected
- **Human Resources** (ability to recruit): comparative
- **Safety/Security**: health effects, injuries, fatalities

Likelihood

- **Rare**: not in 10 years
- **Unlikely**: not at Cdn uni in 10, other uni in 5 yrs
- **Moderate**: once in 10 yrs Cdn uni, 5 yrs other uni
- **Likely**: once in 10 yrs at org, 5 yrs other Cdn uni, 2 yrs other uni
- **Almost Certain**: once in 5 yrs at org, 2 yrs other Cdn uni, 1 yr other uni

Risk treatment is required for all risks above Level 1.
Canadian Case Law: Digitization Projects
US Case Law: Digitization Projects
How are CARL libraries assessing copyright digitization risk?

Results of an informal environmental scan of Canadian Association of Research Libraries (CARL) members with digitization ‘programs’ in November 2015.

“Does the University of xxx have a formal copyright risk assessment procedure for digitization projects? If so, does it include a risk matrix (e.g., with risk tolerance scenarios determined by factors like type of material and access level, etc.)?”

Information offered by respondents (not requested). Actual values likely higher.
SFU: Timeline

2014-2015  Copyright Office consulted by SFU Archives re: “Virtual Reading Room” (atom.archives.sfu.ca);
Peter Hirtle presented “Understanding Rights and Responsibilities” at Digital Directions conference (NEDCC 2014)

Spring 2015  Copyright Office began developing risk management approach for use in Library
SFU Digitized Collections
SFU Digitized Collections

Canadian Farmworkers Union Collection
Selected publications, documents, and other significant items from the complete Canadian Farmworkers Union collection. 900+ publications, documents, and other significant items from the complete CFU archival collection held by the SFU Library's Special Collections. For more information about... 

Chinese Benevolent Association Collection
A collection of 55 Chinese-language documents focusing on the history of the Chinese Consolidated Benevolent Association (CCBA). Founded in 1884, the CCBA was a crucial force in Victoria’s immigrant history. The oldest association of its kind in North America, the CCBA advocated for an... 

Community Health Online Digital Archive Research Resource (CHODDARR)
A publicly accessible digital archive of research materials related to health and social welfare, with an emphasis on housing, gender, aboriginal issues, HIV and mental health. The CHODDARR archive includes documents that are not normally published by commercial publishers. Much of the... 

Mai '68 Collection
The mai '68 poster collection is SFU Library Special Collections consists of posters and pamphlets created largely by the Atelier Populaire. The collection is important as a source of documentary, artistic and historical evidence of the student protests in France during May 1968. Each day... 

Pacific Tribune Photograph Collection
The Pacific Socialist Education Association's Pacific Tribune photograph collection comprises over 40,000 35 mm images taken for the weekly Vancouver Labour newspaper Pacific Tribune. The images cover a twenty-year period, from 1972 to 1992, one of the most active periods in... 

Vancouver Punk Rock Collection
"A brief noisy movement which still reverberates" is how the New York Times (12 June 2008) described Punk, a movement which once lived much more than music or clothes, it supported and promoted various social and political causes, such as the movement, women's rights, and opposition to...
SFU: The Approach


Works are deemed low-risk or high-risk by the Copyright Office, based on a series of factors.

- Low-risk: disseminate
- High-risk: seek permission before disseminating

Acknowledgement that dissemination of low-risk works without authorization may be infringing.

Takedown protocol enables copyright holders to easily contact the Library with concerns.
### SFU: Timeline

<table>
<thead>
<tr>
<th>Year</th>
<th>Event 描述</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-2015</td>
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<tr>
<td>Fall 2015</td>
<td>University-wide <em>Risk Management Policy</em> (GP 42) approved; Risk management approach approved by SFU legal counsel; Library stakeholder consultations</td>
</tr>
<tr>
<td>Winter 2016</td>
<td>Library approved <em>Risk Management Copyright Policy Framework for SFU Library Digitization Projects</em> and related documents</td>
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</table>
SFU: Stakeholder Concerns

Liability to the Library

What are the limits to the Library’s responsibility or ownership of projects?

How will this approach work when researchers external to the Library submit material?

Complaint response and takedown

What will the process look like?

What are the technological implications?

What will the administrative burden be?

Concerns, process, and stakeholders’ input will be revisited as we proceed.
SFU: Documentation

Introduction

When undertaking digitization projects, libraries must do so in a way that respects the copyright law. The Copyright Act, R30.04 Copyright Compliance Policy, and the Library Services Copyright Office have developed a framework for digitization. It is important for libraries to work with the Copyright Office to ensure that their digitization projects are done in a way that respects the rights of creators.

Client and Department

When working with a client, it is important to understand the purpose and audience of the digitized material. This can help to ensure that the digitization is done in a way that respects the copyright holder's rights.

Description of materials

The Copyright Act, R30.04, and the Library Services Copyright Office have developed a framework for digitization. It is important for libraries to work with the Copyright Office to ensure that their digitization projects are done in a way that respects the rights of creators.

License?

When working with a client, it is important to understand the purpose and audience of the digitized material. This can help to ensure that the digitization is done in a way that respects the copyright holder's rights.

Commercial value?

When working with a client, it is important to understand the purpose and audience of the digitized material. This can help to ensure that the digitization is done in a way that respects the copyright holder's rights.

Owner history of copyright

When working with a client, it is important to understand the purpose and audience of the digitized material. This can help to ensure that the digitization is done in a way that respects the copyright holder's rights.

Takedown Protocol for Digitized Material Disseminated Under a Risk Management Decision

The University Library digitizes material under six different situations:

1. Purpose of the digitized material is for educational parody, satire, etc.

2. The character of the digitized item is for educational parody, satire, etc.

3. The copyright owner has granted permission.

4. SFU owns the copyright in the work.

5. The SFU Copyright Office conducted a risk assessment and determined that the material

6. The material is deteriorating or at risk of deteriorating or becoming damaged or lost, and digitization for preservation purposes.

Why would the Library be asked to remove material?

The University may be asked to take down material if it was made available under the risk management protocol since it would have been made available without the copyright owner's permission. It comes to the attention of the Library that the digitized material is a violation of the relevant copyright and privacy legislation or policies.

Who can request that material be removed?

Those who may request material be taken down are the copyright holder, the individual or institution that created the material, the Libraries, Archives, and Museum, or a third party that has a legal interest in the material.
Mai '68 Collection
http://digital.lib.sfu.ca/mai68-collection
Copyright Risk Analysis for SFU Library Digitization Projects

Date: May 11, 2016 (for 2012)

Client and Department: Special Collections - Library and History dept. (Prof. M. Leler, SDF 2011)

Description of material (title, creator, medium, dates of creation and/or publication, source, additional information): Posters from the Atelier Populaire from the mai '68 protests in Paris. These posters were designed by members of the AP would meet to discuss the day’s events and coordinate a message for the following day via posters, a form of wall newspaper. Are considere art works.

Confidential information / trade secrets / privacy concerns? No

Protected by copyright? Yes
  If yes, copyright owner: Unknown

License? No
  If yes, ☐ Creative Commons ☐ Other: Click here to enter text.

Amount copied: ☐ All or much ☐ Little or some

Insustantial? No

Fair dealing analysis needed? No

Commercial value? No. Digitization will not compete with any commercial exploitation of the works. Commercial value lies in the 1968 originals, not with any digital reproduction.

Owner history of copyright defence? No
  If yes, details: Click here to enter text.

Is owner/author relationship with SFU a factor? No
  If yes, details: Click here to enter text.

Potential effect on moral rights? No
  If yes, details: Click here to enter text.

Other reason for careful consideration? No
  If yes, details: Click here to enter text.

Copyright Office’s final recommendation and comments: This is a true orphan work and is also anonymous. Copyright term is 75 years (display of art works does not qualify as publication). Atelier Populaire has been disbanded since 1968 and there is no way to contact it. These works were displayed during student protests as a way to transmit and coordinate messages for the day. Based on the ideology of the creators and the purpose to which they were put, it is highly unlikely the creators will object to the making available of the posters.
Cleveland Arabic Collection
http://digital.lib.sfu.ca/cleveland-collection
Copyright Risk Analysis for SFU Library Digitization Projects

Date: May 11, 2016 (for June 2015)

Client and Department: Library Special Collections and History / CSMSC (Prof. D. MacLean SOF 2014/15)


Confidential information / trade secrets / privacy concerns? No

Protected by copyright? Yes
If yes, copyright owner: al-Husari estate or Dar al-Tali’ah publisher.

License? No
If yes, ☐ Creative Commons ☐ Other: Click here to enter text.

Amount copied: ☐ All or much ☐ Little or some

Insubstantial? No

Fair dealing analysis needed? No. Cannot see a plausible fair dealing defence.

Commercial value? No. A digitized book online of only one page with no online features is unlikely to compete with the market for the original.

Owner history of copyright defence? No
If yes, details: Click here to enter text.

Is owner/author relationship with SFU a factor? No
If yes, details: Click here to enter text.

Potential effect on moral rights? No
If yes, details: Click here to enter text.

Other reason for careful consideration? No
If yes, details: Click here to enter text.

Copyright Office's final recommendation and comments: The book can be scanned and made available. The risk is marginal, as the Egyptian publisher is out of business, the work is only 3 years from public domain, Egyptian copyright holders are not known for enforcing their rights, there are well known sites of infringing digitized books in the Arab world (Shamila and alwaraaq) which do not come under scrutiny. Finally, there is no OCR of the Arabic text, so it can only be found via a known title or author search. Pages are only images, so not all that easy to re-use for other purposes as well. Advice of the head of the McGill Islamic Studies Library was that there was no risk in digitizing this material.
Risk of Litigation

Large-Scale Digitization of Copyrighted Materials

<table>
<thead>
<tr>
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<th>High</th>
<th>Level 3</th>
<th>Level 4</th>
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<tbody>
<tr>
<td>Major</td>
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<td>Level 3</td>
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<tr>
<td>Rare</td>
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<tr>
<td>LEVEL 2 RISK : The University will accept a risk at level two as long as it is reduced to a lower level of risk in the long term using low resource options.</td>
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Potential treatments to reduce Level 2 risks to Level 1 (reliance on section 29 or 30.1):

- TPMs to restrict access to authorized users, limit number of concurrent users, limit uses to viewing and/or partial downloading (could be graduated if needed).
- Click-through agreements explaining acceptable uses.
- Takedown notices / communication plan for queries from rights holders.
Risk of Loss of Materials

WITHOUT Large-Scale Digitization of Copyrighted Materials

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RISK: EDUCATION / RESEARCH, REPUTATION CONSEQUENCES
- Not all print works in the library collection are commercially available. When these works are lost or removed timely access is denied to the university community.

RISK TREATMENT:
- Create a backup copy.

LEVEL 3 RISK: Uni will accept as long as it is reduced to a lower level of risk in the midterm through reasonable and practicable risk treatments.

LEVEL 4 RISK: Uni will not accept unless fully reviewed and approved by the President’s Executive Committee - Operational.
## Risk of Major Event / Sustained Losses

**WITHOUT Large-Scale Digitization of Copyrighted Materials**

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| LIKELIHOOD   | Moderate | Likely | Almost Certain |

**RISK**: EDUCATION / RESEARCH, REPUTATION, HUMAN RESOURCES

- Loss of print resources due to major event (flood, fire, etc.) would impact services.
- Lag time / inability to restore access would damage competitiveness to attract and retain staff.

**RISK TREATMENT**:

- Create a backup copy.

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**LEVEL 2 RISK**: The University will accept a risk at level two as long as it is reduced to a lower level of risk in the long term using low resource options.

**LEVEL 3 RISK**: Uni will accept as long as it is reduced to a lower level of risk in the midterm through reasonable and practicable risk treatments.
Where do we go from here?
Questions?

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Resources and References


Photographs

All photographs related to climbing are CC0 and available via PixaBay: