

DIGITAL RIGHTS CHALLENGES IN A WORLD OF TECHNOLOGICAL CONVERGENCE

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Media and digital content convergence

- ◎ Intellectual Property issues and challenges
- ◎ features inherent in digital content that exacerbate the intellectual property problem
 - Multiple media
 - heterogeneous media
 - dynamic
 - non-permanence
 - multiple goals of digital content collections

Legal challenges

- ◎ Not to infringe copyright
 - > what content is protected?
 - > How to facilitate access to content
 - > consent from copyright holders
 - > avoid unauthorized exercise of exclusive rights
- > persistent question
 - digital content manager has necessary rights in the e-content?
 - privacy and confidentiality issues
 - ethical issues (e.g., health, personal data)

Digital content dynamic

- specific files and databases: constant additions/corrections
- File not static
- Problem: how to vouch content integrity

Digital Content “not permanent”

- > technology changes
 - > may corrupt files
 - > may make unreadable
- > Longer access time frame = more uncertainty
 - Challenges:
 - Format changes
 - Proprietary formats, continuous morphing
 - earlier versions orphaned
 - proprietary owner may contractually limit access
 - or may go out of business
 - Digital info fragile and at risk

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- ◎ Migration of data one solution to format changes
 - > software and hardware
 - > may involve structural and data elements sequence re-arrangement
 - > Legal challenges in migration:
 - migration process usually involves copying information
 - structural and data elements re-arrangement may violate author's exclusive right to make derivative copies

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- Additional issues in the US
 - Does the file conversion violate the DMCA, and
 - Is a migrated file the same as the original file for the purposes of evidence?

Multi-media content

- ⊙ Digital files in a mix of media formats, e.g.,
 - ⊙ text
 - ⊙ sound
 - ⊙ graphics
 - ⊙ video
 - ⊙ other
 - > Sometimes play devices are proprietary

- DRM used to control access; preserve exclusive rights
- Prevent unauthorized copying
- Allow copyright holder various levels of control
- DRMs tech protections are reinforced by DMCA's legal prohibitions
 - Most DRM technologies not user friendly
 - E.g., prevent portability of file after downloading, even for a licensee
 - Can restrict fair use
 - Limit access to public domain material
 - Affect privacy; require disclosure of private information



- E-books

- May not be able to download from regions where you are not a resident (e.g., Kindle in Europe for an American)
- Different locality rules
 - IP address
 - Credit card address
 - Stated address, etc.



◎ digital collection manager should

- understand the DRM access limitations
- understand the different pricing models
- from outright purchases to limitations on frequency and simultaneous access
- other use restrictions
 - printing
 - downloads
 - sharing
 - amount of content that can be accessed



© Legal issues complicated by

- > Some rules are specific to particular media formats (e.g. sound files)
- > Media format conversion may trigger copyright infringement (e.g. conversion of text into audio formats)
 - in the United States, dates on which a sound recording was first fixed determine the nature of the legal protection available (more so than text works).

- ⦿ prior to February 15, 1972, for example, sound recordings did not have federal copyright protection
- ⦿ situation changed by the Sound Recording Amendment Act of 1971, works recorded or fixed after February 15, 1972 provided federal copyright protection
- ⦿ until February 15, 2067, however, state criminal law statutes or common law may protect Pre-1972 works against unfair competition or misappropriation

New legal challenges

- Newer versions of familiar formats
 - Document icons; small visual representations of document
 - Page thumbnails; small images of a page usually in reduced resolution
 - can be enlarged by a reader for viewing

◎ Thumbnails and search engines

- › search engines make copies of the images they crawl; may violate the author's reproduction exclusive right
- › thumbnails are shown to the users, search engines may also violate the author's exclusive right to public display
- › use of thumbnails may rely on one of the exemptions to the author's exclusive rights: Fair Use (as in the Kelly v. Arriba and Perfect 10 cases below)

Kelly v. Arriba

- ◎ Virtual search engine operator displayed photographer's copyrighted images on its website and those of its licensees
- ◎ To build the database, operator had copied images and reduced them to thumbnails that could be enlarged upon clicking
- ◎ Use was ruled Fair Use by the lower court, because the character and purpose of use was "significantly transformative and the use did not harm the market value of the works."
- ◎ The ruling was affirmed by the 9th Circuit

Perfect 10 v. Google

- ⦿ This time internet Google and Amazon search engines were sued by website operator Perfect 10
- ⦿ Perfect 10 publishes adult photos on its website and magazine
- ⦿ Has spent significant resources developing a brand name for its website and magazine
- ⦿ Google & Amazon used textual search string queries in its image search functions to retrieve thumbnail images

Perfect 10 v. Google

- Some of these retrieved images came from Perfect 10's website
- Perfect 10 sued both Google and Amazon
- Argued that Google's action superseded Perfect 10's market for downloading reduced-size into cell-phones
- Dist. Ct. granted preliminary injunction against Google, restraining it from creating and displaying Perfect 10's images

Perfect 10 v. Google

- 9th Cir disagreed and ruled that use was fair: thumbnails did not detract from economic value of images
- Google could display search results containing Perfect 10 thumbnails

More legal complexities

- ◎ digital collections
 - ◎ different types
 - ◎ Different goals

Divergent Goals

- ⦿ different goals (as well as heterogeneous, multiple formats)
 - ⦿ Preservation is one of the goals
 - ⦿ a legal privilege to preserve is provided to some institutions (e.g. Section 108 of the US copyright law)
 - ⦿ If maintaining documents for evidentiary purposes, issue of non-permanence acquires critical importance

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- A closely related issue for evidentiary purposes is authenticity
 - Digital info can be vulnerable to tampering or corruption
 - Depending on the nature of the collection, authentication methods such as digital signatures, version control, and encryption may be necessary

Conclusion

- We are in the age of media convergence
- gradual creeping of computer capabilities into our everyday consumer products
 - The line between the television set and the computer monitor is becoming blurred

Conclusion

- ① IP problems and challenges accompany this convergence
- ① We have discussed some of these challenges, mainly from the US perspective
- ① these challenges are exacerbated by the peculiar characteristics of digital content (e.g. heterogeneous nature of media)
- ① digital media preservation for legal evidence presents yet other issues



Thank you for listening!