



COPYRIGHT FACTORS FOR HERITAGE INSTITUTIONS

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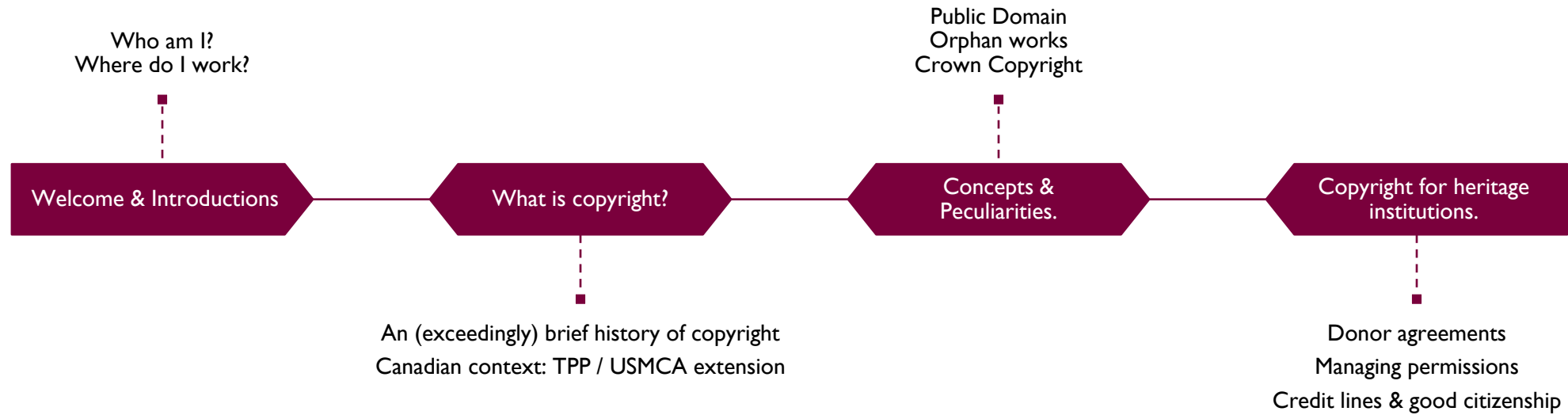
WELCOME & INTRODUCTIONS

- Who am I?
 - Myron Groover, Archives & Rare Books Librarian, McMaster University Library
- Where do I work?
 - The William Ready Division of Archives and Research Collections
- Our collections:
 - 4 linear kilometres of archival records (records of people and organisations: personal papers, manuscripts, letters, diaries, etc.)
 - 100,000+ rare and significant books (dating from c. 1050 AD to the present day)
- Why archives & special collections are important:
 - Direct evidence of events that have happened in the past.
 - Tangible statements about societies' priorities & ideals.
 - An opportunity for the past to speak to us in its own words.

A VERY BIG DISCLAIMER

- “I’m a librarian, Jim, not an intellectual property lawyer!”
 - I’m a working professional with a mind like a magpie’s nest. These are my personal gleanings from a 20-year career in archives, libraries, and museums on both sides of the Atlantic.
 - I have dealt with all sorts of copyright-related issues in my career and almost every single one of them has left a bad taste in my mouth.
 - I’m sharing a bit of what I’ve learned in order to get you thinking about how you may wish to proceed in your own context. In case it needs saying:

Nothing in this presentation should be construed as legal advice. Please and thank you.



Today's Outline:

WHAT IS COPYRIGHT?

A thin, vertical white line is positioned to the right of the text, extending from the top of the word 'WHAT' down to the bottom of the word 'COPYRIGHT?'. It is perfectly vertical and has a consistent thickness.

A BRIEF HISTORY OF COPYRIGHT

- Copyright: a relatively modern concept
 - Early European “creators” possessed no legal rights to their work; even the idea of a “creator” or “author” is fairly recent.
 - Copyright attempts to reconcile:
 - An individual’s (or collective’s) moral right to the creations of their own mind.
 - The state’s practical right to regulate, censor, and monetise publishing.
 - Commercial interests’ speculative investment in subsidising content production.
 - Individuals’ right to own & possess the tangible results of this production (books, films, &c.)
 - Early conceptions of legal copyright were explicitly aimed at ensuring the anti-competitive rights of protected commercial monopolies. This is still their primary purpose.
 - Search your feelings. You know it to be true.

CASE STUDY:

EARLY EVOLUTION OF ENGLISH COPYRIGHT

- The advent of printing (~1450) poses a significant threat to established structures.
- The Protestant Reformation makes this significantly worse.
 - 1556: Stationers' Company founded to regulate the publishing industry.
 - The Company exercises a suffocating monopoly on printing, ensuring that printing in England lags far behind both Catholic and Protestant continental printing in quality, quantity, and diversity.
 - Stationers' monopoly revoked in 1695; Statute of Anne (1710) passes into law 15 years later.
 - Statute of Anne:
 - Intended to break the back of commercial monopoly and incentivise cultural and intellectual production.
 - Introduces a commercial incentive to publish:
 - Publishers enjoy 14-year legal exclusivity to anything new they print; books already in print receive a 21-year term.
 - Over time, the Statute's ideas about subsidising cultural production and liberalising the print industry are subsumed by rights-holder lobbying.
 - Since then, the story of copyright in the Anglophone world has tended to be one of ever-increasing copyright term.
 - The eventual extension of copyright to authors is largely a fig leaf because almost all profit rests, then as now, with various publishing industries.

RECENT HISTORY

- For a long time, life + 50 (as in the UK) was the general rule.
- Canada possesses an unenviable set of circumstances:
 - Weak-to-non-existent leverage in international trade negotiations.
 - Heavily subsidised cultural production with relatively weak commercial appeal.
 - Our nearest neighbour is the epicentre of the modern rights industry.
- Copyright in the United States: a Mickey Mouse affair. Literally.
 - Ever since the passage of the Mickey Mouse Protection Act (1998) the USA has sought to force its copyright term on the rest of the world through trade negotiations.
 - Canada surrendered during the USMCA negotiations; copyright term extension to life + 70 was implemented in 2022.
 - Mercifully, no clawback from the public domain was included. This was a real concern.

IMPORTANT CONCEPTS: COPYRIGHT TERM, ORPHAN WORKS, CROWN COPYRIGHT

- Public domain:
 - The sphere of cultural production legally considered the common heritage of humankind. In USA, generally includes pre-1923 works.
 - Also the reason you sometimes find weird modern facsimiles of 200-year-old books on Amazon.
- Copyright ownership:
 - In principle, ownership inheres in the creator of a work — unless (as in Crown Copyright) they're acting *in loco* of another legal entity.
 - In practise, this right is widely sold and in many cases will tend to rest with the private commercial sector.
- Copyright term:
 - The length of time after an author's death that a work is considered to be under copyright.
- Crown copyright:
 - A special provision for works subsidised by the Canadian state — including many military records.
 - The system of crown copyright licensing is grotesquely under-funded and irretrievably broken; see “orphan work” below.
- Orphan work:
 - A work which may reasonably be inferred to be under an existing copyright, but for which no copyright-holder can readily be found.
 - A major challenge for heritage institutions — and everybody else. Especially true in a context of corporate mergers & acquisitions.

Literary work (Covers works in electronic and paper formats)

Memoranda, email messages, journals, books, magazines, text books, talking books (the underlying work, not the recorded voice), periodicals, monographs, government records and reports, pamphlets, newspapers, poetry, genealogical materials, letters, statistics, computer software, statutes, law reports, judicial decisions, forms, court records, databases, published and unpublished research papers, brokers' reports, stock reports, annual reports, manuscripts, microforms (print on plastic), theses, conference proceedings, industry standards, Braille, postings to Internet newsgroups, large print materials, compilations of literary works on CD-ROMs and databases.

Dramatic work

Video recordings, documentaries, films, radio, television and cable programs, plays, choreography, CD-ROMs containing compilations of dramatic works.

Artistic work

Patterns, art slides, maps, atlases, paintings, architectural drawings, plans, stage and costume designs, digital images, drawings, photographs, charts, mosaics, art prints, compilations of artistic works on CD-ROMs and on Websites.

Musical work

Sheet music, songs with or without words, audiocassettes, audio CDs.

Sound recording

CDs, talking books, oral history tapes, vinyl albums, phonographs, audio books, audio cassettes, papers recorded at seminars, audio tapes of speeches and lectures, sound effects, spoken word recordings, language cassettes for ESL, compilations of sound recordings on CDs.

Performer's performance

Recorded performances of actors, authors, singers, musicians and dancers on tapes, cassettes, CDs, CD-ROMs, video recordings and films, compilations of performances by performers on records, CDs and in audiovisual formats.

Communication signal

Television and radio signals

COPYRIGHT CONCERNS FOR HERITAGE INSTITUTIONS:

- Copyright makes people afraid. It creates uncertainty, doubt, and in a worst case scenario, paralysis. It can help to think calmly and clearly through a few questions:
 - Who owns the material in your collection?
 - What right do you have to display or publish the materials you hold?
 - How do you handle donations and accessioning?
 - Does your documentation cover copyright and intellectual property?
 - Are there other ways of thinking about cultural production and property that need consideration?
 - Moral rights, Indigenous traditional knowledge, cultural production / intangible heritage...

© FOR HERITAGE INSTITUTIONS: THREE (OKAY, FOUR) APPROACHES

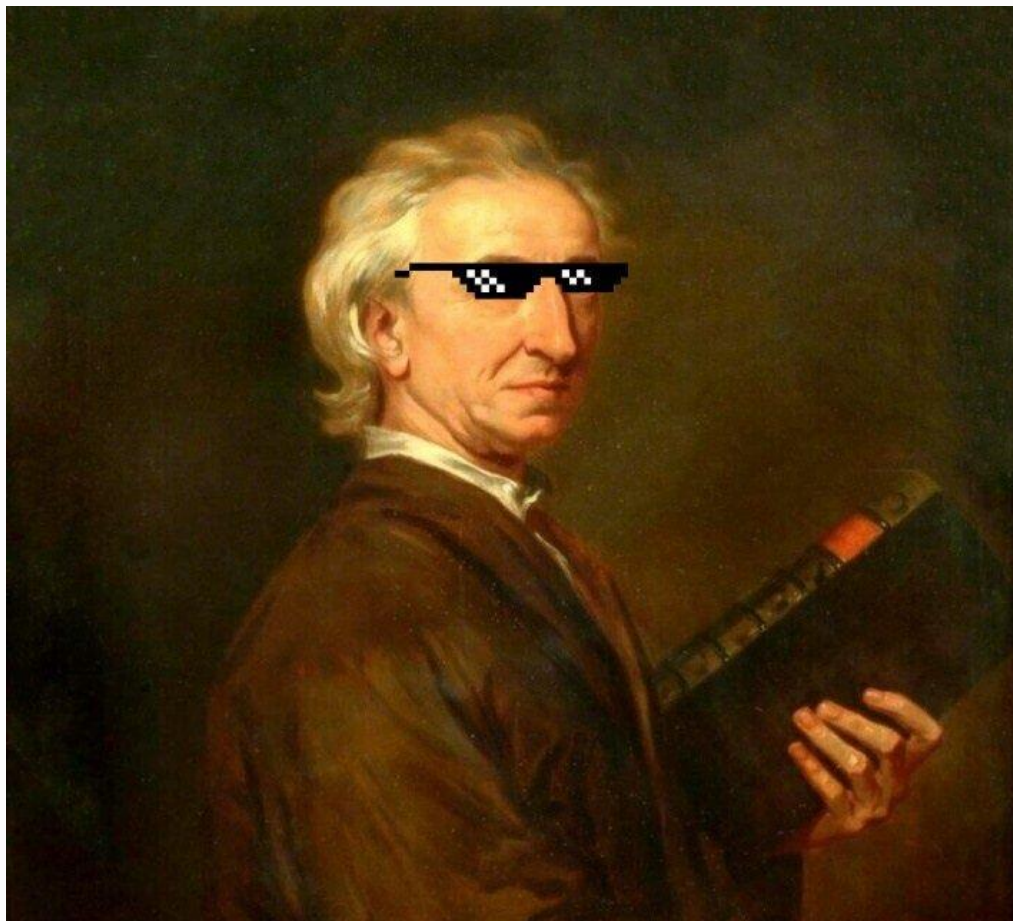
- Approach I: Moon the Devil.
 - Don't worry about it! You're beneath notice enough that nothing will ever come of it. Right?
 - We've all worked somewhere that tried this. There are lots of reasons it happens. There's no shame in inheriting a bad situation, but you do have to find a way forward.
- Approach II: Too Hot.
 - Require that donors sign over any IP rights which may inhere in their donations to you at the point of transfer. Watch your donations dry up in real time.
- Approach III: Too Cold.
 - Leave all rights with the donor, and simply avoid any licensing requests. Disavow all knowledge. No media for you!
- Approach IV: Just Right.
 - Talk about rights with donors, leave rights with them, and have an established procedure for negotiating licensing / permission requests.

LICENSING AND PERMISSIONS FOR HERITAGE INSTITUTIONS:TRICKY

- You can't license what you can't own.
 - The people tasked with handling licensing requests often don't really care.
 - Be prepared for licensing requests you can't service.
- How do you navigate permissions requests?
 - Respecting donor relations and donor privacy.
 - Think ahead about vexatious requests.
 - How involved do you want to be?
- Consider (like, strongly consider) legal advice.
- Sometimes, things don't work out. That's okay! You can only do the best you can do.

OUR LICENSING APPROACH (FROM OUR ONLINE BOOKING FORM)

- In being granted permission to access the archive(s) listed above and to make copies from the archive(s), I understand that:
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 - McMaster University Library – unless otherwise explicitly stated in writing – makes no representation that it is the owner of the common law copyright in the items accessed or copied.
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