Archives and Copyright

Jeremy Gunnoe

Info 560-901

Jordon Steele, Instructor
Copyright law has always been an important issue in regards to archives. Whether this was for copying material for patrons or managing bequests, copyright concerns have always been in place. With the ever-increasing amount of digital media and the continuing growth of the internet, copyright concerns are more front-and-center than ever before. Dryden summarizes these concerns when she states that, “the ease with which digital documents can be copied and disseminated, and what end-users might do with the repository’s online content, temper the potential for increased access to holdings and a higher profile” (Dryden, 522). This literature review first discusses the issues with digitization and actual ownership of the rights. The second addresses recent legislation and how this has affected the availability of archives to the general public. The third article speaks to copyright and digital archives as applied to commercial use and licensing. While these issues sound very different, they all explore themes of note for archivists dealing with copyright and digitization.

Jean Dryden’s article “Copyfraud or Legitimate Concerns?” discusses some basic copyright laws and issues, but specifically addresses archives whose material may fall into a gray area of ownership. This article also addresses whether physical possession of the material actually constitutes ownership of the copyright and whether archives are going against the mission of archives, “By invoking copyright in ways that impede access to, and use of, online documentary heritage, they are compromising their core mission of making their holdings available for use” (Dryden, 522). Dryden states that archivists invoke copyright protection to protect their material, but inadvertently are restricting the mission of the archive. It’s also discussed how some of this is to protect the rights and privacy of the material, but also to protect income the material may produce for the institution. This article goes into detail in discussing the specific concerns regarding archival digitization and actual ownership and rights of the material.
Also, often by invoking copyright protection (digital rights management, disabling right-clicks, etc.) on public-domain materials, archives are acting without the legal authority to do so, and therefore, are perpetrating “copyfraud”. This article contains a good mix of quantitative and qualitative data, however, the survey participants were all Canadian archives, so it’s unclear if these results are representative of the profession worldwide. Dryden is also very thorough in her citing and her footnotes often add explanation and clarify some of her points. She does make a strong argument that archivists need to be more aware of copyright laws as many of the survey participants (archives and archivists) did not even completely understand where they were at fault. She also discusses how managing digital collections should be more incorporated in education and professional experience (Dryden, 543). This becomes a running theme throughout all three articles. All in all, this article is an excellent source of data, information and practical solutions.

Kimberly Barata’s article, “Archives in the Digital Age”, discusses how archives have been responding to legislation requiring transparency and availability of material (specifically the Freedom of Information Act and Data Protection Act in England). Barata also discusses how electronic records, in particular, are affected by these regulations. She states that, “archivists must be involved early in the life-cycle of records if they are going to have an impact” (Barata, 63). The article discusses the burden these acts have put on archives in regards to the amount of records the repositories will be required to hold on to. While this article contains a good deal of information on the laws and requirements, the author tends to be more pessimistic in regards to archives being able to keep up with copyright laws and concerns. Barata states that electronic records are often ignored and archival education needs to be more geared towards electronics records management. This article is a good example of the blurring of the lines between archives
and records management, and actually seems to lean towards the latter in ideas and discussion. Even in the conclusion the author is more negative and doesn’t offer many actual solutions. In the same sentence she suggests archivists go to the National Archives for guidance, but then that “they are not as useful as they might be” (Barata, 69). She does restate several times the need for additional training in digital archives, which does seem to be good advice in regards to these issues.

Nancy S. Loe specifically addresses the licensing of archives for commercial purposes in “Avoiding the Golden Fleece: Licensing Agreements for Archives”. She also discusses how the rapid growth of digital media has caused a tremendous increase in requests for rights to archival materials. As with the other two articles, she also discusses the difficulty in regards to actual ownership and the lack of information regarding digital rights of copyrighted material. She states, “Much of the existing content in institutional settings is subject to pre-existing agreements that do not stipulate rights in new environments” (Loe, 64). This article also goes into great detail on the archival goal to disseminate information against the commercial licensee’s (movie and television studios, websites, etc.) desire to gain control of the content at a minimum price while gaining the maximum rights to it. A general theme seems to be that they’ll take advantage of you if they can. Loe provides some excellent solutions on how archives can manage their digital material, from the more expensive (their own in-house legal team) to less expensive options (a cooperation between several institutions to manage these rights). The article also contains a sample license agreement and explicit legal language that the archival institution should ensure is included. It contains specific material and information that could be put to use almost immediately. This article also shows excellent real world examples of situations that have occurred and the solutions that resulted. It’s also very interesting in how Loe argues the
need for archives to provide information to the public, and balancing that with commercial situations that could potentially bring in revenue to the archive.

A number of themes run through all three of these articles. One of the main themes is the mission of archives to make material available while balancing copyright laws and the potential for profit. A second is ensuring the archive knows who actually owns the materials and what rights they may have. Another seems to be the need for additional education in copyright and digital archives. All three articles discuss the additional education, training and experience required, though, Barata is again more pessimistic when she states, “the model for archival education is breaking down” (Barata, 68) and argues that archival training programs need to be drastically revised to handle these digital and electronic issues. While I definitely agree that the digitization and digital archives needs to be a major component in today’s archival education, many of these issues relate more to the understanding of copyright laws and how the archive or institution implements them. Most copyright laws were created without any idea of future technologies and legislators have been slow (or incomplete) in addressing these issues. These articles contain some very useful information for the contemporary archivist on ways to adjust to these new laws and technologies in a variety of situations. From making the material available, to protecting that material, to possibly generating revenue from it, the understanding of copyright laws as it relates to digitization and digital media is a vital necessity in the archival field.
Bibliography:

