
Who Owns What? Negotiating Intellectual Property, Digital Assets, and Information Access

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Agenda

- Examples of current practice
 - US Copyright Office guidelines
 - Implications on practice
 - Underlying issues
 - Potential solutions
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Example 1: Literary work

As You Like It by William Shakespeare (1564-1616)

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Drama: As You Like

http://drama.eserver.org/plays/renaissance/shakespeare/comedies/as-you-like-it.txt

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The EServer Drama Collection

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 - Twelfth Night
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 - A Winter's Tale

- Histories
- Tragedies
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As You Like It

AS YOU LIKE IT

DRAMATIS PERSONAE

DUKE SENIOR living in banishment.

DUKE FREDERICK his brother, an usurper of his dominions.

AMIENS | | lords attending on the banished duke. JAQUES |

LE BEAU a courtier attending upon Frederick.

CHARLES wrestler to Frederick.

OLIVER | | JAQUES (JAQUES DE BOYS:) | sons of Sir Rowland de

ADAM | | servants to Oliver. DENNIS |

TOUCHSTONE a clown.

SIR OLIVER MARTEXT a vicar.

A person representing HYMEN. (HYMEN:)

CORIN | | shepherds. SILVIUS |

WILLIAM a country fellow in love with Audrey.

ROSALIND daughter to the banished duke.

Go to: http://drama.eserver.org/plays/renaissance/shakespeare/contents.txt/document_view

AUTHOR: [Shakespeare, William](#), 1564–1616.

TITLE: [The Oxford Shakespeare](#): the complete works of William Shakespeare.

PUBLISHED: London: Oxford University Press: 1914.

PHYSICAL
DETAILS: viii, 1350 p., 1 l. front. (port.) 21 cm.

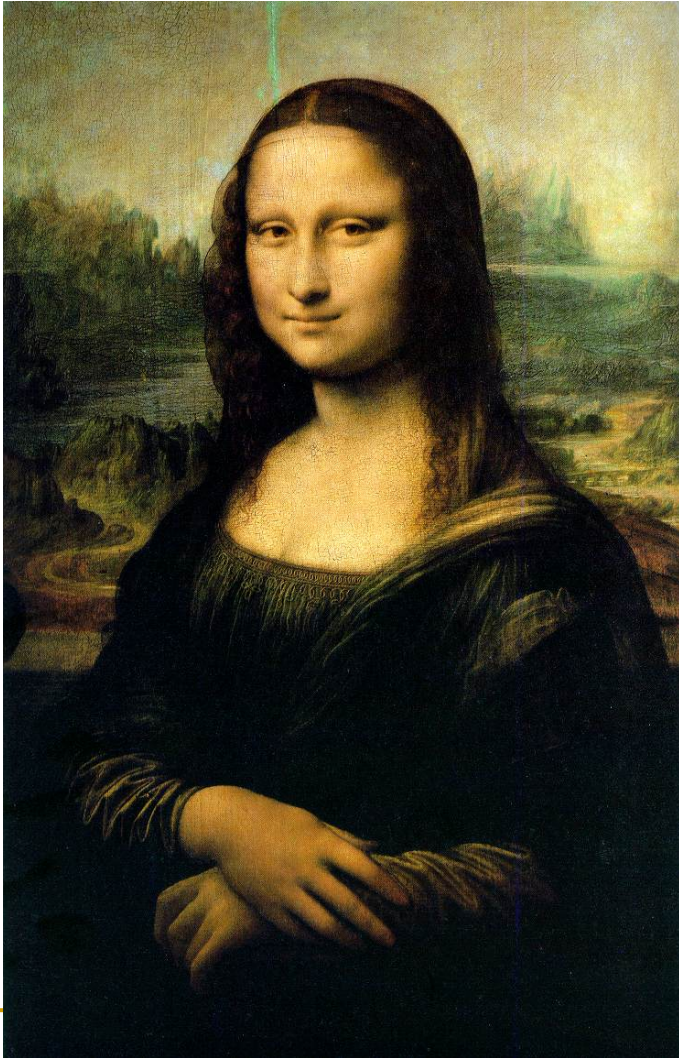
ISBN: 1-58734-055-0.

OTHER
AUTHORS: Craig, W. J. (William James), 1843–1906, ed.

CITATION: Craig, W.J., ed. “[Play/Poem Title].” *The Complete Works of William Shakespeare*. London: Oxford University Press: 1914; Bartleby.com, 2000. www.bartleby.com/70/. [Date of Printout].

ON-LINE ED.: Published May 2000 by [Bartleby.com](#); © Copyright Bartleby.com, Inc. ([Terms of Use](#)).

Example 2: Work of Art



Leonardo da Vinci, *La Gioconda*
(ca. 1503-1508)

Image courtesy of WebMuseum, Paris
<http://www.ibiblio.org/wm/paint/auth/vinci/joconde/>



Vers 1503 - 1506

© Musée du Louvre/A. Dequier - M. Bard

Leonardo di ser Piero DA VINCI, dit Léonard de Vinci - Vinci, 1452 - Amboise, 1519
Portrait de Lisa Gherardini, épouse de Francesco del Giocondo, dite *Monna Lisa*, la *Gioconda* ou la *Joconde*
Vers 1503 - 1506

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Close

<http://www.louvre.fr>

Example 3: Photograph

San Diego Historical Society



Interior of the Quon Mane store [ca. 1925]

Finding Aid, Online Archive of California

Creator:

[Unknown]

Date:

[ca. 1925] 1920/1930

Source:

From:

San Diego Historical Society Negative Collection (C004) California Border Region Digitization Project: 1870-1939
California Border Region digitization project

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What are these content providers asserting?

Copyright refers to the exclusive right to

- **reproduce** the work
- **prepare derivative works** based upon the work;
- **distribute** copies to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- **perform** the work publicly
- **display** the copyrighted work publicly

Physical ownership vs. copyright ownership

Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of **ownership of any material object that embodies a protected work** does not of itself convey any rights in the copyright.

US Copyright Office, Circular 1

Is the digitized work copyrightable?

Premises:

- Digitized version is different
- Intellectual effort involved in digitization
- Published for the first time



Is the digitized work copyrightable?

- Derivatives must be transformative or contain a substantial amount of new content
- Format is not copyrightable
- Compilations are copyrightable only if they contain new material

US Copyright Office, Circular 14

Bridgeman v. Corel (1999): intent of reproduction

Is the digitized work copyrightable?

- Copyright in a derivative work covers only the new material
- Copyright in a derivative does not extend nor imply copyright in preexisting material

US Copyright Office, Circular 14

Implications on Practice

- Copyright status of the analog work holds for the digital version:
 - Published works before 1923 are public domain
 - Unpublished works (life of author +70; 120 years after date of creation)
 - Creator unknown—**orphan work**
-

Implications on Practice

- Blanket copyright statements may not be accurate, nor are they helpful

The text, images, and data on... (the "Museum") website (the "Site") are protected by copyright and may be covered by other restrictions as well. The Museum retains all rights, including copyright, in data, images, software, documentation, text, and other information contained in these files (collectively, the "Materials").

Implications on Practice

- It is not valid to impose copyright restrictions on a work when you do not own copyright
 - There is no such thing as an "international copyright" –US Copyright Office, Circular 1
 - False copyright notices are punishable under U.S. copyright law
 - Works ultimately belong in the public domain
-

Is there a conflict of interest?

- Preserving/Protecting assets

- Special collections

vs.

- Enabling access

- Serving user needs
-

Is there a double standard?

- Open-access publishing models
 - Libraries *as* publishers
 - Investment/return
 - How do libraries fulfill the responsibility of the publisher's role?
-

Possible Approaches

- Incorporate copyright information in object records, including:
 - Creator, date of death
 - Nature of authorship (work for hire?)
 - Date of creation
 - Copyright holder
 - Country of creation/publication
-

Possible Approaches

- Use (develop) technology that allows users to fully exploit information in a work, while protecting the asset
 - Explore sustainable models for digitization
 - External funding
 - Licensing
 - Acquisitions budget
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