



## ASM/Museums Alaska Chat

December 13, 11 am

Session 54

**Scott Carrlee:** Hi Jodi. Welcome to the chat

**Scott Carrlee:** Hi Erin

**Della Hall:** Hello!

**Scott Carrlee:** Hi Della, welcome to the chat

**Della Hall:** Thanks Scott!

**Jodi:** Thanks Scott. Hi to everyone.

**Scott Carrlee:** Hi Sue, welcome

**Sue Deyoe:** Hi Scott and everyone!

**Scott Carrlee:** We will give it a few minutes to allow any stragglers to log on.

**Della Hall:** Hi Jane!

**Jane Lindsey:** Hello All, nice to join in

**Scott Carrlee:** Ok great, let's get started. Today we have a theme to the chat and that is copyright. We have Freya Anderson with us to facilitate the discussion

**Freya Anderson:** Good morning, all!

**Scott Carrlee:** Hi Freya

**Freya Anderson:** I have a few things to mention up front. I need to give the obligatory notice that I'm not a lawyer and can't provide legal advice. What this means in practical terms is that I can bring up

issues to consider, and we can work through hypothetical practice cases, but I can't give advice on how to handle a specific situation. The tools and resources I mention throughout are linked from a copyright guide I created, which you can find at <http://lam.alaska.gov/owlcopyright>. Those out of the way, if you have any questions, please jump in, whether related to my comments or not. I'm most concerned that we cover your questions than any ideas I've prepared!

**Freya Anderson:** To kick things off, I thought perhaps we could start off talking about the difference between different types of intellectual property. Copyright, trademark, and patent overlap a bit, but generally protect different things in different ways for different reasons.

Patent is for short-term protection of inventions and processes, and you have to apply for it to get protection.

Trademark is intended to avoid consumer confusion about products. It lasts indefinitely, as long as it's protected, and it prevents others from using similar branding for similar products. Thus, it would most likely be ok to name a museum café Apple, but perhaps not a museum app.

According to the Constitution, copyright is intended "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." It protects creative, original content that is fixed in some way, for a limited, but increasingly less-so, period of time.

**Freya Anderson:** Do you ever run into issues between these different kinds of intellectual property?

**Scott Carrlee:** I think Museums are mostly concerned with copyright

**Freya Anderson:** Ok, getting more into copyright...

Keep in mind the rights that copyright protects: copying, public performance, modification, but not putting something you own on display. So, you can display a piece of art that you own, but may not be able to modify it. This may sometimes mean that you can't display a work in a way other than intended, although, we have it easy compared to some countries with "moral rights" based copyright! In one case, a building owner was required to maintain a mural on the side of his building, and to maintain the building itself! Plagiarism is also often confused with copyright. Giving appropriate attribution is important, ethically. It also helps show that you're behaving well, when done as part of a more comprehensive practice. But, strictly speaking, it doesn't relate to copyright. Attributing content doesn't give you permission to use it.

**Scott Carrlee:** that is a good point. I think a lot of people run afoul of that using music

**Freya Anderson:** It's a common misperception.

**Freya Anderson:** There are two main ways that pretty much all of us interact with copyright every day: as creators and as users. As creators, copyright protection is automatic when creative, original thought is put into a fixed format.

So, your comments here have copyright protection. So does a doodle I did in my notebook. A list of donors most likely would not. Most forms don't have protection either, or it's "thin". This term is used when there might be some protection, but fair use might be a LOT easier. Most federal publications

don't have copyright protection, but you need to be careful, because some might, and some content within them might have protection.

State publications vary from state to state, but in Alaska, state and local publications do have copyright protection, except for laws. I use publications, because that's what I'm used to, but the concept applies more broadly.

**Scott Carrlee:** is that in the constitution?

**Freya Anderson:** Yes and no.

**Freya Anderson:** Copyright law has basis in the Constitution, but the specifics are in law.

**Scott Carrlee:** is it in the AK state constitution?

**Freya Anderson:** One sec and I'll show you the Constitution part

**Freya Anderson:** "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

This is from the US Constitution. Alaska law doesn't mention copyright, so the default is copyright protection.

**Scott Carrlee:** oh that answers my question

**Freya Anderson:** So, State of Alaska works are under copyright by default.

**Scott Carrlee:** good to know

**Freya Anderson:** Not all states are that way. Some have their own law, putting some or all state works in the public domain. Any thoughts or questions about what qualifies for copyright protection?

**Sue Deyoe:** I have asked this question to others in the past. We have 2 small books (booklets...74 pages each) that were published in 1974. The author is dead, the author's daughter is deceased. We would love to reprint it to sell in our bookstore. We have contacted the original printer and they have nothing on file. Do we get in trouble if we re-print? Or is there a way to go about this and not get in trouble with copyright?

**Scott Carrlee:** wow really good question Sue

**Freya Anderson:** It's a good question, but I'm afraid not a good answer.

First, you need to determine copyright status. For this time period, you'd need to know whether there was a copyright notice

**Sue Deyoe:** How do I verify copyright notice?

**Freya Anderson:** Look on the pamphlets for a c in a circle or the word copyright together with a year and usually a copyright owner

**Sue Deyoe:** Oh, if that's all, yes, copyright 1974. By author

**Freya Anderson:** Ok. So then it would be under copyright until 70 years after the author's death. This is true even if the copyright were transferred. Transferring just impacts who to contact. So, if the author and her heir have passed away...it will have passed to someone else. Sometimes, it's hard to determine who. Sometimes, even the owner doesn't know!! These are called "orphan works" Because there's no realistic way to get permission to use.

**David Shealy:** Out of curiosity is that the rule for all public domain status applied to works?

**Freya Anderson:** David, there are differences. The law has changed several times, so it depends on when it was published; different times=different requirements

**David Shealy:** Understood, okay. Thanks! Sorry to veer off topic

**Freya Anderson:** good question, David!

**Freya Anderson:** If you have an orphan work, then you need to determine whether you can use it anyway. In this context, you would probably need to do a Fair Use analysis.

**Della Hall:** Freya, you mentioned fair use. You may be getting to this later, but can you expand on that concept a bit? Would there be a way for the museum in this case to reprint it in a way that falls under fair use?

**Freya Anderson:** Potentially! In fair use, you need to consider four factors. I like to think of a window PANE:

Purpose: the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;

Amount: amount and substantiality of the portion used in relation to the copyrighted work as a whole;

Nature: the nature of the copyrighted work;

Effect: the effect of the use upon the potential market for or value of the copyrighted work.

We can delve into any or all of these, but there's another thing to consider. A factor that has come out through court cases is transformativeness: are you making something different? For example, copying a book to share the book would be hard to justify, but courts have ruled so far that copying a book to allow for search, with some limitations, is ok.

For the first factor, the commercial aspect is not so much if you're making money, although that's part of it. More, is whether or not the copyright owner COULD make money if you didn't make your copy.

**Sue Deyoe:** So, we could maybe make extra research copies? or justify making enough copies for an educational program? Purpose isn't to make money, its to get this wealth of local history information out.

**Freya Anderson:** That's just that one factor. Copies for research or an educational program would be good purposes, though.

**Scott Carrlee:** so if Sue were just covering the cost of the publication would that be ok?

**Freya Anderson:** For amount, you're copying the full thing, so that argues against.

**Sue Deyoe:** Interestingly, I randomly see this publication pop up on eBay and even Amazon now and then.

**Scott Carrlee:** well if it is being sold on amazon someone is making a profit

**Freya Anderson:** Let's get back to profit in a sec.

**Freya Anderson:** the third factor is nature. Is this mostly factual?

**Sue Deyoe:** Yes, Scott, and it generally shows up as "Joe Smith, Arkansas" or something. I've never figured out if someone has a whole stack or just has one.

**Scott Carrlee:** I guess that goes into selling used books

**Freya Anderson:** Selling used books is legal in the US under the First Sale doctrine.

**Freya Anderson:** Whew!

**Scott Carrlee:** So let's get back to the nature thing

**Scott Carrlee:** if I publish a book of facts about Juneau can someone copy it?

**Freya Anderson:** maybe. Most things aren't just factual or just creative. Selecting which facts to include is creative! But, the more factual, the more likely Fair Use is to apply.

**Sue Deyoe:** I'm hogging up the conversation but this book is really a journal/life story. I've thought about reprinting, but adding.

**Freya Anderson:** Effect is similar to purpose, but is more about the effect on the market. This is where the ability to sell copies on Amazon would come into it. So, you need to consider each of these factors. But, while it's a balance, it's not a formula. So, you have to use your judgment. There are some good tools to help linked from my guide <http://lam.alaska.gov/owlcopyright>.

Another factor that the courts have added to the law is transformativeness. Are you making it something different? In this case, not so much. Finally, many institutions are considering how much someone is likely to care. Part of this is how risk-averse your agency is. But part of it is an assumption that most copyright holders of orphan works would like to see the stuff out there.

So, some agencies are making orphan works available online with a notice that they'll take items down if someone lets them know that they're the owner and don't want it up. I haven't seen this in analog, but perhaps an equivalent would be a notice asking for the owner to contact you...and then being willing to provide remuneration or destroy remaining copies. This isn't a suggestion, just a possibility related to what I've seen elsewhere.

**Jane Lindsey:** Freya or Scott, can you share some of the thinking now in the field about cultural appropriation and legal and ethical concerns in use of non-copyright works or images?

**Freya Anderson:** Good question, Lindsey. Scott may be able to speak to law outside of copyright. Copyright doesn't address this, but best practices certainly do...at least in libraries. Often, we choose not to do things we could under copyright, to maintain respect and good relationships...with creators, owners, and communities. Sometimes, it's worth asking permission even if you don't need to, legally.

Scott, do you have more to add? This is a difficult area that I'd really like to explore more.

Did the question about the pamphlets get covered sufficiently?

Any question about fair use or any of the factors?

Should we delve more into commercial aspects, and how they relate to fair use?

**Sue Deyoe:** Well, not exactly, but it is sticky and I've been exploring this for about 4 years and trying to figure out what to do.

**Freya Anderson:** there really isn't an easy solution. Once you have the facts, then there's a fair amount of analysis, and decisions about how far you want to push things. And really, no one can do that for you.

You can get advice from an attorney, and if you do, I recommend finding one that specializes in intellectual property law, but really, you and your organization need to make your choices.

**Scott Carrlee:** Back to Jane's question, I don't think there are yet laws to cover cultural appropriation

**Freya Anderson:** this is a great area for work

**Scott Carrlee:** I think it is a matter of how much outrage and shaming can be brought to it

**David Shealy:** Ah, a force of law all its own!

**Freya Anderson:** Those techniques have been effective in some fields! Such as comedy writing, cooking, etc.

**Scott Carrlee:** I see a shift coming in regard to this area

**Freya Anderson:** Yes, me too. Lessons can be taken from extra-legal techniques used in these other fields.

**Scott Carrlee:** I think as more people become aware of what it means and how it effects the cultural stake holder the less it will be tolerated

**Sue Deyoe:** There's not a lot of time left, but back to Jane's question and regards to photos? Facebook and other media are really making copyright difficult

**Della Hall:** This would make a great conference session...

**Freya Anderson:** A lot of people post things and say that no infringement is intended. But that's not really a help.

**Jane Lindsey:** In regards to social media, are you saying that attribution is not a way around copyright?

**Freya Anderson:** Absolutely.

**Sue Deyoe:** Yes, Della! I think it was one in Juneau, but it could be a session at every conference, really. Or a separate workshop.

**Freya Anderson:** Attribution is important, but for ethical reasons. However, linking to something is almost always ok.

**Scott Carrlee:** I have wondered about photos on the web. When I do PowerPoints I sometimes just grab what I see on the web. Is that wrong if I am just using it for a conference session?

**Freya Anderson:** You can do a fair use analysis, but yes, it can be a problem. There are a lot of free, public domain or licensed materials. Try for those first!

**Sue Deyoe:** Scott, I have a friend that does website work and she got sued because she randomly took a photo without proper permission. (no suit, just had to pay a lot of money)

**Freya Anderson:** If you have to use something under copyright, have a strong argument as to why. with fair use.

**Jane Lindsey:** I have a good cease and desist story about grabbing an image off of the web and using it as the basis of a book cover design. It was a no-go and the book cover needed to be redesigned or the photographer needed to be paid for the photograph. This happened to a personal friend/author.

**Scott Carrlee:** I guess being lazy is not a great argument

**Freya Anderson:** Not so much! :)

**Freya Anderson:** Consider using creative commons with your search engine. You can easily limit results!

**Scott Carrlee:** do you just put creative commons before the search item?

**Freya Anderson:** there are options on the search pages or results pages.

**Scott Carrlee:** where are those located?

**Freya Anderson:** Or go to <http://search.creativecommons.org/> to search a bunch! It depends on the search engine. When I do a google images search, I start with a search, and then limit by license, a dropdown option under the search box.

**Scott Carrlee:** ok that is great

**Freya Anderson:** You can also find good resources at <http://lam.alaska.gov/freemultimedia> Daniel Cornwall and I put this together, and it includes Alaska specific sources

**Scott Carrlee:** lots of options for not being lazy

**Freya Anderson:** A little info can go a long way!

**Scott Carrlee:** Well thanks Freya

**David Shealy:** Very valuable, thank you!

**Scott Carrlee:** this has been a very enlightening session

**Freya Anderson:** It's been fun!

**Sue Deyoe:** Thanks a ton, Freya!

**Freya Anderson:** I can go on about this stuff forever :)

**Scott Carrlee:** I know it is just an introduction but very useful

**Freya Anderson:** I'd like to leave you with one last thing. Much of copyright is gray, designed to balance rights in a way to encourage learning and the development and implementation of new and useful ideas. Because so much is situational, perhaps the most important takeaways to protect yourself is to act consistently, fairly, and honestly. Be, and look like, a good actor. Communicate well.

**Scott Carrlee:** that is good advice for all of life's endeavors

**Freya Anderson:** Indeed, Scott.

**Della Hall:** Thanks Freya!

**Freya Anderson:** Thanks so much for having me with you all today! This chat is such a neat tradition, and you've been a great group!

**Freya Anderson:** And here, even the intellectual property lawyers encourage it!

**Scott Carrlee:** thanks everyone for joining in. I will be getting a transcript out soon. and it will be copyrighted

**Della Hall:** haha!

**Erin Kirchner:** Thank you for sharing today, Freya!

**Scott Carrlee:** bye for now and have a great holidays!!!

**Freya Anderson:** Perfect take away!

**David Shealy:** Heh, great! Thank you!

**Scott Carrlee:** please please join us in January. Not sure what the topic will be

**Della Hall:** feel free to suggest a topic! Email me at [director@museumsalaska.org](mailto:director@museumsalaska.org)

**Scott Carrlee:** Yes Della and I love suggestions

Next Chat Session

January 17, at 11 am