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Presentation Panel on Copyright/Ownership

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Copyright / Ownership

community standards for 3D data preservation
CS3DP Forum 1, February 5-7, Washington University, St. Louis

TUESDAY - WORK

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What we’ll do today.

- Groundwork for copyright law fundamentals (US) - Kyle
- Touch on basics of copyright ownership, work for hire, licensing and contract law - Kyle
- EU and other international questions - Melissa
- Discuss in context of case studies: what might best practices look like? How might they fit into the DCC? Respond to day 1 discussions. – Melissa and Kyle
The mammoth in the room.

Legal uncertainty.

Kyle’s foundation and how it relates to data, data sets, and your choices.

Here, you are both author/creator and publisher.

You are deciding how to shape behavior.
Keep in mind preservation best practices generally

Understanding goal helps develop legal approach. What’s your mission?

Legal metadata as part of the foundation.

Response to reading on wiki: “3D Scanning: A World without Copyright”
US fundamentals – thinking about Kyle’s Concise Copyright…
Where copyright comes from in the US?

Article 1, Section 8. US Constitution.

The Copyright Act (17 USC). Congress.

Case law. Courts.

*Treaties.* Congress, politics, economics, law: Berne Convention for the Protection of Literary and Artistic Works (1886)
What is not copyright.

Data is not eligible for copyright in and of itself as ‘fact’.

Excluded from list of eligible items. Numbers too.

*Some* kinds of data might be eligible e.g. if the unit of data is a picture or other protectable element.

- The number 234,645 (not protectable unit of data)
- Image or screenshot (possibly protectable unit of data)
But is a scan just a copy?


- Bridgeman Art Library v. Corel Corp (S.D.N.Y 1999) (treats 2 and 3d items a little differently, art reproductions)
- Assumptions in current practice in US in many LAM and in rightsstatements.org

White pages compared to yellow pages - low level of originality in yellow, but enough.
Is data from a 3d scan a ‘mere’ copy?

Is the data from a scan - even compiled in some special way - essentially a copy or instructions to copy? A form of reproduction. Simply not original for copyright purposes.

If ‘just’ a copy - the more similar the data/image/reproduction is to the original, the less likely there is any copyright. [other rights?] Example and problem of art photography. *Intended* to represent the original as closely as possible.

Does complexity of scanning process argue for possible originality/creativity: multitude of choices, many possible ways to get similar result? My guess in US: not.
Intersection of copyright and preservation

- Issue for data preservation broadly. Unique in context of academy and research? Matter of professional standards and practice and thus place for standard treatments in a workflow?
- 3d data intrinsically describes and possibly produces a thing. Is the thing protected in some way?
- Is the data really a set of instructions for creating something? Is patent implied in some cases?
Who owns the data: employment policies

- Multiple scholars on research teams
- Multiple university or employer policies on ownership of scholarly communications (generally, publications)
- Some with policies on who owns data generated in sponsored research
- Sometimes tech transfer offices might be involved
- Theoretically one university could insist on 'ownership' at the expense of another university partner or scholar.
- Know contracts, know university/employer policy. Still – how to reconcile?
Example: DMCA and video games - breaking drm

Museum of Art and Digital Entertainment - seek exemption for online games for LAM so can continue to operate games discontinued by publishers (is this akin to out of print? Who can copy for preservation and how?)
European Union

- Protection to creators of databases - the ‘sui generis’ right in databases (is there a right in the data set from the scan of something?)
- Being [evaluated now](evaluated) with report expected by end of March with opportunities for public comment.
- Does the law “still fulfil its policy goals of providing protection of databases, including those not protected by copyright, while taking into account users’ legitimate interests.” Also re ‘protection of investments.’
- Part of the EU modernization, response to new technologies.
Basics of the Database Directive 96/9/EC

- Passed 1996
- Idea was that copyright did not sufficiently protect investment.
- Created a unique (sui generis) right – it is distinct from copyright
  - So if this directive is applicable, it is applicable independently of any Creative Commons license. Creative Commons licenses are great for data – but ONLY address copyright elements.
“Whereas the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently.”

-Database Directive preamble at 7
“Whereas this Directive protects collections, sometimes called ‘compilations’, of works, data or other materials which are arranged, stored and accessed by means which include electronic, electromagnetic or electro-optical processes.

Preamble at 12
Owners rights and users needs

- Limitations – how to interpret and apply?
Removing the public domain from the public.

Despite the limitations built into international copyright law, see non-copyright laws that functionally create other kinds of controls.

Difference in right to photograph (‘reproduce’ public architecture, historic sites)

Non-copyright rights

- See Italian and Greek Cultural Heritage Codes (are you doing CAD of artifacts as compared to bones? Do we need different standards for different kinds of objects or disciplines?)
- How a ministerial degree can obliterate the public domain in a country. (Morando, 2011)
- Moral rights
- Contract as control
Privacy

- EU privacy directive – relevant for medical or human-related scans or research
- May be relevant for HIPPA and similar human-related concerns in US
- [I’ll fill this out]
What other conditions might apply?

Working with contractors? Students? Employees? Know the difference and implications. (*Kyle’s discussion of work for hire, employees, independent contractors*)

May need written agreements before work starts to ensure rights in work product is handled as you want. (*Something in writing with grad students, students clarifying their relationship to work product.*)

Grant terms? Funder terms? Can they be met?
Thank you.