E-Reserves Permissions and the Copyright Clearance Center: Process, Efficiency, and Cost

J. Christopher Holobar and Andrew Marshall

Abstract

This study examines the process of requesting copyright permissions through the Copyright Clearance Center's (CCC) pay-per-use service for electronic course reserves at the Penn State University Libraries in 2008. The authors investigate the efficiency of this process as a function of the percentage of permission requests successfully mediated by the CCC, the time required to submit and fill requests, and transaction and royalty costs. They conclude that, while the CCC is clearly more efficient than attempting to request permission from individual rightsholders, the process remains burdensome and rightsholder royalty pricing models are unclear.

Introduction

For over 20 years, many arguments about the fair use of copyrighted materials have been offered within the context of "market failure"—that is, whether the boundaries of fair use are in some way determined by the relative vitality of a permissions market. For some, the mere existence of a permissions market effectively negates any claim of fair use.¹ For others, fair use expands or contracts with the market's effectiveness or efficiency.² Still others have argued that basing fair use on a permissions market is inherently circular reasoning, since the implicit assumption of such a market is that no use is "fair."³ While much has been written about these issues
comparatively little analysis is available, however, to assess the process efficiency of the current permissions market in a real world application, such as electronic course reserves (e-reserves). Given the contentious climate surrounding copyright, fair use, and e-reserves—and, in particular, as we await the outcome of the lawsuit brought by several academic publishers against administrators responsible for managing the e-reserves and course management systems at Georgia State University—we believe that this analysis is highly relevant.

Suggested by Congress in the legislative history of the Copyright Act of 1976 and operational since 1978, the Copyright Clearance Center (CCC) has grown to become something more than merely the primary licensing mechanism for copyright permissions in North America. For many content consumers in the academy, the CCC (which boasts of managing more than 300 million rights and distributing $134 million to rightsholders in 2008) is the de facto permissions market. For universities, the CCC offers two licensing services—a transactional, pay-per-use model, in which permission is requested and royalties are paid for each specific use of specific content, and a blanket annual license, which grants broader permission for different types of uses of content from participating rightsholders for an annual fee. Due to concerns about coverage, price, and reporting requirements under the annual license, the Penn State University Libraries (PSUL) e-reserves service employs the pay-per-use model for permissions.

For the 2008 academic year, staff managing e-reserves at PSUL tracked almost 3,000 requests for permission to the CCC for copyrighted content used during the spring, summer, and fall trimesters. The goal was to create an accurate assessment of the permissions process and to gauge the efficiency of the CCC pay-per-use model based on the percentage of requests successfully filled, the time required for the CCC to fill those requests, and average permissions
costs. Our overall success rate for obtaining permission was 64 percent; however, permission was granted immediately for only 45 percent of requests.

Background

The Pennsylvania State University is comprised of 24 campuses with a combined FTE enrollment of 79,000 students, more than half of which attend the main campus at University Park. The PSUL course reserves unit assists in the production and management of e-reserves for more than 1,000 courses annually across all Penn State campuses (including non-resident World Campus courses) and processes copyright permissions centrally for all locations through the Copyright Clearance Center. All fees for copyright permission for e-reserves are paid by the libraries.

E-Reserves Copyright Permissions Process

PSUL e-reserves are managed and delivered through the integrated library system, Sirsi-Dynix Symphony. Staff create brief title records for requested readings and link these records to instructor and course information through the Symphony reserves module. Requests are first reviewed by staff and subjected to a four-factor fair use analysis. As records are created, staff include local codes to identify the copyright status of readings. These codes provide such information as the trimester during which the reading was first used, the specific licensed resource to which the record may link, whether the reading is in the public domain or considered fair use, and so on. Reports are then run each trimester based on these codes to produce a list of
readings that require permission. Staff use these reports to request permissions through the CCC pay-per-use rights database, providing citation information for each reading as well as instructor, course, and enrollment information.

Information from the Symphony system reports and the university's course schedule are integrated into an MSAccess database. Staff use the E-Reserves Usage and Copyright (ERUC) database as a starting point for requesting permissions and as a storehouse for recording detailed transaction information. Queries run in the ERUC database allow for the examination of usage and permissions costs according to copyright status, course enrollment, and a variety of other indices.

Methodology

During the 2008 academic year, 16,267 e-reserve readings were provided for 656 instructors teaching 1,225 courses with a combined enrollment of 29,785. Of the 16,267 readings, 10,018 were designated as having been used in previous semesters. Of these, 7,057 were available through licensed resources, fell within the public domain, were ruled fair use, or were unpublished materials used with the permission of the author. The remaining 2,961 readings required permission. Permissions fees paid to the CCC totaled approximately $148,000.00 for 2008.

Staff performed searches by source title or ISBN number in the CCC pay-per-use Web interface and recorded in detail the status of each request in the ERUC database. These details included whether each title was listed with the CCC, the availability of permissions, and the permissions costs. Requests not resolved immediately were also monitored as the e-mailed status
updates were received from the CCC. Dates for both the original request and final resolution of these delayed orders were recorded when available.

Overview of the Permissions Request Process

The CCC pay-per-use Web interface, www.copyright.com, is fairly intuitive and easy to navigate. However, default search options are limited to title and the ISBN or ISSN, and retrieving specific editions of many works proved challenging. Searching by title alone was often insufficient to produce a satisfactory match, especially when searching titles that are brief, common, or that have been published repeatedly. The "more search options" tool adds the ability to search by publisher; however, this was of limited utility. Although the CCC's records for monographic works include author (or editor) information, this index is not searchable.

While searching by ISBN/ISSN usually yielded more focused results, staff found that the publication information listed in the CCC's records often differed slightly from information listed in the local library catalog or in WorldCAT. Most notably, publication dates listed by the CCC often differed by a year or more from dates listed in WorldCAT. One possible explanation for this incongruity is that the CCC's "publication year" may actually be the year of the copyright claim. Similarly, publishers listed by the CCC and WorldCAT frequently differed, although rightsholders listed in the CCC's detailed records often matched publishers listed in WorldCAT. These and other inconsistencies increased the time required to negotiate the best match to a specific work on the CCC's Web site.

Overall, staff reported an average time of approximately five minutes to search and request permission for each work. For the 2,961 requests in this sample, staff spent
approximately 250 hours submitting permissions requests to the CCC. This estimate does not include staff time spent preparing information, such as course numbers, instructor names, enrollment, and citations.

Categorizing Responses

Additional staff time was spent recording and updating the permission status of all requests in the ERUC database. For the purposes of this article, we filtered the CCC's varied responses to our permission requests into four broad categories listed in table 1 below: available (permission for e-reserves use is available for purchase), denied (the rightsholder denies permission for such use), contact (the customer must contact the rightsholder directly to request permission), and unknown (the rightsholder or rightsholder's contact information is unknown). In addition, staff distinguished requests receiving immediate responses from the CCC from those receiving delayed responses. The latter included works explicitly listed as "special order," as well as those that were not found in the CCC's database. In both cases, the CCC attempted to contact rightsholders and broker permission, a process that ranged in duration from a single day to several months (see figure 2).

Table 1. CCC Terms and Their Corresponding Permission Response Categories

<table>
<thead>
<tr>
<th>Category</th>
<th>Corresponding Permission Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available</td>
<td>Permission for e-reserves use is available for purchase</td>
</tr>
<tr>
<td>Denied</td>
<td>The rightsholder denies permission for such use</td>
</tr>
<tr>
<td>Contact</td>
<td>The customer must contact the rightsholder directly to request permission</td>
</tr>
<tr>
<td>Unknown</td>
<td>The rightsholder or rightsholder's contact information is unknown</td>
</tr>
</tbody>
</table>

Permission Response Rates by Category
Our working category, "available," corresponds to the CCC status, "available for purchase," indicating that the CCC can provide permission to use the work requested at a royalty rate set by the rightsholder. When a work is immediately available, the user is presented with a calculated cost before the order is confirmed. When a delayed order results in a purchase, however, the user is not apprised of the price before the order is processed, although the transaction may be canceled up until the billing date. Overall, permission was available for 64 percent of the works requested in 2008.

Table 2. "Available" Responses by Response Time

Insert Table 2 here>

Responses that staff interpreted as a denial of permission are more ambiguous, since permission is never explicitly listed as "denied" in the CCC's database. Instead, staff encountered obstructions when completing the online order form for requests that exceeded enrollment limits or limits on the number or percentage of pages used, which are set by the rightsholders. Because the PSUL course reserves policy limits the number of pages from a single monograph to no more
than 15 percent of the total pages in the work, one can deduce that such usage limits are prohibitively low.

In other cases, permission for seemingly available works was denied due to license terms. For example, *The Collected Stories of William Faulkner* (1950) was listed as "available for purchase," but the terms stated that permission to use any of Faulkner's work was refused. It is not clear why permission to use such works is listed as available in the first place.

The remainder of requests that staff regarded as "denied" were listed in the CCC's database as "not available." Determining whether this status indicated that permission was explicitly refused or that the CCC could not broker permission for some other reason, however, required a review of the license terms. Terms such as "excluded work" were interpreted by staff as a denial of permission. Altogether, 3 percent of the total requests for permission were denied.

Table 3. "Denied" Orders by Response Time

| <insert Table 3 here> |

**Contact**

Other works listed as "not available" with the CCC and for which the license terms stated, for example, "author's rights, contact author directly," were categorized as "contact." Many more of the works that staff included in this category were explicitly listed with the CCC as "contact rightsholder directly" and included links to contact information (typically mailing addresses) for
indirect rightsholders. Overall, 27 percent of the works requested through the CCC required direct contact with rightsholders.

Table 4. "Contact" Orders by Response Time

<insert Table 4 here>

Unknown

Finally, staff categorized as "unknown" the works listed in the CCC's database as "not available" and including license terms such as "rightsholder unknown" or "CCC unable to locate rightsholder." In other words, these terms were not interpreted as a strict denial of permission but rather an inability on the part of the CCC to mediate a permissions request. Five percent of the total requests in 2008 were categorized as unknown.

Table 5. "Unknown" Orders by Response Time

<insert Table 5 here>

Figure 1. Permission Request Responses by Category and Response Time

<insert Figure 1 here>
Response Times

Overall, we found that 69 percent of total responses from the CCC were immediate. For only 45 percent of requests, however, was permission immediately granted. For the 31 percent of responses that were delayed, library staff recorded the dates of original orders and, when possible, the dates of responses received from the CCC.

Unfortunately, we did not receive e-mailed updates for all of the delayed orders requested. For "special order" works, we received responses for 87 percent of the requests. Orders for works not found in the CCC's database resulted in a much lower response rate of 31 percent. Overall, we received responses for 74 percent of delayed orders. While it is possible that some responses may have been misdirected by e-mail filters, it seems unlikely that this could account for the full 26 percent of missing responses. Also, the discrepancy in response rates between the two categories of delayed orders cannot be explained by such a failure of technology because the e-mail messages concerning either type of order are essentially identical in content and structure.

Of those delayed orders that could be tracked from request to resolution, 17 percent were resolved within 24 hours, and another 34 percent were resolved within the first week. About 13 percent and 10 percent of delayed orders were resolved in the second and third weeks, respectively, following the original request. The remaining 26 percent were spread out over a range of four to 13 weeks, with only one notable outlier in orders resolved (8 percent in the eighth week). Overall, the average time until a response was received was about 16 days. For the quarter of orders that remained unresolved after three weeks, the average response time was 43 days.
Though seeking permission through the CCC for works that do not provide an immediate response can be time-consuming, participating in the request process does seem to improve the registry's responsiveness for future rights-seekers. Works that were initially not found in the CCC's database were subsequently found in searches following the resolution of the original order. And the responses we originally received for many delayed orders were later reflected in the works' permission status, eliminating the need for such orders in the future. For example, requesting permission for Jean Clandinin's *Handbook of Narrative Inquiry* (2007) required a special order in the fall of 2008. After four days, permission was granted by the rightsholder. Soon thereafter, the permission status for this work was amended to "available for purchase" in the CCC's database.

In October 2009, we revisited the records of those works that had been listed as "special order" or were not found in the CCC's registry when they were requested in 2008 in order to determine how many now provided immediate responses. We found that all of the works that were originally not found in the CCC's database were subsequently included. Of these, 57 percent of the works for which the rightsholder eventually granted permission were listed as "available for purchase." In 92 percent of the cases in which we were instructed to contact rightsholders directly, the initial status of those works was updated to reflect that response. Among works that were originally listed as "special order," 19 percent of those for which
permission was ultimately granted were later listed as available, and 52 percent of those that were categorized as "contact rightsholder directly" were later listed as such up front. Overall, 38 percent of the works that previously required a delayed order currently provide a more immediate response.

Permissions Costs

The CCC charges a $3.00 transaction fee for each successful request, whether permission is granted immediately or after mediation between the CCC and rightsholders. If permission is not granted, the CCC waives the transaction fee. For 2008, these transaction costs amounted to 3 percent of total permissions costs. Royalties, the rates of which are prescribed by rightsholders and not the CCC, are considerably more expensive. Describing a pilot study conducted in 2001 to determine the feasibility of providing e-reserve service at the University of Colorado, Boulder, Brice Austin and Karen Taylor estimated royalty fees to be approximately $35.00 per reading, a figure apparently arrived at by dividing the total permissions cost by the total number of readings.\(^6\) Rachel Bridgewater reported a much higher average of almost $86.00 in 2008.\(^7\)

Our per-reading costs in 2008 varied each semester but fell closer to the high end of this range, averaging $78.03, including transaction fees. The usefulness of this measure, however, is limited, given the outsized impact of course enrollment on per-reading costs. Generally, permissions fees are calculated using a formula of price-per-page multiplied by the number of pages used, multiplied by the number of students enrolled in the course. Thus, higher enrollments inevitably result in higher permissions costs per reading.
As data for budget planning, average permissions cost per reading may have some utility. However, we would caution that this varies considerably across academic units as well. As a means to determine the cost effectiveness of delivering course content to students, we believe that an average cost per e-reserve reading, *per student* is a more accurate indicator. For the spring, summer, and fall trimesters in 2008, the average cost per reading varied from $92.94 to $58.72 to $68.44, respectively. The average cost per reading, per student, however, remained comparatively consistent at $2.92, $2.97, and $2.61, respectively.

Discussion

Few, we believe, would dispute that the CCC represents the de facto permissions market for academic use of copyrighted content. As early as 2000, Karen Graves reported that 85 percent of journals surveyed referred clearance requests to the CCC.\(^8\) In an e-mail to the authors in July 2009, the CCC listed more than 570 publishers participating in their annual license, with even more participating in their pay-per-use service. For those seeking copyright clearance from rightsholders not participating with the CCC, direct contact is very rarely an efficient option. In 2001, Austin and Taylor reported a response rate of 50 percent for 20 requests forwarded directly to publishers.\(^9\) In 2005, Carole George reported similar findings of 48 percent unsuccessful direct requests to publishers and an average response time of three months for the 52 percent that did respond.\(^10\) Of those, more than half refused permission, for an overall success rate of 24 percent. Such dismal rates of return seldom merit the staff investment in time spent preparing and managing these requests.
How efficient is the CCC's pay-per-use permissions service? To characterize the efficiency of the permissions process for e-reserves, we examined a variety of measures, including the percentage of permissions requests granted immediately upon request, the percentage of requests granted at later dates, and the percentage of requests for which permission was unavailable. Average royalty costs per reading, student, and course were also scrutinized, as were percentage transaction costs.

Austin and Taylor reported that the CCC successfully brokered permission for 55 of 75 requests (73 percent) in their 2001 pilot. With a much larger sample size of 2,961 requests, we found an overall success rate of 64 percent. Despite claiming on its Web site that the CCC "makes it easy to purchase instant permission to use content for coursepacks, e-reserves, course management systems, classroom handouts, interlibrary loan and more," permission was immediately available for only 45 percent of total requests. While the disparity in sample sizes prevents us from identifying a clear trend, we find it curious that the CCC's success rate of permissions granted has not significantly improved, and may have declined, over the past seven years, despite seemingly aggressive outreach to rightsholders. Still, a 64 percent success rate overall is significantly higher than the rates reported when contacting rightsholders directly. And the CCC has clearly streamlined the permissions process, with approximately 58 percent of requests resolved (permission either granted or denied) within one week, rather than months.

Nevertheless, a simple comparison between the current CCC-mediated permissions process and the pre-CCC mail-and-fax approach to obtaining permissions fails to adequately address the real burden in time and expense that the former represents for academic libraries. An average of five minutes staff time per request would seem minimal but is not trivial in the aggregate if processing thousands of permissions. For the 2,961 requests in 2008, staff logged
approximately 250 hours processing time; and this total does not include time spent preparing and recording information outside of the CCC Web interface.

Similarly, permissions costs per reading, per student of approximately $3.00 collectively impose a tremendous burden on central budgets for large-scale electronic reserves services and high-enrollment courses. Indeed, for the academic year 2008, the 10 most expensive readings were used in Penn State courses with enrollments of more than 200 students. Permissions costs for the 25 percent of all "available" e-reserves that were purchased for use in high enrollment courses amounted to over $89,000.00—or 60 percent of the 2008 total. This represents something of a paradox for e-reserves, particularly at large academic institutions. From a service perspective, e-reserves would seem to be an efficient solution for distributing content for courses with high enrollment. But royalty fees for content used in such courses are prohibitive. Staff now routinely flag courses with high enrollments and work with course instructors to deliver necessary content in a cost-effective manner. This, however, is a step toward what Marcia Keyser calls "the HMO Model of course readings, in which course readings are chosen by price, not by quality or appropriateness." Indeed, Rachel Bridgewater reported that instructors at Washington State University, Vancouver, opted not to use articles with high associated permissions costs, a response we have also encountered in conversations with some instructors at Penn State.

A cost analysis would be incomplete without a discussion of pricing—specifically, how do rightsholders determine per-page royalty prices, which averaged approximately $0.16 per page, for content? We e-mailed inquiries to the copyright contacts of five of the largest publishers of academic materials; however, their responses, which all included various formulations of "standard for the industry," were unhelpful. We then examined a random
selection of 100 titles for which permission was paid in 2008, of which 77 listed per-page prices for both photocopy/coursepack and e-reserves use. For 57 of these 77 (74 percent), prices for photocopy/coursepack and e-reserves were identical. For 12 titles, the photocopy/coursepack price was somewhat higher, and for eight titles the e-reserve price was somewhat higher. From these observations, we can infer that royalty pricing of content for e-reserve use closely follows long-established pricing models for print reproduction and does not distinguish between not-for-profit academic use and for-profit course packets. We also observed that, generally, publishers charge the same per-page price for works across different disciplines and different genres, including content reproduced from both monographs and periodicals, suggesting that specific content plays little role in valuation.

As mentioned earlier, the CCC does offer another service in addition to pay-per-use. The annual copyright license, introduced in 2007, offers blanket permission to use works owned by participating rightsholders in classrooms, in e-reserves, and course management systems. The annual license fee is based, in large part, on the institutional enrollment, and it is not clear what role content valuation plays in determining the fee. Penn State examined this model in 2006, when the CCC approached us as a potential development partner. At that time, we concluded that the annual license model was not suited to our size and complexity and would neither alleviate workloads nor offer substantial cost benefits. Other concerns included rather stringent reporting requirements, content overlap with other digital institutional licenses, and "prepaying" for uses that may be fair. Our 64 percent overall permissions success rate in 2008 with the CCC pay-per-use service, which includes a higher number of participating rightsholders than the annual license, also suggests that, for more than a third of the content used in electronic reserves, permission would not be available under the annual license, further limiting its utility. While we
have not reexamined this service since 2006, we remain skeptical that it represents a genuine step forward in permissions processing efficiency or pricing for our institution.

Regardless of how permissions are secured, however, the current rightsholder permissions pricing model is unsustainable; and the high costs associated with managing permissions remain a powerful disincentive for large university libraries to create and maintain centralized permissions processing for services like electronic reserves. Facing annual investments of hundreds of hours of staff time and tens, if not hundreds, of thousands of dollars in royalties, it is little wonder that some universities pass responsibilities for copyright compliance to instructors, many of whom will either seek alternative, unmediated means of delivering content to students or may avoid specific content entirely due to cost. The latter response is an especially troubling example of what Ben Deporter and Francesco Parisi have identified as the "tragedy of the anticommons," in which resources go unused when resource owners erect barriers to use, creating "deadweight losses" to both copyright holders and, of course, users—truly a lose-lose scenario.

At the Penn State University Libraries, permissions fees for e-reserves are paid from the general collections budget: therefore, monies that might have been spent acquiring new works of art and scholarship are spent, instead, on permission to use portions of older works that, in almost all cases, the library has already purchased. While we do not dispute that rightsholders should be compensated for uses that fall outside the scope of fair, we cannot help but note that this model is very much at odds with a copyright system that is intended, at least in part, to foster the creation of new works. Colleges and universities, of course, have options available for diluting or recovering such costs through increases in tuition or fees, although any mechanism implemented to assess and collect specific fees would only create additional management costs.
And, although an average of $3.00 per reading, per student may, again, seem reasonable, classes often require dozens of readings comprised of brief selections of books and journal articles, resulting in potentially hundreds of dollars in royalty fees per student each semester for uses of materials that, had students come to the library to copy or scan for themselves, would widely be considered fair use. Furthermore, any payment mechanism would fail to address the issues raised by seemingly arbitrary royalty pricing models that are not based on actual costs to rightsholders and that do not consistently distinguish between print and digital use, between academic for-profit (course packet) and not-for-profit (electronic reserve) use, or between different disciplines and genres. Opaque and seemingly outdated rightsholder pricing models remain, indeed, the primary reason why, although it has developed a more efficient permission-seeking process, the CCC does not yet represent an efficient permissions market.

The authors of recently released documents related to the pending suit brought by several academic publishers against administrators responsible for Georgia State University’s electronic reserves and course management systems debate many of these same issues. In an expert report, Debra Mariniello, director of Rightsholder Relations and Inventory Strategy for the Copyright Clearance Center, argues that the CCC’s Web interface is easy to use, that per-student royalty prices are reasonable, and that its repertory of licensed content is broad (precisely how broad is difficult to determine because the publically available version of her report is redacted). She further argues the harm of unlicensed digital copying, of which Georgia State University is accused, by noting that the decline in print permissions requests from 2005–2009 does not correspond to an increase in digital permissions requests, suggesting that instructors have shifted from using printed course packets to “unlicensed digital distribution,” such as electronic reserves. Implicit in this argument are two assumptions: first, that library e-reserves systems are
producing the digital equivalent of course packets and, second, that royalty prices should be the similar for both. In an expert rebuttal report for the defense, copyright scholar Kenneth Crews rightly identifies the many differences between copy shops that produce course packets and academic libraries' e-reserves services, concluding that "educational institutions and libraries are offering services under a model that is necessarily different from the model that has emerged for coursepacks. The systems are different in policy, mission, economics, management, and law." Indeed, the model for academic library e-reserves systems, which neither charge for nor profit from this service (most incur significant costs), is driven almost exclusively by access to scholarly materials, the core of the libraries' mission.

Other emerging models such as Open Access, Creative Commons licensing, and shared digital preprint repositories offer great promise going forward, and colleges and universities should continue to pursue partnerships in support of these initiatives. For uses of materials requiring permission, it is also our hope that rightsholders will explore other pricing models that more accurately reflect the non-profit educational mission of academic libraries, sustainable academic markets, digital efficiencies, and how content is used by instructors and students. Finally, we must continue to support, rely upon, and aggressively defend the fair use of copyrighted materials for instruction and research.

J. Christopher Holobar is circulation and reserves specialist, Penn State University Libraries, University Park, PA 16802; he may contacted via e-mail at: jch4@psu.edu.

Andrew Marshall is reserves copyright coordinator, Penn State University Libraries, University Park, PA 16802; he may be contacted via e-mail at: adm135@psu.edu.
Notes


5 Copyright Clearance Center, 2008 Annual Report (2009), 3.


9 Austin and Taylor.

11 Austin and Taylor.


14 Bridgewater.


18 Ibid., 20.