



WIKIMANIA
Haifa, Israel

2011
by international Wikimedia Community

Christopher T Cooper
User:CT Cooper

FREEDOM OF PANORAMA AND WIKIMEDIA COMMONS

What is Wikimedia Commons?

- “Wikimedia Commons is a media file repository making available public domain and freely-licensed educational media content (images, sound and video clips) to all” – [Commons:Project scope](#)
- “Public domain” – Not copyrighted at all
- “Freely-licensed” – More complicated

What does “freely-licensed” mean?

- ◎ Fixed definition used by the Wikimedia Foundation
- ◎ To be free, the copyright holder must allow anyone:
 - to use and redistribute the media, including commercially
 - to create derivative works from the media
 - ...but still optionally allowing the copyright holder to demand:
 - attribution
 - share alike
- ◎ Definition does not mention individual countries

Architectural and artistic copyright law

- ◎ [Berne Convention](#)
- ◎ Over 160 countries have ratified it
- ◎ States that architecture and art work is copyrighted
- ◎ Images featuring architecture or art work are derivative works
- ◎ Prevents such images being released under a free licence

Exceptions to architectural and artistic copyright law

- ◎ Four main exceptions:

1. Freedom of panorama
2. Expiry of copyright
3. Not meeting the threshold of originality
4. Trivial inclusion – *de minimis*

- ◎ Fair use images are not allowed on Commons

- ...but can be used as “non-free content” on the English Wikipedia and some other projects

Exception 1: Freedom of panorama

- Abbreviated as FoP
- From German [Panoramafreiheit](#)
- German copyright law: Depictions of buildings or sculptures are not a copyright violation
 - ...if they are “permanently located in a public place”
- A positive exception to copyright law
 - Term is often misunderstood and misused



Exception 1: Freedom of panorama

- ◉ Usable FoP exists in many countries:
 - Israel: Architecture, sculptures, and applied art
 - United States: Buildings only
 - United Kingdom: Does not cover “2D works”
- ◉ FoP is too limited to be useful in some countries:
 - Former Soviet Union: Non-commercial use only
 - Greece: “Occasional reproduction” by “mass media” only
 - United Arab Emirates: Broadcasts only
- ◉ Other countries have no FoP at all:
 - France
 - Italy
 - Qatar

Exception 2: Expiry of copyright

- Authors rights over their work eventually expire
- Works with expired copyright are in the [public domain](#)
- Countries free to set their own terms but some are bound by required minimums:
 - Berne Convention signatories: Life + 50 years
 - European Union members: Life + 70 years
- Frequently different terms for anonymous works and photography
- United States is very complicated



Exception 3: Not meeting the threshold of originality

- An object must be “original enough” in order to be copyrighted
- Frequently applied to logos
- Can be applied to architecture and artwork
- Variation between countries:
 - United States: Low threshold
 - Germany: High threshold

BOEING



Exception 4: Trivial inclusion – *de minimis*

- *De minimis* is a Latin expression for “about minimal things”
- Legal concept that allows trivial copying to be ignored
- Sometimes mentioned in statutory law
 - ...such as in Germany, Israel, and the United Kingdom
 - Usually exempts “incidentally” inclusion
- Sometimes entirely case law
 - ...such as in the United States
- Always presumed to exist in some form on Commons



Legal obligations for the Wikimedia Foundation

- ◉ The Wikimedia Foundation's main server farm is in Tampa, Florida, United States
- ◉ All content must observe the laws of the United States
- ◉ No legal need to follow the copyright laws of any other country
- ◉ English Wikipedia: Content only needs be free in the United States – [Wikipedia:Non-U.S. copyrights](#)
- ◉ Wikimedia Commons: Content must be free both in the United States and in the country of origin - [Commons:Licensing](#)

Passing United States copyright law

- ⦿ No clear case law on how foreign FoP interacts with United States copyright law
- ⦿ Presumed that the United States would use its own FoP provisions regardless of location
- ⦿ Possible scenario of sculptures and art work being “stripped” of FoP when subject to United States copyright law
- ⦿ No known case law
- ⦿ In practice copyright in the country of origin is the focus of enforcement

Three categories of copyright status

- ⦿ Effectively three categories of images
- ⦿ **Red images: Copyrighted in the United States**
 - Example: Sculptures in the United States
 - Wikimedia Commons: Not permitted
 - All other projects: Not permitted (except under fair use as “non-free content”)
- ⦿ **Amber images: Copyrighted in the country of origin**
 - Example: Buildings and sculptures in France
 - Wikimedia Commons: Not permitted
 - All other projects: Permitted (if allowed to upload locally)
- ⦿ **Green images: Not copyrighted in the country of origin**
 - Example: Buildings in a public place in Germany
 - Wikimedia Commons: Permitted
 - All other projects: Permitted

Problems with enforcement on Commons

- ⦿ Problems that have occurred include:
 1. Disagreement on speedy deletion
 2. Disagreement on interpretation
 3. Inconsistency
 4. Lack of past enforcement
 5. Impact on other projects

Problem 1: Disagreement on speedy deletion

- Speedy deletion is deletion by an administrator without discussion
- Not “codified” on Commons
- Images were/are speedy deleted for a lack of freedom of panorama
- “The subject of FOP is far too complex for speedy action.” – [Commons:Deletion requests/Template:FOP-cv](#)
- [Commons:Criteria for speedy deletion](#) proposal – “no freedom of panorama” criterion removed
- No community wide consensus yet

Problem 2: Disagreement on interpretation

- ⊙ Causes of disagreement:
 - Reliance on translation
 - Need for interpretation
- ⊙ Example: Israel
 - FoP since 2007 covers “architectural work”, “sculpture[s]”, and “applied art”
 - Argued that “applied art” has a wider meaning in Hebrew
 - Inclusion of 2D art works from this disputed
 - Essays on the issue by [Deror avi](#), [Pieter Kuiper](#), and [Drook](#)

Problem 3: Inconsistency

- Most individual images are discussed at [Commons:Deletion requests](#)
- Frequently backlogged
 - ...but many requests closed with little discussion
- Inconsistencies on:
 - Where to set the threshold of originality
 - What passes as *de minimis*
- Aggravated by a lack of case law
- Makes deletion requests less efficient
- United Arab Emirates freedom of panorama related deletion requests [recorded](#):
 - 180 did result in deletion
 - 165 did not result in deletion

Problem 4: Lack of past enforcement

- ◉ [Commons](#) was launched on 7 September 2004
- ◉ [Commons:Freedom of panorama](#) didn't appear until 25 May 2006
- ◉ Evolved over time
- ◉ [User:LoverofDubai](#)
 - Uploaded hundreds of images of buildings in Dubai from 19 August 2007 to November 2008
 - No usable FoP in the United Arab Emirates but no warnings or enforcement until...
 - ...a flood of deletion requests from 1 January 2010 onwards
 - Is this fair on a contributor?

Problem 5: Impact on other projects

- Large scale image deletions on Commons negatively impact on other projects
- Wikipedia projects have varying approaches:
 - English Wikipedia: Apparent confusion
 - [Template:Non-free architectural work](#) encourages photographs of buildings to be uploaded as non-free content
 - Talks about “country of origin” – wrong!
 - Template frequently ignored anyway
 - [Wikipedia:Public domain](#) policy not clear enough that only United States copyright law matters locally
 - Simple English Wikipedia: No image uploads allowed
 - No **non-free images**; **free images** go on Commons – [Wikipedia:Image use policy](#)
 - What about the **amber images**?
 - Current policy dates from 2006

Possible solutions

- No clear consensus on changes
- Minor changes through evolution likely
- Radical changes also proposed

“Ignoring it”

- Amend policy to apply only United States copyright law to images depicting architecture or art work
- Exemption from current Commons policy
 - ...on grounds that enforcement as written compromises the educational mission of the project
- Similar proposal at [Commons:Photographs of modern buildings](#)
- Some precedent:
 - [Personality rights](#) are only subject to a template warning on image uploads
 - ...but this is independent of copyright
 - Photographic reproduction of public domain art work is [allowed](#) regardless of potential copyright in the source country
 - ...but this has Wikimedia Foundation backing
- What about a more selective approach?

Conclusions

- ⦿ The current approach is not working well
- ⦿ Greater consensus and better consistency is needed on Commons
- ⦿ More attention is needed from other projects
- ⦿ Is it time to re-think the fundamental copyright policies of Commons?
- ⦿ Should the Wikimedia Foundation get more involved?

Image attribution

In order of appearance

- Itzike (2011) File:Wikimania 2011 Haifa Logo.png. Available at: http://commons.wikimedia.org/wiki/File:Wikimania_2011_Haifa_Logo.png [Accessed 25 July 2011]
- Christopher T Cooper (2011) File:Boldrewood Campus Annexe Building of the University of Southampton from Burgess Road 2.jpg. Available at: http://commons.wikimedia.org/wiki/File:Boldrewood_Campus_Annexe_Building_of_the_University_of_Southampton_from_Burgess_Road_2.jpg [Accessed 31 July 2011]
- Adnergje (2006) File:Tower of Pisa.jpg. Available at: http://commons.wikimedia.org/wiki/File:Tower_of_Pisa.jpg [Accessed 31 July 2011]
- Boeing (2007) File:Boeing wordmark.svg. Available at: http://commons.wikimedia.org/wiki/File:Boeing_wordmark.svg [Accessed 30 July 2011]
- H B *et al* (2003) File:SED Logo.svg. Available at: http://commons.wikimedia.org/wiki/File:SED_Logo.svg [Accessed 30 July 2011]
- Christopher T Cooper (2009) File:Water bus in Dubai Creek.jpg. Available at: http://commons.wikimedia.org/wiki/File:Water_bus_in_Dubai_Creek.jpg [Accessed 31 July 2011]

Any questions?