What Trends May Come in 2016

What will next year’s information industry headlines be about? We’ve gathered a team of experts—some familiar, some new to these pages—to take an educated guess as to what we’ll be talking about in 2016. So whether it’s grand predictions about changes that will rock the technology and info pro world for decades to come, or smaller trends that might take center stage for just a year, join our experts as they take a look into possible futures of the industry.

Industry at a Tipping Point

Leigh Watson Healy
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From 2013 to 2014, the total industry grew by 3.8%, from $738 billion to $766 billion. Our industry of information, media, and technology is a blend of fast-growing software, services, and tech companies and moderate-growth traditional content publishers and media. Hot spots are workflow solutions

Mass Digitization and Copyright

by CORILEE CHRISTOU

Mass digitization has become a prominent driver of potential copyright legislation. In the past several years, the U.S. Copyright Office has released two reports: “Legal Issues in Mass Digitization: A Preliminary Analysis and Discussion Document” and “Orphan Works and Mass Digitization.” More recently, stakeholders were asked to submit comments on how best to develop a legislative framework for the creation of a pilot program

Stormy Seas: The State of Library Budgets

by BRANDI SCARDILLI

It’s no secret that libraries of all types have struggled in recent years to operate on limited budgets and redefine their roles as the world goes digital. The Great Recession that started in 2008 put many libraries on a downward slope, although they’ve found ways to adapt
for mass digitization. The deadline for submission was Oct. 9, 2015.

“Orphan Works and Mass Digitization” recommends the consideration of an extended collective licensing (ECL) program for certain mass digitization activities. The initial effort would comprise a pilot program that would enable users to digitize and provide access to certain works defined as literary works, embedded images, and photographs that are only to be used for research and education purposes under conditions to be agreed upon between rightsholder and user representatives for a period of 5 years. To facilitate and ensure a diligent search for rightsholders, the Copyright Office suggests the use of collective management organizations (CMOs).

**Collective Management Organizations**

One of the key benefits of using CMOs that are appointed for “representing copyright owners in particular categories of works” would be to relieve users—particularly libraries—that are involved in mass digitization projects from the burden and expense associated with conducting a diligent search for each owner prior to undertaking such projects.

Karyn Temple Claggett, the Copyright Office’s associate registrar of copyrights and director of policy and international affairs, is certainly an expert in the field of mass digitization and orphan works. Her extensive and impressive experience at the Copyright Office includes previously serving as senior counsel for policy and international affairs, during which she worked on some of the Copyright Office’s policy and international initiatives, including legal solutions for users of orphan works, institutions that are engaged in mass digitization, and people who require accommodations because of print disabilities. In June 2012, she was a member of the U.S. delegation to Beijing, where member states of WIPO (World Intellectual Property Organization) concluded a treaty to protect the intellectual property rights of audiovisual performers. In 2013, she was a member of the U.S. delegation to WIPO’s meeting in Marrakesh, Morocco, where members signed a treaty to facilitate access to works for people who are blind, visually impaired, or print disabled.

As of Oct. 12, 2015, the Copyright Office received more than 80 submissions from the most recent request for comments regarding mass digitization. ...
of Law, also served as the University of California—Berkeley School of Law’s Digital Library Fellow for the Digital Library Copyright Project. His research has focused on how libraries and related information intermediaries can overcome copyright and other legal obstacles to provide better access to their collections online. He has written about copyright exceptions for libraries and archives under Section 108 of the Copyright Act, orphan works, mass digitization, copyright protection of metadata, and issues related to expanding copyright protection of traditional knowledge. Hansen is one of the facilitators for a project to create the Statement of Best Practices in Fair Use of Collections Containing Orphan Works for Libraries, Archives, and Other Memory Institutions, which was released in December 2014.

In a recent post on the DPLA (Digital Public Library of America) blog, Hansen says, “Societies could, in theory, already grant mass digitization licenses for works owned by their members. The [Copyright] Office’s proposed ECL system would allow collecting societies to go beyond that, and also grant licenses for all works that are similar to those owned by their members, even if the owners of those similar works are not actually members of the collective themselves” (bit.ly/1ke0oJw).

Most stakeholders agree that the current copyright term is just too long and inherently contributes to pretty much all orphan works issues that exist today.

According to Hansen, the Copyright Office’s ECL system would still require a search for copyright owners, but the onus would be on the CMO. Also, “the Copyright Office says very little about what such a search would entail, either for users or for CMOs, but the process of establishing criteria for a ‘diligent search’ by going through the Copyright Office rulemaking process to develop guidelines is potentially onerous,” he says.

Copyright Direction

Libraries and library-related associations are pretty adamant about not using an ECL system for mass digitization of any kind. However, the idea does have its supporters. Mary Rasenberger, executive director of the Authors Guild, has been involved with copyright and copyright policies for several years. A lawyer who has held positions at the Copyright Office and the Library of Congress, Rasenberger also oversaw the recently published 1,288-page Compendium of U.S. Copyright Office Practices, Third Edition. The Authors Guild’s stated mission is to “support working writers. We advocate for the rights of writers by supporting free speech, fair contracts, and copyright. We create community and we fight for a living wage.”

When asked about the proposed pilot program and the use of an ECL-type solution for mass digitization, Rasenberger says that she supports this sort of approach. “It’s a win for all,” she says. “The public gets access to the entirety of these immensely valuable works of science and imagination—not just the snippets offered by Google. Authors get access to a much-needed revenue stream in an era where fair pay is harder to come by than ever. Libraries and other institutions get to reap the benefits of digitizing their collections and more effectively fulfilling their missions in the digital era.”

So what are the next steps? Most stakeholders agree that the current copyright term is just too long and inherently contributes to pretty much all orphan works issues that exist today. As problematic as the current length of the U.S. copyright term may be (life of the author plus 70 years), it isn’t going to change and may even be further solidified at its current length. On Oct. 7, 2015, the Trans-Pacific Partnership—of which the U.S. is a member—reached an agreement that includes a term of life plus 70 years for all of its members. [For more on the Trans-Pacific Partnership, see Legal Issues on page 13. —Ed.]

As for the proposed pilot program and its use of an ECL system combined with associative CMOs, the Copyright Office hopes to initiate the 5-year program prior to introducing any new legislation and, as stated earlier, it hopes to be flexible with regard to its next actions relative to the comments it received. If a pilot ECL program is established, it may very well provide some reasonable solutions to mass digitization and orphan works in general. Certainly, the Copyright Office should be given credit for understanding and attempting to resolve these issues as they relate not only to the rightsholders, but also to the potential users and uses. Furthermore, the proposed limitation on remedies and an improved registration process are needed steps toward creating a fair balance between the rights of copyright owners and potential users.

What Information Wants

There is no easy answer here. The internet and everything digital have not only both simplified and complicated the findability and awareness of all types of works, but have also presented new challenges for copyright law and policy, rightsholders, and users, as well as for today’s stewards of a fair copyright system: the Copyright Office and the legislative branch. It is imperative, however, that whatever solution the Copyright Office or the legislature ultimately adopts does not overcomplicate already complex copyright law or place undue restrictions on user behavior or use, particularly as it relates to fair use. Unlike at any other time in history, creators have access to a huge digital and networked audience of untapped users, creating markets well beyond what was possible or even heard of before the advent of the digitally empowered internet age.

Cory Doctorow, in his book Information Doesn’t Want to Be Free: Laws for the Internet Age, eloquently describes this new electronic environment when he advises us to “[t]hink like a dandelion. ... The dandelion’s strategy is to maximize the number of blind chances it has for continuing its genetic line—not to carefully plot each germination. ... The copies that others make of my work cost me nothing, and present the possibility that I’ll get something.”

In a landmark decision made on Oct. 16, 2015, the judge of the United States Court of Appeals for the Second Circuit upheld the original decision for Authors Guild, Inc. v. Google, Inc., further reinforcing that the Google Books project is protected by fair use. Google Books only scans snippets of books, thereby enabling its users to become aware of titles they may not have known about otherwise and then potentially purchase these items. Similar to Doctorow’s dandelions, not every seed becomes a flower, but those that do are more likely to be bought. Fair use is still alive and well as HathiTrust and now Google Books continue to cement the rights of fair use while still providing libraries and other noncommercial users with needed discovery and preservation tools.

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