

I am a bit of an historian. My research often involves viewing old film footage and documentaries. It appears that some of the old films are no longer protected by copyright as they have fallen back into the public domain. Some of the documentaries contain old silent movie footage as well as footage that had been produced by the government and thus it is not copyrighted. Usually the DVD that contains the non-copyrighted scenes is copy protected. Thus I am unable to copy the scenes within the DVD that contain the footage that is not copyrighted. The blanket protection on the DVD has denied my use of material that is within the public domain. As an historian, I have managed to collect some rare films myself. Some have dated as far back as 1912 and some have fallen into the public domain. Some of these films I have donated to the American Film Institute. Others I have held on to. Does this mean that I can convert one of my only known films to DVD and add copy protection to the DVD and in effect rob the public's fair use of this material? Perhaps if I brighten up the scenes a bit, or add some audio, I can claim that I have created a new work and thus gain copyright to material that was once within the public's domain?

Here are just a few quick examples of old silent films that have been copy protected on DVDs. These are just a few of many examples that I have run into.

Kino Video has copyrighted a DVD that contains the "Blind Husbands". The "Blind Husbands" is a silent movie produced in about 1919. I am not sure if the movie is still under copyright as copyright has been extended so far back. If the copyright of this movie has expired, then why is it copy protected on the DVD? This DVD also contains "The Great Gabbo," from 1929. It is also copy protected on the DVD. The copyright on this DVD is from 2003 by the Kino Int. Corp.

What makes this DVD even more interesting is that on the cover of the DVD is a statement that the movies are "newly restored by the library of congress." I do believe that the library of congress is a government entity. I thought that works produced by the government were not subject to copyright.

Another DVD by the Kino Int. Corp. that I have viewed is also copyrighted in 2003 and it contains the silent film titled "Assunta Spina." This silent film was created in 1914. Again it is copy protected on the DVD. Here again, I am not sure if the copyright has expired. It appears as if material that should be in the public domain has fallen victim to copy protection.

As copyrights expire, does the copyright protection automatically disappear from these DVDs?

What about all the clips of government war footage that is re-used within current documentaries and movies alike? Recently I viewed a couple of DVDs that contained extensive footage of WW2 all of which is copy protected on the DVD.

Not only have the content providers extended copyrights to encompass the entire twentieth century, it appears that they copy protect material that is in the public domain as well. In addition, it appears that they utilize government organizations to restore the material prior to copy protecting it on their DVDs. This would certainly invalidate the argument that they themselves have enhanced the material and thus deserve any rights to the material. The content providers then present no means of removing protection from the DVDs as copyrights expire. Perhaps they have no intent on allowing them to ever expire. It is as if they have placed a permanent fence on public property. We are allowed to look over the fence for a fee, but we are not allowed to take a walk in the park.

Perhaps someone at the copyright office can tell me if the above original silent films are still under copyright. Certainly the library of congress can tell us if the movies they restored are copyrighted. If they are under copyright, then why is the library of congress restoring films for copyrighted content providers on our tax dollar? If they are not copyrighted, then why is the DVD copy protected and why does our government prevent us from exercising our fair use of our material with the DMCA? All I wanted to do was to take a few short scenes from these and other silent films and place them in chronological order for reference and research.

It would be an interesting exercise to bring together a number of copyright lawyers in order to have them review the DVDs on the market, just to see how much material within the public domain is indeed copy protected. Then the amount of infringement on the public domain can be established.

Given the fact that each and every year, more and more material will fall into the public domain and yet the copy protection will linger on, it would seem that the only logical approach would be to restore the public's right to circumvent such copy protection that prevents us from accessing copy protected material that belongs to us and that in some cases, we may have paid to have had restored.

I do believe that the DMCA prevents me from circumventing protection of copyrighted material. If the material on these DVDs is in the public domain, then circumventing the copy protection does not violate the DMCA. If this is true, then the software that allows us to gain access to our public domain material should be allowed back on the market. This is not even a fair use issue as it is not an issue of gaining access to copyrighted material, rather it is an issue of gaining access to material in which the copyrights have expired or material that could not be legally copyrighted and should not legally be copy protected.

If you apply the argument that it is o.k. to copy protect material that is in the public domain if that material can be found elsewhere, such as on VHS tape, then why is the Library of Congress restoring movies on my tax dollar, only to provide me a substandard, lower resolution, version on VHS Tape? Again, who paid to for

the newly restored version and who benefits from it? In addition, VHS tape is obsolete. According to an article written by Jennifer Netherby on 7/22/2005, and displayed on the Video Business website, "DVD sales made up the vast majority of sales and rentals, with VHS now just a 7.9% slice of the video market." As VHS tape vanishes from the market place, so are my rights to public domain material.

The public has been injured by the extreme extension to the duration of copyright and the public is further insulted by the copy protection applied to the last vestiges of material that is within the public domain.

The Library of Congress should exempt material that is in the public domain from the prohibition against circumvention of technological measures that control access to NON-copyrighted works.

Thank you for your time.
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