Claiming Surrogate Intellectual Property Rights: When Cultural Institutions Repossess the Public Domain

This paper examines what happens when cultural institutions impede the circulation of knowledge through the World Wide Web by claiming intellectual property over digital reproductions of public domain artworks. Digitization of cultural heritage collections is now common practice for cultural institutions. Yet, how to finance and maintain digitization efforts has become increasingly challenging. Through efforts to find sustainable solutions, the premise that ‘an item in the public domain remains in the public domain’ is increasingly not the case. Many cultural institutions claim a copyright in the digital reproduction of the public domain work as their own original work. In some cases, domestic law requires copyright be awarded to the photographer as well. Consequently, practices have become accepted that reassign certain rights to a work, as well as its digital surrogate, that have long expired—rights that are being claimed by a surrogate party. These strategies restrict public access to digital cultural heritage and discourage users from access and reuse, or, as is seen when users blatantly or unintentionally infringe, have no impact at all.

Cultural institutions’ regulation of digital reproductions over the Internet has become increasingly controversial. This paper explores such trends and addresses the relevant implications for the public domain.

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