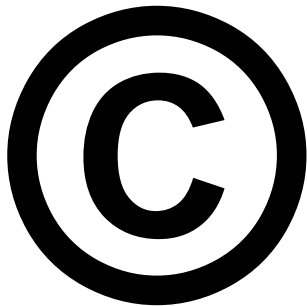


Introduction to Copyright & Copyright Legislation



Background Information for “Copyright
Conundrums,” Librarian to Librarian Networking
Summit, February 3, 2007, Joyner Library, East
Carolina University

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Copyright: Definition & Foundation

- ❑ “A property right in an original work of authorship...” – Blacks Law Dictionary, 7th ed.
- ❑ 1790 US Constitution, Article I, Section 8:
 - ❑ “The Congress shall have power ...To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”

Copyright: US Legislative History

- 1790 – First US Copyright Act
 - Covered ONLY books, maps and charts
 - 14-year term of protection, renewable once if the author were alive
 - Copyright had to be registered, document deposited, and notices listed
- 1909 – Notice requirements, lengthened duration, expanded works
- 1976 – Codified judicial rules, federal supremacy, expanded works
- 1980 – Computer software added
- 1982 – Criminalized high volume copying of records and movies
- 1990 – Visual Artists Rights Act – additional protections for sculptors, etc.
- 1992 – Criminalized copying willfully for commercial or private gain
- 1998 – Sonny Bono Copyright Term Extension Act “Mickey Mouse Act”
- 1998 – Digital Millennium Copyright Act (DMCA) – Anti-piracy
- 2002 – TEACH Act – Classroom and Distance Education Fair Use
- 2002 – Digital Media Consumers’ Rights Act (DMCRA)

Copyright is governed by Title 17, United States Code

Copyright: Requirements

□ Work Must Be

- An original expression
- Independently created
- Modicum of creativity
- Fixed in a tangible medium of expression

□ Protects

- Creative expression
- Selection of creative material
- Arrangement of creative material

Copyrightable Material (§102)

- ❑ Literary works (includes website & software code)
- ❑ Musical works (including any accompanying words)
- ❑ Dramatic works (including any accompanying music)
- ❑ Pantomimes and choreographic works
- ❑ Pictorial, graphic, and sculptural works
- ❑ Motion pictures and audiovisual works
- ❑ Architectural works
- ❑ Sound recordings

Non-Copyrightable Material

- Prohibited by Statute
 - Ideas, Principles, Concepts (§102)
 - Processes, Procedures, Systems, Methods (§102)
 - Most US Gov Docs (§105)
- Excluded by Court Cases
 - Names, Titles, Short Phrases
 - Facts and Theories
 - Recipes



Copyright: Rights & Authors

□ Rights (§106)

- Reproduce
- Derivative works
 - Movies, plays, etc.
- Distribute
- Perform publicly
- Display publicly
- Transmit digitally

□ Authors (§201)

- Creator
- Joint-Authors
- Employer
 - Work for Hire

Copyright: Limits on Exclusive Rights

- §107 Fair Use
- §108 Libraries and Archives
- §109 First Sale Doctrine
- §110(1) Face to Face Teaching (media)
- §110(2) Distance Education Teaching (still media)
- §113 Pictorial, Graphical, Sculptural
- §117 Computer Programs
- §120 Architectural Works
- §121 Reproductions for disabled persons
- §111, §112, §118, §119, §122 Secondary Transmissions
 - broadcast, cable and satellite TV; radio; digital
- §114, §115, §116 Non-Dramatic Sound Recordings

Copyright: Libraries and Archives

- Limitations on Exclusive Rights: Reproductions by Libraries and Archives (§ 108)
- Allowed to make three copies:
 - Unpublished: solely for preservation and security, if owned
 - Published: solely for replacement of an owned item if cannot obtain an unused copy at a “fair price” and if obsolete reader equipment is no longer “reasonably available”
 - All: Any digital copy cannot leave the library building
- Does not preclude fair use or license restrictions
- Within last 20 years of a copyright, can reproduce a work only if no longer still profitable for owner and if unavailable for purchase at a “reasonable price.”
- Applies only to books and journals in facilities that are open to the public, provide notices of copyright on request forms, copies, and copiers/scanners, and which can reasonably claim no direct / indirect commercial advantage.

Copyright: Registration & Notice

□ Formal Registration

- No longer required – immediately fixed upon completion
- Required prior to enforcement suits
 - proof of ownership, enhanced damages, attorney fees
- Requirements
 - Deposit of first and last 25 pages of code
 - Trade secrets can be redacted
 - Source code or object code can be registered

□ Notice

- No longer required, but suggested
- Notice may be placed on work
- ex: © Owner's Name, year

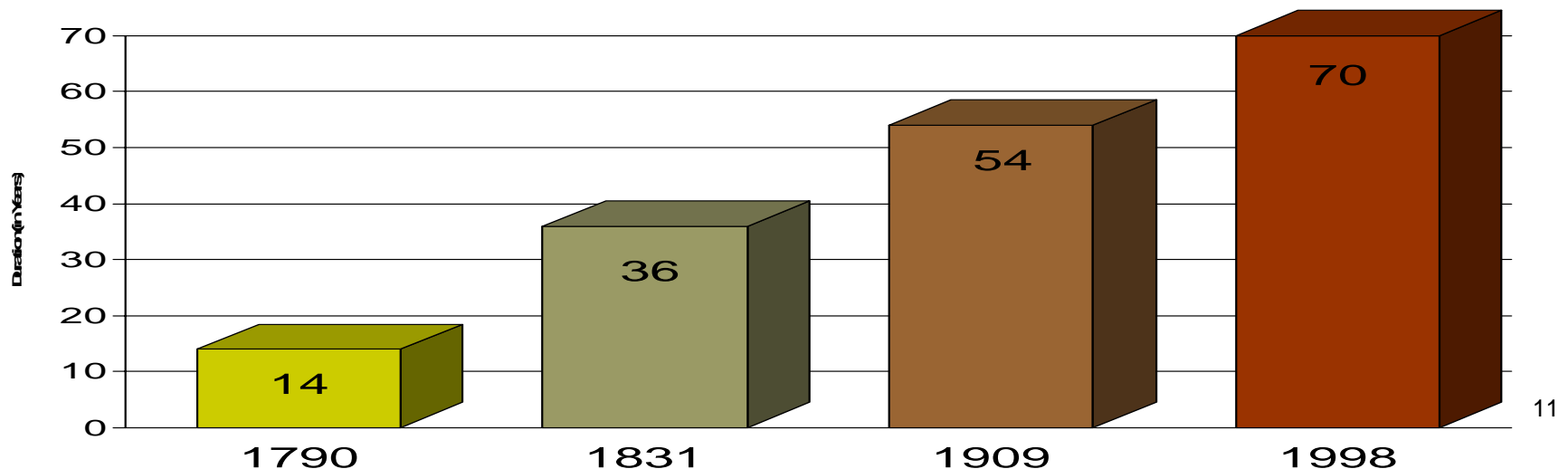
Copyright: Duration (§300)

□ Personal Authors & Joint-Authors

- life of author(s) + 70 years

□ Corporate Authors

- 95 years after publication -- OR (the lesser of) --
- 120 years after creation



Copyright: Enforcement

- Owner's must police own copyright
 - C&D orders, lawsuits, & notifying police, FBI, etc.
- Many private agencies/associations
 - International Federation of Reproduction Rights Organisations
 - Links to 109 international IP rights management organizations
 - Am. Soc. of Composers, Authors, and Publishers (ASCAP)
 - Software & Information Industry Association & Motion Picture Assoc. of Am.
 - Copyright Clearance Center, Assoc. of Am. Publishers, National Writers Union
 - Recording Industry Assoc. of Am., Broadcast Music, Inc., Harry Fox Agency, SESAC
- The National Intellectual Property Law Enforcement Coordination Council
 - U.S. Patent and Trademark Office & U.S. Copyright Office
 - U.S. Dept. of Justice (Criminal Div) & U.S. Dept. of State (Bureau of Econ/Bus/Ag)
 - Office of the U.S. Trade Representative
 - U.S. Customs Service & U.S. Dept. of Commerce (Intl. Trade Admin)

Copyright: Complexities

- Typical modern music CD
 - Musical Score
 - Lyrics
 - Sound Recording
 - Cover & Booklet Art
 - Booklet Text
 - Enhanced CD software
- Joint-Authorship Book
- Work-for-hire
- Software: EULAs, DRM, etc.



Copyright Infringement: Defenses

- Independent Creation
- Fair use
- Not Substantially Similar
- Material was licensed
- Copyright misuse
- Copyright is invalid
 - Not fixed in medium
 - Not original
- In Public Domain
 - Non-copyrighted materials
 - Ancient works
 - Expired copyrighted works
 - Abandoned works
 - Federal Government publications

Copyright Infringement: Remedies (§500)

- Injunction: a court order to cease infringement
- Seizure and Destruction of infringing works
- Damages
 - Infringer's Profits – AND/OR –
 - Actual monetary damages – OR –
 - Fixed statutory damages
 - Only for registered items
 - \$500-\$20,000 unintentional; \$20,000-\$250,000 intentional
- Educational non-profits usually fall under “good faith” caps on damages

Copyright: Fair Use

Fair Use: Creation of Doctrine

- 1841: Folsom v. Marsh – Supreme Court
- 1976 Act - codified in 17 U.S.C. section 107
 - Four prong test
- Each case decided on its own facts
 - Many cases have solid arguments on both sides
- Balance of two desirable characteristics
 - Financial incentives to produce content
 - Desirable uses of existing information
- Developed in an era of physical documents
 - Perfect copies/instant delivery alter the balance

Fair Use: Definition (§107)

- Fair Use is an exception, not a defense to copyright
 - Copyright owners & users often differ on “fair use”
- No clear definition of Fair Use, only guidance
 - Blacks Law Dictionary, 7th ed.: “A reasonable and limited use of a copyrighted work without the [rights owner]’s permission” – *original had ‘author’ which could be misleading*
- Statute states: “For purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research...”

Fair Use: Four Factor Test

- The purpose and character of the use
 - This focuses on the transformative nature of the work: whether the work adds something new
 - The commercial nature is not determinative of whether a use is fair or not
- The nature of the copyrighted work
 - Factor focuses on the plaintiff
 - Fictional works are usually more protected than non-fictional
- The amount and substantiality taken
 - Some circuits were using the “conjure up” test – you could use just enough so that the public knows what you are taking without taking too much
 - Some courts said that if you took the heart of the work it was infringing
 - Taking a lot is not presumptively unfair either
- The effect on potential market for or value of the copyrighted work
 - This is the most important element

Fair Use: Tips

- ❑ Education/nonprofit does NOT create automatic fair use
- ❑ Commercial use usually requires permission
- ❑ Imaginative works are more likely to require permission
- ❑ Use only “on occasion”
- ❑ Excerpt small quantities
- ❑ Always credit sources
- ❑ Limits on Fair Use
 - preempted by digital rights management
 - surrendered by restrictive contracts and licenses
 - copyright holders can exercise arbitrary power

Guidelines

CONTU

CONFU

CONTU: Natl. Comm. on New Tech. Uses of © Works

- US © Office: Classroom Guidelines
 - Intended to be a minimum to ensure safety from infringement
 - More limited than statute because was a compromise
 - Not law, but legal history and in cases; has become forceful
- One per student IF made by or for instructor
 - Brevity test:
 - Complete article of less than 2,500 words
 - An excerpt under 1,000 words or 10% (the lesser)
 - Spontaneity test
 - If planned in advance, should get © permission
 - Cumulative effect test
 - “shall not be more than nine instances...for one course”
 - Must include notice of copyright and citation

CONFU: Conference on Fair Use

- Clinton Admin. initiative with interested parties
 - Informal, non-legislative, non-binding working groups
 - Model copyright compliance guidelines
 - Never formally adopted, but useful as a reference
- Electronic Reserves
 - Limited Accessibility
 - Documents listed only by faculty name and course
 - Currently enrolled students and faculty only
 - Faculty/Course Websites
 - May only LINK to electronic library reserves
 - Bibliographic Citation
 - Reading first page must have a full citation
 - Not just © stamp (under DMCA)

Recent Legislation

Digital Millennium Copyright Act of 1998

Digital Media Consumers' Rights Act of 2002

Teach Act of 2002

Digital Millennium Copyright Act (1998)

- Relevant Provisions
 - Prohibited circumventing anti-piracy methods
 - Exceptions: government, testing, limited research/personal
 - Prohibited circumventing for copying AND access
 - Prohibited manufacturing of devices/software used for piracy
 - Limited library digital preservation & medium-transfer
 - Limited liability for ISPs & OSPs (Online Service Providers)
- Results
 - Fair Use not adequately updated
 - First Sale doctrine undermined
 - Research & Advancement chilled

Digital Media Consumers' Rights Act

- DMCRA (2002)
 - Revised DMCA (1998)
- Required product labeling for DRM measures
- Expanded DRM circumvention allowances
 - private users for personal use
 - scientists for research
- Restored market/consumer rights
 - To make, market, sell, buy, & use equipment that could be used to violate copyright, but has other uses, as well

TEACH Act

- Technology Education and Copyright Harmonization
- Expands approved works
 - Display/performance of most types of works
 - Permissions/royalties usually not required
- Expands receiving locations
 - classroom, closed-circuit T.V., & Internet
- Allows limited copies to be retained and reused
- Allows analog materials to be digitized
 - Must already not be available in digital form

TEACH Act: Digitalization/Broadcast

□ Allowed

- Non-dramatic literary and musical works in entirety
- Any other work in “reasonable and limited portions”
- Display “an amount [similar to] a live classroom session”

□ Prohibited

- Dramatic stage plays in their entirety
- Optional readings, unless integral to the class
- Anything “not lawfully made and acquired”
- Anything readably available commercially
- Works sold as primarily as distance education courses

TEACH Act: Duties

□ Institutional Policymakers

- Education & Government
- Copyright policies
- Notice to students

□ Instructors

- Allowed under the law
- Made by or for instructor
- “An integral part of a class” & “directly related”

□ Info Tech Officials

- Enrolled students only
- Control storage and dissemination
- Limited copy retention

□ Librarians

- No role under TEACH
- Library services used though

TEACH Act: Alternatives

- If unable/unwilling to comply with TEACH:
 - Secure permission from copyright holders
 - Rely upon traditional “Fair Use” exemption
 - Use alternative delivery methods
 - Exclude copyrighted material from lessons

Upcoming Legislation

Orphaned Works Act

Section 108 Study Group recommendations

Orphaned Works Act

- Orphaned works are copyrighted materials with no rights owner able to be found
- US Copyright Office studied the issue and released a report in 2006, <http://www.copyright.gov/orphan/>
- Orphan Works Act of 2006 (HR 5439) was introduced in House on May 22, 2006
 - Forwarded to committee – no action since May, 2006

§108 Study Group Recommendations

- Ongoing study by the Library of Congress to review copyright law for the digital age
- Intends to propose changes to Congress
- Group members include media industry representatives, librarians, and others
 - Public comment is welcomed, too
- Site: <http://www.loc.gov/section108/>

Interpretation & Jurisdiction

Interpretation & Jurisdiction

- State contract law trumps federal copyright
- US Federal District Courts vary in interpretations
 - Nashville, NY, and S. Calif. especially are pro-IP owner
- International Treaties alter US © law
 - Universal Copyright Convention
 - Geneva Phonograms Convention
 - Berne Convention
 - WTO Agreement: World Trade Organization
 - TRIPS: Trade-Related aspects of Intellectual Property rights
 - WIPO treaties: World Intellectual Property Organization



Copyright Misconceptions

Copyright: Common Misconceptions

- ❑ All educational uses are fair use.
- ❑ Copyright & Fair Use trump licenses.
- ❑ Following copyright guidelines absolve infringement.
- ❑ Giving authors credit absolves infringement.
- ❑ If an author dies, his/her work moves into public domain.
- ❑ Works that do not have a copyright notice are in the public domain.
- ❑ Material on the Internet is in the public domain.
- ❑ Adding something to the copyrighted work creates a new work to which you own the copyright.
- ❑ Maps are facts and therefore public domain.

Thank You / Questions

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