

Remembering Copyright in a Digital Age

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Copyright protects authors, publishers and producers as well as the public. There is a good deal of tension between these groups. However, authors have *exclusive rights* to their works for a limited period of time as a reward for their contribution to society.

An original work is protected by copyright as soon as the work is “fixed” and “tangible.”

Liability for copyright infringement rests with the person who actually commits the infringement and in reality usually rises to the top to include the company or organization itself. A copyright owner can seek up to \$30,000 for each work infringed plus costs of litigation. If the infringement is “willful”, damages can escalate from \$30,000 to \$150,000 for each work infringed. The 1998 Copyright Act also adds tough criminal liabilities including jail sentences.

New technologies are giving rise to new laws.

The *Digital Millennium Copyright Act (DMCA)* 1998 is an amendment that attempts to update copyright law for the digital environment. It is controversial and flawed. On the positive side, it offers a “safe harbor” for colleges, universities, and other online service providers (such as libraries, AOL) whose systems may have been used to infringe on copyright. However, it makes the circumvention of technology used to protect copyrighted materials a civil and criminal offense. It will be difficult for us to exercise fair use of digital materials protected by technological measures.

The TEACH Act of 2002 allows copyrighted works in digital formats to be digitally transmitted to students in classroom or distance learning environments without prior permission. However, TEACH is limited in scope, requiring that a long list of conditions be present *BEFORE* exemptions can be used. With DMCA and TEACH, digital materials are more protected than analog materials.

Until DMCA, most of copyright the law had been written in “technologically neutral language.” Digital works are more vulnerable to copying. Rules governing them are different and penalties for infringing them are more severe. Exercising fair use in this environment becomes more complex, but no less essential to serving the greater society while protecting the exclusive rights of copyright holders.

Disclaimer: The purpose of this presentation is to present information about copyright issues. It does not constitute legal advice. Should you need legal advice, consult a lawyer.

What can be copyrighted?

- Literary works (books, periodicals, manuscripts, web page, email, discussion lists, web blogs)
- Musical works (songs, operas, musical plays)
- Dramatic works
- Pantomimes and choreographic works (dances)
- Pictorials, graphics, sculptures
- Motion pictures, audio- visuals, multimedia works
- Architectural works
- Computer programs and their documentation

What are the author's rights (a growing list)?

- Reproductions
 - make copies, transparencies, quotes, digital images; download
- Public distribution
 - sell, rent, lend, hand out photocopies, put on a listserv or web site, email
- Public performing rights
 - Live renditions of musical, literary, dramatic works; face to face performances before a substantial number of persons outside the author's family or acquaintances; use a copyrighted song, CD clip or video clip in a QuickTime movie and transmit it;
- Creating derivative works
 - Any alteration; adaptation; translations; dramatizations; musical arrangements; sound recordings abridgements; motion pictures made from original work; digitally alter a copyright image, article, or song and transmit it
- Public display
 - Display of a work, sculpture, manuscript, painting, graphic by means of film, slide, TV image, scanned images, exhibits including on web sites
- Moral rights for works of art (new since the Berne Agreement and WIPO; 1990)
 - Right of a visual artist to have his or her name kept on a work or to be removed if the work has been altered in a way objectionable to that artist; limited abilities to prevent works from being defaced or destroyed; apply during the life of the artist
- Digital audio transmissions (1995)
 - Right of composers **AND performers** to receive payment when musical recordings are digitized and transmitted over the Internet
- Technological Protection Systems (*Digital Millennium Copyright Act 1998*)
 - Password interfaces to control access to copyrighted digital works; encryption
 - Protection of "Copyright Management Information" (CMI); prohibits removing or altering the CMI which includes copyright notice, author/owner name, title; performers & writers credited with AV work; terms and conditions for use of all types of works; (For example, see the verso of the title page of a book; and "click-on" contracts governing downloaded materials or websites.)

Who owns copyright?

- The person who does the creative work EXCEPT:
- Work Made for Hire (WMFH)
 - The employer of the person creating the work is considered the author and copyright owner
 - Work prepared by an employee within the scope of employment belongs to the employer unless the parties have expressly agreed otherwise in writing
 - In higher education, work usually belongs to faculty, BUT look at the fine print
 - An area to watch as courses are delivered over the Internet; Web-based courses require significantly more institutional resources than traditional writing/teaching.
 - What are Central's policies? An intellectual property rights policy is in the Faculty Handbook (5-06)

What cannot be copyrighted?

- “• Works in the “Public Domain” i.e., copyright has expired
 - 1998 Congress added 20 years to the term; for most works today, copyright lasts for the life of the author plus 70 years!
 - See *Public Domain Chart* by Peter Hirtle, Intellectual Property Officer, Cornell University Library on the Geisler Library Home Page under “Copyright.”
 - Remember, a copyright can be “recaptured” by another person or company
- United States government works
 - except those contracted to private sector; NTIA National Telecommunications and Information Administration [5 yrs]; Postal Services (stamps!)
- US Court opinions; laws; rules
- Ideas, concepts (copyright protects the *way* the idea is expressed *NOT* the idea itself)
- Pure, raw facts; processes; equations; principles
- Names, titles, slogans (*if* these are not Trademarks)
- Blank forms; standard materials like calendars, charts
- Extemporaneous speech (which is not recorded or based on detailed notes)
- Standard plots
- Characters

What are *some of the 15 or more* exceptions or limitations to copyright owners' rights?

- Fair Use (see more in next section)
 - The most important limitation on exclusive rights of copyright holders
- Library copying
 - Reserves (traditional and electronic), interlibrary loan, access to protected/licensed online databases; photocopy services
 - preservation copies (paper and digital)
- First-Sale doctrine
 - Once owner authorizes release of lawfully made copies, copies can be sold, rented, loaned, given to others
- Exception for public displays
 - Owners (like libraries, museums, book stores) of lawfully made copies can display/exhibit them
- Displays and performances in face-to-face teaching and distance learning
 - Permits reciting poetry, reading novels and plays, showing videos, playing music, all in the traditional classroom setting *or over networks under certain conditions* (since TEACH Act 2002)
 - Permits showing pictures, charts, graphs, text and other still works
- Computer software
 - make 1 backup copy; modify program to work on a computer
- Architectural works
 - make and use a picture of a building; but the photograph may then be copyrighted and those rights must be recognized!
- Special formats for the disabled
 - make special, non-dramatic literary works accessible to persons with disabilities

What about Fair Use?

The 1976 Copyright Act grants “FAIR USE.” The fair use doctrine is a defense against copyright infringement. Under fair use, the copyright owner is not remunerated because use is “minimal” and “in the public interest.” Individuals and non-profit and educational institutions have some special protection when reproducing copyrighted materials without prior permission of the copyright owner.

- Key Issues:
 - Fair Use is complex
 - Fair use applies to all copyrighted works regardless of media: print, electronic, multimedia

- Kinds of fair use copying:
 - Personal for learning or entertainment
 - Educational for teachers, scholars and students for teaching and learning
 - Criticism, comment, news reporting
 - Creative by authors who copy from other works to create their own new work

- 4 factors to determine whether use is “fair”:
 - PURPOSE What is the purpose and character of use – Commercial? Non-profit educational?
 - NATURE What is the nature of the work – facts, published, scientific or scholarly works are less protected than creative literary, graphic, pictorial, and unpublished works
 - AMOUNT What amount is used in relation to the whole – make it small and not the “heart” of the piece
 - EFFECT What is the effect on the potential market for the original and on any permissions or licensing fee opportunities – does use prevent a sale?

Fair Use “Guidelines”

- Developed by publishers, authors, educators and librarians after the 1976 Copyright Act to identify permissible uses of copyrighted works
- Published in Congressional reports
- BUT DO NOT have the force of law

What are some copyright myths?

- Out of print means out of copyright.
In an age of easy digitizing, out of print is almost irrelevant. Unless there is an unambiguous statement that a work won't be re-issued or republished, we can't rely on out of print status to mean fair use.
- All educational use is fair use.
- I am absolved of all responsibility because I didn't know about copyright/intellectual property rights.
- Anything posted on a Web site, on email, blogs, or Usenet news group is in the Public Domain and can be freely copied, uploaded, downloaded, posted or forwarded to others.
- I gave the author credit and am absolved of any infringement
- It's OK to copy and use materials, images, sound or video files when there is no copyright notice attached to them.
 - Since 1989, no notice of copyright is required. However, if you want to sue someone for infringing on your original, creative work, it helps to have registered your copyright with the US Copyright Office in a timely way
- I can place a copyrighted cartoon on my web site.
- It's OK to post copyrighted materials for downloading on a server located outside the US because US copyright laws don't apply outside the US.
- If I'm not making a profit on the copies I have made (print, graphic, sound), I can give (send electronically) them to others without breaking the law.

Good News!

We can avoid copyright infringement if we act in good faith and are careful to:

- Understand and consistently apply the 4 Fair Use Factors before copying
- Use only small amounts of others' copyrighted works
- Limit access to course materials to students enrolled in the course
- Terminate student access to course materials at the end of the term
- Get permission for works that are used repeatedly
- Make copies legally and always give appropriate citations and attributions to the original source
- Include copyright notices
- Remember that course use and fair use may not be the same
- Seek permission before placing copyrighted materials on the Web

Where possible, we should seek out and negotiate site licenses that contractually enable us to use digital information and computer software programs to effectively teach, work, and learn without infringing on copyright, but with maximum access.

Help is available

- Geisler librarians for guidance
- Geisler Library access to Copyright Clearance Center
- Book Store for assistance with the legal compilation of course packs

Learn More about Copyright and Citing Internet Resources from the Geisler Library Home Page -- “Copyright,” “Citing Sources,” and “Academic Integrity”

Sources consulted:

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