Copyright: Know the Law!

The Basics for Print and Electronic Materials
Presenter Today

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Real Property vs Intellectual Property
Intellectual Property

- Patents
- Trademarks
- Copyrights
Historical Underpinning

U.S. Constitution gives Congress the power to “promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” [Art. 1, Sec. 8]
Today Copyright Law is Federal Law Only! No state law!
Copyright law includes

- IP clause of Constitution
- U. S. Code--Title 17
- Regulations-CFR (Code of Fed Regs), Title 37
- Court decisions
Venue for disputes--Federal Courts

1. District Court
   Trial court, facts established

2. Circuit Court of Appeals
   Challenge outcome of trial

3. U.S. Supreme Court
   Final decision (If they hear the case, that is)
Copyright around the Globe

- Is there an international copyright Law? NO! But, there’s
- UCC
- Berne Convention
- Gatt Agreement
- Other trade agreements
Copyright Law applies to materials found on the internet and to electronic resources to the same extent it applies to materials in traditional formats.
Copyright Requirements

1. Original work of authorship; *
2. Fixed in a tangible medium of expression.

*The original work of authorship must involve a “modicum” of creative effort.
Unregistered Copyright

- With the fixation of an original work of authorship in a tangible medium of expression, the author has a copyright but it is an unregistered one.

- A copyright holder cannot sue someone for infringement until the copyright is registered.
To Register a Copyright

Go to: Copyright Office at
http://www.copyright.gov/

1. Register online for $55 or
2. Use a paper form with $85 fee.

Follow instructions for deposit copies.
Notice is no longer required!

U.S. Copyright law before 1989 required works to carry a notice such as this one↓
Copyright © 1988 by Jane Jones

In 1989, this notice requirement was eliminated.
Question

If you cannot find any copyright information on a work, is it okay to assume it’s not covered by copyright?

Yes? No? Why?
What Can be Copyrighted?

- Literary Works
- Visual Arts
- Performing Arts
- Sound recordings
- Serials/Periodicals
Literary Works

- Literary works may be published or unpublished and include non-dramatic textual works with or without illustrations.
- Computer programs and databases are considered literary works.
Examples of literary works

- Fiction, nonfiction, poetry
- Compilations of data or other literary subject matter
- Dissertations, speeches
- Bound or loose-leaf volumes
- Pamphlets, brochures
- Textbooks, reference works
- Catalogs, directories
- Advertising copy
- Games
- Automated databases
Visual Arts

- Visual arts are pictorial, graphic, or sculptural works, including 2-dimensional and 3-dimensional works of fine, graphic, and applied art.
Some Examples

- Advertisements, commercial prints, labels
- Artificial flowers and plants
- Artwork applied to clothing or to other articles
- Bumper stickers, decals, stickers
- Cartographic works, such as maps and globes
- Drawings, paintings, murals
- Original prints, such as engravings, etchings, silk screen and woodblock prints
- Patterns for sewing, knitting, crochet
- Photographs, photomontages
- Sculpture, such as carvings, ceramics, figurines
- Technical drawings, architectural drawings
Performing Arts

- Performing arts works are intended to be “performed” directly before an audience or indirectly “by means of any device or process.”

- Included are (1) musical works, with any accompanying words; (2) dramatic works, such as scripts, including any accompanying music; (3) pantomimes and choreographic works; and (4) motion pictures and other audiovisual works.
Further Clarification

- Generally, dramatic works such as plays, screenplays, and radio or television scripts are works intended to be performed. Dramatic works usually include spoken text, plot, and directions for action.

- Choreography and pantomimes are also copyrightable dramatic works.
Sound Recordings

- Sound recordings are “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work.”
Further Clarification

- Generally, copyright protection extends to two elements in a sound recording: (1) the performance and (2) the production or engineering of the sound recording.

- A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. The word “phonorecord” includes cassette tapes, CDs, LPs, as well as other formats.
Serials/Periodicals

- Serial works are issued or intended to be issued in successive parts bearing numerical or chronological designations and are intended to be continued indefinitely.
Examples

- Newspapers
- Magazines
- Periodicals
- Bulletins
- Newsletters
- Annuals
- Journals
- Proceedings of societies
What cannot be copyrighted?

- Ideas
- Facts
- Something already in the public domain
- Procedures/Processes
- Systems, Operation Methods
- Concepts/Principles
- Discoveries
Works not covered by ©

- Those not fixed in tangible medium
- Works consisting entirely of common property
- Federal docs
- Titles, names, short phrases, slogans, familiar symbols or designs, mere listings of ingredients or contents
Public Domain

Works in the public domain are those that are not covered by copyright, for whatever reason.
When Works Enter Public Domain

In the United States, determining whether a work has entered the public domain or is still under copyright can be quite complex, primarily because copyright terms have been extended multiple times and in different ways—shifting over the course of the 20th century from a fixed-term based on first publication, with a possible renewal term, to a term extending to fifty, then seventy, years after the death of the author.

From Wikipedia
<table>
<thead>
<tr>
<th>DATE OF WORK</th>
<th>PROTECTED FROM</th>
<th>TERM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Created 1-1-78 or after</td>
<td>When work is fixed in tangible medium of expression</td>
<td>Life + 70 years or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation²</td>
</tr>
<tr>
<td>Published before 1923</td>
<td>In public domain</td>
<td>None</td>
</tr>
<tr>
<td>Published from 1923 - 63</td>
<td>When published with notice³</td>
<td>28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain</td>
</tr>
<tr>
<td>Published from 1964 - 77</td>
<td>When published with notice</td>
<td>28 years for first term; now automatic extension of 67 years for second term</td>
</tr>
<tr>
<td>Created before 1-1-78 but not published</td>
<td>1-1-78, the effective date of the 1976 Act which eliminated common law copyright</td>
<td>Life + 70 years or 12-31-2002, whichever is greater</td>
</tr>
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<td>Created before 1-1-78 but published between then and 12-31-2002</td>
<td>1-1-78, the effective date of the 1976 Act which eliminated common law copyright</td>
<td>Life + 70 years or 12-31-2047 whichever is greater</td>
</tr>
</tbody>
</table>
Duration

- Life of author plus 70 yrs
- Joint authors—life of last surviving plus 70 yrs
- Works for hire—95 yrs from publication or 120 from creation
Bundle of Exclusive Rights

Copyright holder has exclusive right “to do and authorize:”

1. Reproduction (make copies);
2. Adaptation: new editions, abridgements, etc.;
3. Public distribution: sale, lease, rental, etc.;
More Exclusive Rights

4. Public performance: musicals, dramas, choreography, pantomimes, motion pics, other AV;

5. Public display: Pictorial, graphic, or sculptural works, including the individual images of a motion picture.
Exceptions to Exclusive Rights

- Works in public domain
- Facts and Ideas
- Fair Use (Section 107)
- Reproduction & Distribution by Libraries & Archives (Section 108)
What is Fair Use?

The “use” by someone other than the copyright owner, without the copyright owner’s permission, of a copyrighted work.

“Use” includes making a copy, paraphrasing, quoting, etc.
No Need for ‘Fair Use’ if You obtain permission to “use” a copyrighted work.

Caveats:
- Obtain permission in writing;
- Be sure the person giving permission has the authority to do so.
Purposes of Fair Use

Teaching

Preparation for teaching

Scholarship or research

Criticism & comment

News reporting
Fair Use Factors Stated in the Law & Used by Courts

1. Purpose & character of use;
2. Nature of copyrighted work;
3. Amount & substantiality of portion used;
4. Effect of use on market for or value of work.
Purpose & Character of Use

Non-profit educational?
Commercial?
Mere copying?
Transformative?
Nature of Copyrighted Work

Fiction?
Non-fiction?
Published?
Unpublished?
Amount & Substantiality

How much was taken?

What was taken?

If what was taken was the “heart” of the work, a very small amount could be too much.

But, taking all of the work may NOT BE TOO MUCH sometimes!
Effect of Use on Value or Market

Does the taking of the material:
Enhance the market? or
Diminish the market?
Enhance the value? or
Diminish the value?

(The courts consider this the most important factor.)
When law was passed in 1976, Congress realized fair use guidelines were needed. They called together interested parties.

Result: Fair Use Guidelines for
--copying by teachers for own use
--classroom copying
--classroom use of videos
College Professors & the Guidelines

No profs were included in the group that developed the Guidelines.

NYU decided to set their own guidelines.

Publishers threatened to sue.

NYU backed off and adopted the Congressional Guidelines.
Objections to Guidelines

- Today, groups that formerly supported the Congressional Guidelines, like the American Library Association, consider them to be too restrictive.
- Their solution is to offer the four factors of fair use used by the courts as guidelines.
- Guidelines are still available and are being used, especially by schools.

http://www.copyright.com/Services/copyrightoncampus/content/index_class.html
A teacher may make 1 copy*, for each student, of a:

1. Chapter from a book;
2. Periodical/newspaper article;
3. Short story, essay or poem;
4. Chart, graph, diagram, cartoon, pic from book, periodical or newspaper.

*A copyright notice must appear on each and every copy! DMCA
Guidelines, Class Copies, #2

✓ No copying of consumables
✓ No making of anthologies or compilations
✓ No more than 9 instances for 1 class in 1 class term
✓ Limits on amounts and types of materials
✓ No term to term use of same material for same class
Guidelines-Videos in Classes

Congress developed guidelines for the following types of videos:

a. Public performance
b. Family-use only
c. Recorded off the air
Public Performance Videos

For use in any venue, including public libraries
Family-Use Only Videos

Not-for-profit educational institution
Face-to-face teaching situation
Classroom setting
Teacher or pupil in class
Teaching purpose, curriculum allied
Not for entertainment
Legally obtained
Recorded Off-Air Videos

Not-for-profit educational Institution

Face-to-face teaching situation

Classroom setting

Teacher or agent must tape

Teaching purpose, curriculum allied

Not for entertainment

No time to purchase or ask

Use within 10 school days of taping

And destroy within 45 calendar days
Print Reserves

- Used to be guidelines for reserves
- Now, reserves considered restrictive form of classroom copying

No. of copies allowed?
Consider:
# of students and time remaining in semester
Fair Use in Electronic Environment

Some Guidelines PLEASE!

-Reserves
-Distance Learning
-Electronic ILL
-Digital Imaging
-Internet

-Multimedia
The print reserves factors apply

In addition, copyright information should appear on first screen

Include warning against further distribution by user

Include citations or attributions prominently
Electronic Reserves #2

- Limit access via passwords or other security measures
- Get permission from © holder for subsequent use in new term
- Retain material in electronic form while seeking permission
- Students who have not completed the course during term may access the material to complete their work
Important Sites

Copyright Office
http://www.copyright.gov/

Fair Use Checklist
http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/

Fair use guidelines for educational multi-media
http://cms.bsu.edu/academics/libraries/collectionsanddept/copyright/fairuseteach/complyingwithteach/confuguidelines

Fair use Guidelines for use of music
http://copyright.musiclibraryassoc.org/Resources/CopyrightAndFairUse
Latest Actions from Congress

- **Family Entertainment and Copyright Act**
  
  Forbids recording of films in theatres

- **Individuals with Disabilities Education Improvement Act of 2004 Section 306**
  amends section 121 of the Copyright Law.

  Allows publishers of certain print materials to send electronic copies to the National Instructional Materials Access Center for access translation into format for use by blind and physically handicapped.
Fun Quizzes

- http://www.csus.edu/indiv/p/peachj/edte230/copyright/quiz.htm
- http://www.copyrightkids.org/quizframes.htm
- http://www.teachingcopyright.org/handout/copy-quiz
Section 504©(3) states, in part:
The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was:
an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment….

Moral: Know the Fair Use Doctrine!