Copyright: Know the Law!

The Basics
for Print and Electronic Materials
Presenter Today

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We’ll start with some short exercises

- Let’s look at four short scenarios in four different types of libraries—to illustrate the possibilities under the law.
What Would You Say?

At the University:

- The IT guy sends out a memo to all faculty saying that the VHS players are being removed from the hi-tech classrooms by the end of the month.
- He tells them that they can send their VHS tapes to him and he has a machine that will copy them onto DVDs.
- The library has a high tech classroom. As Library Director, what would you say?

1. Great 2. You can’t do that. 3. Have you checked to see if this complies with the law?
What Would You Say?

At the Public Library

- The Senior Center, a Daycare and the Public Library share the Community Center.
- The Senior Center director comes into the library to borrow the DVD of the film “Forest Gump” to show to the seniors in the afternoon.
- You have a wonderful collection of films on DVD that is very popular with the families in town. They are legally purchased from your materials vendor and are labeled as for family use only.
- What would you say?
- 1. Enjoy  2. You can’t do that.  3. Have you checked to make sure it’s legal to show it?
What Would You Say?

At the Special Library

- Dr. Smythe teaches as an adjunct professor at the Medical School. She also is part of the Middlesex Cardiology practice, consisting of 6 partners who practice several locations.

- Dr. Smythe has sent you, the librarian at the University Medical School Library, a request to have 23 copies made of an article from a journal to which the library subscribes.

- What do you say?
  1. These must be for your class. When do you need them?
  2. Why don’t you have the students access the article online?
  3. I’ll check the license to see if it’s okay.
What Would You Say?

At the school Library

- The Elementary School Library Media Specialist has decided to record the story times she has today with the first, second and third graders.
- She has the tech person film her reading a picture book to the youngsters in each of those classes.
- Her plan is to offer the film to any of the classroom teachers who would like to show it to their classes—maybe as a rainy day activity.
- As the Coordinator of the school district libraries, what do you say?

1. Great idea
2. The school owns the copyright
And Now for the Basics

Of Copyright Law
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]
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 like Nafta
© in the Electronic World

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 one author, one work, not for hire for $35;
2. Register online for all other filings for $55; or
3. 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, should you 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
- Pamphlets, brochures
- Textbooks, reference works
- Catalogs, directories
- Games
- Automated databases
Definition of Visual Arts

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

- 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, engravings, etchings
- Patterns for sewing, knitting, crochet
- Photographs, photomontages
- Sculpture, carvings, figurines
- Technical drawings, architectural drawings
What are Performing Arts?

- Performing arts are works 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.
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 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.
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 of Serials/Periodicals

- Newspapers
- Magazines
- Bulletins
- Newsletters
- Annuals
- Journals
- Proceedings of societies
What Can’t be Copyrighted?

- Ideas
- Facts
- Something already in the public domain
- Procedures/Processes
- Systems, Operation Methods
- Concepts, Principles
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
Chart of When Works Enter Public Domain

- This Chart is located at Cornell University and is current, having been put up January 1, 2017

- http://copyright.cornell.edu/resources/publicdomain.cfm
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 Persist

- Guidelines are still available and are being used, especially by educational institutions.


http://www.xavier.edu/library/about/documents/copyright_9-23-08.pdf  Copyright and Fair Use Guidelines for Teachers

Guidelines, Class Copies

✓ 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
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 are considered a 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!

- Distance Learning
- Electronic ILL
- Digital Imaging
- Internet
- Multimedia
Electronic Reserves #1

- 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
https://copyright.columbia.edu/content/dam/copyright/Precedent%20Docs/fairusechecklist.pdf

Fair use guidelines for educational multi-media
http://cms.bsu.edu/academics/libraries/collectionsanddepartment/copyright/fairuseteach/complyingwithteach/Confuguidelines
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
- https://www.surveymonkey.com/r/LFSPYMH
Last but not Least!

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!