Applying Copyright in Scholarship and Instruction

Gail McMillan
Director, Digital Library and Archives
University Libraries
http://scholar.lib.vt.edu
March 25, 2003
US Constitution, Article I, Sect. 8

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 Law: U.S. Code, Title 17
Assigns rights and then limits them
Copyright Law: *U.S. Code, Title 17*

- **Section 102:** Original authorship stabilized
- **Section 106:** Exclusive rights of creators
- **Section 107:** Fair use, limit exclusive rights
- **Section 108:** Libraries, limit exclusive rights
- **Section 110:** TEACH Act
Who owns the copyright?

- Creators of original works
- Creators' assignees
- Employers: *explicit* works for hire
  - Greenberg v. National Geographic Magazine
- Why officially register your copyright?
  - Possibly receive greater compensation, with less documentation when filing an infringement suit
Rights of copyright holders

1. Reproduction
2. Modification
3. Distribution
4. Public performance
5. Public display

Title 17 U.S.C. Sec. 106
Permission or license to use a copyrighted work is NOT required if

- Work is a fact or an idea
- Work is in the public domain
  - http://www.unc.edu/~unclng/public-d.htm
- Fair use
  - http://scholar.lib.vt.edu/copyright/doesntsa.html#
  - http://www.utsystem.edu/OGC/IntellectualProperty/copypol2.htm#test
# Public Domain

Lolly Gassaway: [http://www.unc.edu/~unclng/public-d.htm](http://www.unc.edu/~unclng/public-d.htm)

<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 creation)</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 notice</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>
<tr>
<td>Created before 1-1-78</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>
<tr>
<td>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>
Fair Use

Before using someone else's work without permission, balance ALL 4 FACTORS

1. Purpose and character of use
2. Nature of the copyrighted work
3. Amount, substantiality
4. Effect

Title 17 U.S.C. Sec. 107
1. Purpose and character of use

- Commercial or educational use
  © Myth: It's OK--it's for educational purposes.

- For profit or not

- Degree of transformation; value added
  © Myth: I modified it; now it's mine.

- For criticism, commentary, news reporting, teaching, scholarship, research
2. Nature of the copyrighted work

- Character of the work
  - for example, fact (information) or fiction (imaginative)
- Worthy of (extensive) protection?
3. Amount and substantiality

© Myth: Copying just a little bit is OK.

- Use only what is necessary
- Quantity and quality in relation to whole work

  - President Ford's memoirs: Harper & Row, Pub’rs, Inc.
  - (Time) v. Nation Enterprises, 1985
4. Effect

- Harm to potential market or value of a work after a portion has been used separately from the whole

  © Myths
  - Attribution is as good as permission.
  - It's free advertising.

original by Brad Templeton
http://www.templetons.com/brad/copymyths.html

FAIR USE 4 of 4
© Myths

*It doesn't say it's copyrighted!*
*It's on the Web so I can use it without asking.*

- As of March 1, 1989, the copyright warning does not have to appear for a work to be legally copyrighted.

- Reminders

© 1997 by [your name]   or   Copyright by [your name]
ALL RIGHTS RESERVED
Consider adding statements that grant permission or restrict use.

- “Permission is given to copy this work provided credit is given and copies are not intended for sale."

- "Use or inclusion of any portion of this document in another work intended for commercial use will require permission from the copyright owner."
Libraries and Title 17 U.S.C. Sec. 108 or, Why the library can but you can’t

- Open to the public or to others doing research
- Reproduction or distribution of the work includes a notice of copyright or that the work may be protected by copyright
- Reproduction or distribution without profit
University Libraries’ Policies

http://scholar.lib.vt.edu/copyright/cpolicies.html

- ETDs (Electronic Theses and Dissertations)
- EReserve and Reserve Desk
- Interlibrary Loan
- Photocopy Services
- Alternative Media
  - CCUMC Consortium of College and University Media Centers
    http://www.indiana.edu/~ccumc/
ETDs: electronic theses and dissertations
http://scholar.lib.vt.edu/theses/copyright/

- Permission: Receive and Give
  - Request Permission: Sample letter
  - Publishers' email addresses
  - Negotiate with publishers
  - Publishers' Surveys

- US Copyright Office
Copyright for Instruction

- USC Title 17 Section 110
  - Limitations of certain performances and displays
  - Face-to-face classroom settings
- Broadened by TEACH Act (Nov. 2, 2002)
- But don’t forget fair use!
TEACH: Technology Education and Copyright Harmonization Act

- Fair use standards in digital education environment
- Modifies Title 17 USC Sec. 110 and 112
  - Mediated instruction
  - Integral part of class session
  - Accredited nonprofit educational institution
  - Limited to enrolled students
  - Accurately informed about copyright compliance
  - Reasonably prevent
    - Retention beyond course
    - Unauthorized further dissemination
TEACH Act: Works allowed

- Show nondramatic literary works
  - news and poetry
- Show nondramatic musical works
- Everything else in reasonable and limited portions
  - plays and movies
- All in amounts as if in face-to-face classroom
TEACH Act: Don’t use

- Works *marketed* primarily for distance education
- Unlawfully made or acquired copies
- Materials meant for additional study outside of class
  - Use EReserve, Reserve, course management systems
TEACH Act: Do

- Copy only at direction of or under supervision of instructor
- Transmit as an integral part of class session that is a “regular part of the systematic, mediated instructional activities”
- Use © materials only when directly related to the lesson
- Limit access to students enrolled in the course
Copyright Resources

■ VT Library’s copyright Web site
  – http://scholar.lib.vt.edu/copyright

■ Copyright Management Center
  – Kenneth Crews, IUPUI
  – http://www.copyright.iupui.edu/

■ Crash Course in Copyright
  – Georgia Harper, University of Texas at Austin
  – http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm#top

■ US Copyright Law
  – http://www.law.cornell.edu/uscode/17/

■ Stay Alert to Changing Copyright Legislation
  – http://www.loc.gov/copyright/legislation/
  – Library of Congress, Copyright Office