

Beyond Copyright 101: Everyday & Advanced Copyright Issues in Libraries

A Webinar for LibraryLinkNJ

Carrie Russell

Copyright Specialist, and Director of the Program
on Public Access to Information

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Review of Copyright Law

- Purpose: “to advance the progress of Science and the Useful Arts” to benefit the public
- Congress creates the copyright law; it is not a “natural” right
- Creators/Authors allowed a limited monopoly by Congress as an incentive to create (only they can market their work to the public)

Review of Copyright Law

- Exclusive rights make up the monopoly
 - reproduction
 - distribution
 - derivative works
 - public performance
 - public display
- Exclusive rights are divisible and can be inherited, given or contracted away
- Original and creative works fixed in a tangible medium get automatic copyright protection
- Distinction between copyright and a copy (the physical object)

Exemptions to the Monopoly

- Statutory monopoly limited by:
 - user privileges like fair use, first sale, interlibrary loan, etc.
 - public domain (current term: life plus 70 years)
 - limits on what can be protected (not facts, lists, processes, federal government documents, etc.)
 - idea v. expression dichotomy

And more!

Socially beneficial uses of copyright materials

- Are central to the purpose of the law
- Are often reflected in copyright exceptions (ex. public performances in the classroom)
- Places of learning, enrichment, and scholarship have a special status under the law
- Non-profit, educational institutions are *really* special (there are exceptions that only apply to them)

Copyright Registration

- No longer required; automatic at point of fixation
- Notice no longer required
- Why register?
 - Offer helpful information to others who might want to use your work
 - Timely registration ensures that you can collect statutory damages in an infringement case

Who Holds the Copyright?

- The author or creator, unless
 - one or more of the rights is transferred to another through a license agreement
 - the work was commissioned as a work for hire
 - the work was created as part of one's employment
 - the holder forfeits their copyrights or creates a license for use that is not as all encompassing as the copyright law (Creative Commons)



Carrie Russell, 2011

You are free:

- to copy, distribute, display, and perform the work
- to make derivative works

Under the following conditions:



Attribution. You must give the original author credit.



Noncommercial. You may not use this work for commercial purposes.



Share Alike. If you alter, transform, or build upon this work, you may distribute the resulting work only under a license identical to this one.

For any reuse or distribution, you must make clear to others the license terms of this work. Any of these conditions can be waived if you get permission from the copyright holder. **Your fair use and other rights are in no way affected by the above.**

Copyright is often confused with...

- **Some other intellectual property [sic] law**
 - Patents, trademark, trade secret
- **Contract law (licensing)**
 - When you ask and get permission to use a copyrighted work from the copyright holder, you get a license to use the work
 - We try to get user rights we would expect in the copyright law reflected in a license agreement

Fair use guidelines (for multimedia, for off-air broadcasting, for photocopying, for e-reserves, for ILL, etc)

- Do not have the force and effect of law
- But you might use these as your institutional policy

Plagiarism

- You can infringe and plagiarize at the same time, or you can do one or the other separately

Fair Use

- **Section 107**, codified with the Copyright Act of 1976
- Determined on a case by case basis
- Four factors are evaluated:
 - Purpose of the use
 - Nature of the publication
 - Amount
 - Effect on the market for the work

More on Fair Use

- Every librarian should understand, apply, value fair use as a user right
- Attempts to limit or restrict fair use can occur in various ways; be wary of them
- Fair use guidelines are not in the law
- Your approach to fair use has a lot to do with how your institution approaches copyright
- Use the fair use checklist (handout)
- Limited remedy status for employees of nonprofit educational institutions who have reason to believe use is fair §504(c)(2)

Other Copyright Limitations

- **Section 108** – allows libraries and archives to make copies for library users, interlibrary loan, replacement and preservation
- **Section 109** – allows owners of locally acquired copies the right to distribute that copy (library lending, used book stores, garage sales, etc.)
- **Section 110** – allows teachers to display or perform works in the face-to-face classroom and in the digital or distance education classroom via digital networks
- **Section 117** – owner of a software program can make a back-up copy

And more.

First Sale

- **Section 109** – allows owners of locally acquired copies the right to distribute that copy (library lending, used book stores, garage sales, etc.)

Library Reproductions

- **Section 108** – allows libraries and archives to make copies for library users, interlibrary loan, replacement and preservation

Public Performances

- **Section 110** – allows teachers to display or perform works in the face-to-face classroom and in the digital or distance education classroom via digital networks

Public Performances

- Showing a video or DVD in the classroom for curriculum purposes?
 - Yes, if copy is lawfully made or acquired
 - OK if video is rented from a video store
 - OK if you show it more than once
 - OK if you show it every year
 - OK if it is a feature film if curriculum-related
 - Not generally OK if you make copies or distribute beyond the classroom

Public Performances

- Showing a video or DVD in the classroom for entertainment?
 - In general, you need a public performance license
 - How? From distributor, during purchase, from a licensing agency (i.e. Movie Licensing USA)

Art, Photos, Multimedia, etc.

- Considered more copyright-worthy than most literary works; “thick” copyright
- Often associated with powerful interest groups (RIAA, MPAA) that have significant control over Congress
- More potential for legal battle, although still very rare
- If licensed works, contract terms determine use
- Often difficult to clear rights because of numerous rights holders and multiple IP protections
- Often involve more than one exclusive right (copy and display, performance and recording)

Why is Digital Different?

- Perfect copies, easy distribution to thousands via digital networks
- Infringement is easier, tempting, common?
- Cannot avoid making a copy
- Fear of mass piracy: argument that greater protection for copyright works necessary (DMCA, TEACH Act, No Electronic Theft Act, etc)
- End of “technology neutral” copyright law
- Should user rights to information differ in “the digital world?”
- Guilty until proven innocent

Non-negotiated Licenses

- Shrink wrap (binding)
- Click wrap (binding)
- Browse wrap (less binding)
- Labels “Do not sell to libraries” (ignore)
- Warnings “Home use only” (ignore)
- Over statements “This book cannot be copied in anyway without the prior permission of the rights holder” (laugh hysterically)

Your Liability

- Unlikely that an educator or librarian would be taken to court, but still could happen
- Section 504(c)(2) limits statutory damages for alleged infringers who work at a non-profit, educational institutions
- 11th Amendment – Constitutional doctrine that state or state agencies cannot be sued for dollar damages by the federal government
- Risky proposition to go to court; many disputes settled out of court
- Rights holders have been successful obtaining money from schools and libraries without going to court, no court ruling necessary with “cease and desist” letter

A way to think through your copyright situation...

- Is your desired use of a protected work infringing?
- What exclusive rights are exercised?
- Is there a specific exception that allows this use?
- Or, is this a fair use?
- If not, can your teaching goal be met in another way that is not infringing?
- If not, only then, seek permission.

Thank You!

Contact me:

crussell@alawash.org

800.941.8478

www.librarycopyright.net