Copyright Essentials for Resource Sharing
Great Lakes Resource Sharing Conference 2014
Friday, June 6, 2014
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Kent State University
Why copyright is fun

Sources: http://boingboing.net/2014/05/09/the-clown-egg-register.html and http://lukestephenson.com/the-clown-egg-register/
Back in February...

Copyright’s Primary Purpose
Copyright

Title 17, United States Code
- Grants a set of exclusive rights to copyright owners for a limited period of time
- Exclusive rights are balanced with exceptions
- [http://www.copyright.gov/title17/](http://www.copyright.gov/title17/)
Patents & Trademarks

- United States Patent & Trademark Office
  - http://www.uspto.gov/patents/

- Patents
  - Types
    - Utility – invention or discovery of a new and useful process, machine, article of manufacture, or composition of matter
    - Design – invents a new, original, and ornamental design for an article of manufacture
    - Plant – green, growing things

- Trademarks (or service mark)
  - Terms – do not run out; file all post registration maintenance documents
  - Types
    - Registered – ®
    - Unregistered – ™
Copyright Law gives copyright holders a **limited monopoly** over their works, to serve as an incentive for authors and creators. The rights include the following:

1. Reproduce the work in copies
2. Distribute the work publicly
3. Make derivative works
4. Publicly display the work
5. Public performance
6. Public performance by means of a digital audio transmission

Moral Rights

- Berne Convention
  - Paternity
    - Right to have a work identified as having been created by a particular author
  - Integrity
    - Right to ensure that the work is not altered in a way that is prejudicial to the author's reputation.
- From the French *droit moral*
- Not mentioned in United States Copyright Law
  - Covered in other parts of U.S. Law
- Nature Publishing Group Requires Faculty Authors to Waive ‘Moral Rights’
Exceptions to Exclusive Rights

- Fair Use – Section 107
- Reproduction by Libraries and Archives – Section 108
- First Sale – Section 109
- Exemption of certain performances and displays (including classroom use and the TEACH Act) – Section 110
- Reproduction for blind or other people with disabilities – Section 121
Allows us to borrow and lend “returnables”
  ◦ Books
  ◦ Theses and dissertations
  ◦ Microforms
  ◦ Videos
  ◦ DVDs
  ◦ CDs
  ◦ Whole issues or bound volumes of journals
  ◦ Applies to materials that are purchased and not licensed
First Sale Doctrine – Section 109

Section 108 (d)

- The copy becomes the property of the user
- Library has had no notice that the copy will be used for any purpose other than private study, scholarship, or research
- Library displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright.
Section 108 Spinner

http://www.librarycopyright.net/108spinner/

Section 108 of the U.S. Copyright Code

Reproductions by Libraries or Archives for their Users, for Replacement, or for Preservation

Directions:
- Use your mouse to turn the wheel chart to the desired section [click & pull]
- Read the text in the box [mouse-over to magnify]
- Clicking for details will bring up any other important qualifying criteria or explanatory notes
- Click "Create PDF" to print or save your results, including all criteria/notes and any details you'd like to add.

Section 108 of the U.S. Copyright Code allows libraries & archives, under certain circumstances, to make reproductions of copyrighted materials without the permission of the copyright holder. This simple tool can 1) help you determine if your reproduction is legal in Section 108 and 2) provide factual information about the copyright status of the work. The work is not subject to commercial exploitation and cannot be obtained at a fair price. Click for details.
Warning of Copyright – Verbatim

Notice: Warning Concerning Copyright Restrictions

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.
Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.
This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.
CONTU – late 1970’s

“Commission on New Technological Uses of Copyrighted Works”
- Group of publishers, librarians, teachers, and other stakeholders

Pursuant to the Copyright Act of 1976
- Final Report – 1978
  - [link](http://digital-law-online.info/CONTU/PDF/index.html)
  - Chapter 4 – Guidelines on Photocopying under Interlibrary Loan Arrangements
  - (Not to be confused with CONFU, which took place in the 1990’s)
CONTU Guidelines

- Provides clarification for Section 108

- Attempts to answer:
  1. What “... aggregate quantities...substitute for a subscription to or purchase of [a] work”? §108(g)(2)
  2. What constitutes “systematic reproduction”?

- Attempts to mitigate the effects of library subscription patterns on market and sales
CONTU Guidelines – Borrowing

- 5/5 Suggestion (or, Suggestion of Five, or Rule of Five, or 5/5 Rule)
  - For the BORROWING library to track
    - Applies only to articles published fewer than five years before date of request
    - Requesting and receiving six or more articles from a single journal title in a calendar year exceeds this suggestion.
CONTU Guidelines – Borrowing

- All ILL photocopy requests must include a copyright compliance statement by the BORROWING library
  - CCG – “Compliance CONTU Guidelines”
    - ILL request complies with 108 (g) (2) Guidelines
    - Subject to the 5/5 Suggestion
  - CCL – “Compliance Copyright Law”
    - ILL request complies with other provision of copyright law
    - Falls outside the years of the 5/5 Suggestion
CONTU Guidelines – Borrowing

- Keep records of all BORROWING requests
  - Filled and Unfilled
  - Three years
In the absence of an automated system, you must keep a record by hand.
Copyright Clearance Center

- Clearance for textual works since 1978
  - http://www.copyright.com
  - For ILL
    - Pay royalties on “CCG” photocopies that exceed the 5/5 Suggestion
      - ILL transactions fall under Pay Per Use Options
    - Not all publishers work with the Copyright Clearance Center
      - Journal of Gang Research
    - Get It Now service
If you’ve exceeded CONTU Guidelines

- Choices for the SIXTH article, or beyond...
  - Check with and pay through CCC – copyright.com
    - Get It Now Service
  - Order a copy of the article from a copyright-cleared commercial source...
    - British Library Document Supply Services
  - Purchase a copy of the article from the publisher’s website
  - Purchase the entire issue
  - Start a subscription to the journal
  - Borrow the entire issue (or bound volume)
  - Refer the patron to a nearby library that has the journal
  - Refuse the order/CLOSE the title
  - Evaluate for possible Fair Use
CONTU Guidelines

Lending Libraries
CONTU Guidelines – Lending

- Check for use of CCG or CCL
- Include copyright statement on copies provided
  - Copy the copyright statement on the piece (1998 DMCA change)
    - If you cannot locate it, use the good ole “stamp”
      - Articles being delivered electronically have an “electronic stamp”
      - “Notice: This material is subject to the U.S. Copyright Law; further reproduction in violation of that law is prohibited.” (Gasaway–Wiant wording)
Law vs. Guidelines

- Guidelines are NOT law...
Fair Use – Section 107

- If your intended reproduction or use is not covered by Section 108 (or any other section of the U.S. Copyright Law), it may still be lawful under Fair Use.
- Fair Use is used as a defense in U.S. courts of law.
- Fair Use evaluations do NOT carry the weight of a legal decision or substitute for the advice of an attorney.
- Keep records of your Fair Use evaluations.
Four Factors of Fair Use

1. Purpose & Character of Use
   - e.g., non-profit vs. for-profit

2. Nature of Work
   - e.g., factual vs. creative; published vs. unpublished

3. Amount & Substantiality of Work
   - e.g., small portion vs. large portion or “heart” of work

4. Effect of Use
   - e.g., little effect on market vs. huge impact on market value
Fair Use Tools

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

- Evaluator
  - http://librarycopyright.net/resources/fairuse/
Public Domain

- Some materials are born into the Public Domain
- Things people might think are in the Public Domain that are not...
## Copyright Term and the Public Domain in the United States

### 1 January 2013

#### Never Published, Never Registered Works

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Copyright Term</th>
<th>What was in the public domain in the U.S. as of 1 January 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of the author + 70 years</td>
<td>Works from authors who died before 1943</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and</td>
<td>70 years from date of creation</td>
<td>Works created before 1982</td>
</tr>
<tr>
<td>works made for hire (corporate authorship)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unpublished works when the death date of the</td>
<td>120 years from date of creation</td>
<td>Works created before 1982</td>
</tr>
<tr>
<td>author is not known</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Works Registered or First Published in the U.S.

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Conditions</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1837</td>
<td>None</td>
<td>None - In the public domain due to copyright expiration</td>
</tr>
<tr>
<td>1837 through 1977</td>
<td>Published without a copyright notice</td>
<td>None - In the public domain due to failure to comply with required formalities</td>
</tr>
<tr>
<td>1978 through 1 March 1996</td>
<td>Published without notice, and without subsequent registration within 5 years</td>
<td>None - In the public domain due to failure to comply with required formalities</td>
</tr>
<tr>
<td>1978 through 3 March 1996</td>
<td>Published without notice, but with subsequent registration within 5 years</td>
<td>70 years after the death of author. If a work of corporate authorship, 95 years from publication or 120 years from creation, whichever expires first</td>
</tr>
<tr>
<td>1923 through 1963</td>
<td>Published with notice but copyright was not renewed</td>
<td>None - In the public domain due to copyright expiration</td>
</tr>
<tr>
<td>1923 through 1963</td>
<td>Published with notice and the copyright was renewed</td>
<td>95 years after publication date</td>
</tr>
<tr>
<td>1964 through 1977</td>
<td>Published with notice</td>
<td>95 years after publication date</td>
</tr>
<tr>
<td>1978 through 3 March 1996</td>
<td>Created after 1977 and published with notice</td>
<td>70 years after the death of author. If a work of corporate authorship, 95 years from publication or 120 years from creation, whichever expires first</td>
</tr>
</tbody>
</table>
Public Domain, oversimplified

- Date of publication before 1923
- Life of the author + 70 years
- Works made for hire – 120 years from date of creation
- Variances are due to changes in U.S. Copyright Law over time
Re-copyright…Public Domain cannot be assumed to be permanent
  • Supreme Court ruled that “limited time” does not preclude restoring items once in the public domain to protected status
  • Berne Convention
Threats

Boo!
What about First Sale threats?

- Costco v. Omega
  - “An equally divided Court affirmed the Ninth Circuit's holding that the ‘first sale’ doctrine applies only to copyrighted items that are made and distributed in the United States.”

- Kirtsaeng v. Wiley
  - “The ‘first sale’ doctrine, which allows the owner of a copyrighted work to sell or otherwise dispose of that copy as he wishes, applies to copies of a copyrighted work lawfully made abroad.”
Copyright Statements in Journal Issues

At least confusing...at worst, threatening...
“Copyright © 2005 by the Association for Computing Machinery (ACM). Permission to make digital or hard copies of all or part of this work for personal or classroom use is granted without fee provided that copies are not made or distributed for profit or commercial advantage and that copies bear this notice and the full citation on the first page. Copyrights for components of this work owned by others than ACM must be honored.”
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International Copyright – Berne

Berne Convention –
- Supports International Interlibrary Loan
- 1886 – originally signed in Switzerland
- 1988 – United States joined
- All members of the European Union are also current signatories
- Many countries’ laws still only partially conform
- “Harmonization”
International Copyright – IFLA

- IFLA’s International Resource Sharing and Document Delivery: Principles and Guidelines for Procedure
  - 1954
  - revised in February 2009
  - Copyright is number six of eight guidelines

- IFLA Position on Copyright in the Digital Environment
  - “Digital is no different…”
  - “Contractual provisions, for example within licensing agreements, should not override reasonable lending of electronic resources by library and information staff.”
Threats – International ILL...

- Statement by the International Association of Scientific, Technical, and Medical Publishers (STM) on Document Delivery
    - Gives lip service to the Berne Convention 3-step test
    - Asserts that international document delivery should be negotiated directly with publishers; that digital document delivery should be governed and coordinated by rights-holders; that even for “private, non-commercial use,” it should be subject to “appropriate due diligence”; and that on-site print delivery is a good compromise.

- Kevin Smith’s blog – “A second front”
Good News

GOOD NEWS EVERYONE!
YOU ARE NOW READING THIS THREAD IN MY VOICE!

Source: http://www.cc.com/shows/futurama
Cases

- **Kirtsaeng v. John Wiley & Sons, Inc.**
  - Supreme Court upheld First Sale

- **Georgia State Ereserves Case**
  - AKA *Cambridge University Press v. Becker*
  - Court ruled most were Fair Use

- **HathiTrust**
  - AKA *Authors Guild v. HathiTrust*

- **Google Books Search Case**
  - AKA *Authors Guild v. Google*
Licenses

- LICENSE trumps LAW
- Know what your licenses say about ILL and other services in your department
- ERM
- OCLC WorldShare License Manager
License negotiation back at home

- Communicate with your acquisitions folks, ask for what you want...
- But be understanding... ILL rights are just a portion of the negotiation process
- You want:
  - ILL lending rights
  - Rights to deliver items through current electronic delivery systems
- You don’t want:
  - Print-only ILL rights (better than nothing?)
  - Required record-keeping beyond requirements of § 108 and CONTU
What if your license is silent?
What about embargoes?
Questions to ask...

- Is the material within public domain?
- Is the material licensed for your purpose?
  - Commercial licenses
  - Creative Commons License
- Is your use permitted by law?
  - Sections 109 and 108
- Can you argue for fair use?
  - Section 107
- Does your use fall within agreed-upon guidelines?
  - CONTU
- Do you need to seek permission?
Useful Web Sites

- Copyright Crash Course – Interlibrary Loan
  - [http://copyright.lib.utexas.edu/l-108g.html](http://copyright.lib.utexas.edu/l-108g.html)

- Columbia University – Interlibrary Loan

- Scholarly Communications @ Duke
  - [http://blogs.library.duke.edu/scholcomm/](http://blogs.library.duke.edu/scholcomm/)

- Supreme Court

- Boing Boing
  - [http://boingboing.net/](http://boingboing.net/)
Ask All the Questions!

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