

# Copyright 102

## Challenges and Changes to “Fair Use” in the Electronic Environment

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# Overview

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- ◆ Fair Use (Fairly Quickly)
- ◆ Challenges
  - The Lure of the “Open Web”
  - Educating the User
  - Licensed Information
- ◆ Changes
  - New Legislation
  - New Models for Scholarly Communication



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# Copyright Basics

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- ◆ Copyright protects: “Books, articles, photographs, paintings, sculpture, software, websites, architecture, pantomimes, ballets, music, sound recordings, and even doodles, scribbles, and graffiti.”
- ◆ Copyright protection is automatic as soon as you have created a work, and does not require registration or use of the © symbol

# Common Copyright Exceptions

- ◆ Works in the public domain
- ◆ Works created “for hire”
- ◆ Works for which copyright has been transferred
- ◆ Fair use

# Fair Use (in a Nutshell)

- ◆ Section 107 of the Copyright Act of 1976 and the “Four Factors”:
  - The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  - The nature of the copyrighted work;
  - The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
  - The effect of the use upon the potential market for or value of the copyrighted work.

# Copyright and the “Open” Web

- ◆ Copyright applies to all types of materials (text, music, images, email, etc.) that might be posted on the Internet
- ◆ Copyright protection begins “the moment [that] ideas are expressed as keystrokes”
- ◆ The © symbol is not required of materials created after 1989; the absence of the symbol on a Web site does not suggest lack of copyright protection
- ◆ The right to appropriate Web-based materials (images, sound files, text) for use in your own course or Web site (i.e., to create a “derivative work”) is retained by the copyright holder



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# A Tale of Two Copyright Statements

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# Educating the User

- ◆ According to “The Internet Goes to College” (2002):
  - 73% of college students say “they use the Internet more than the library”
  - Plagiarism from online sources has become “a major issue” on many campuses

Jones, S. (2002). The Internet goes to college: How students are living in the future with today's technology. Retrieved October 12, 2004, from [http://www.pewinternet.org/pdfs/PIP\\_College\\_Report.pdf](http://www.pewinternet.org/pdfs/PIP_College_Report.pdf)

# Educating the User

- ◆ Copyright and Intellectual Property
  - Copyright Tutorial Series (North Carolina State University)  
<<http://www.lib.ncsu.edu/scc/tutorial/index.html>>
  - Copyright Crash Course (University of Texas)  
<<http://www.lib.utsystem.edu/copyright/>>
  - Information Ethics Tutorial (University of North Carolina)  
<<http://www.lib.unc.edu/instruct/infoethics/index.html>>

# Educating the User

- ◆ Evaluating Information Found on the Web
  - Thinking Critically About WWW Resources (UC Berkeley) <<http://www.library.ucla.edu/libraries/college/help/critical/index.htm>>
  - Texas Information Literacy Tutorial (University of Texas) <<http://tilt.lib.utsystem.edu/>>
  - Learn Information Literacy Initiative (Government of South Australia) <<http://www.tafe.sa.edu.au/lili/>>

# Licensed Information

- ◆ How you can use printed journals and books is governed by **copyright law**
  - Fair Use
  - First Sale
- ◆ How you can use (most) electronic databases, journals, and books is governed by a publisher's **contract** with the subscribing library

# Contracting for Access

- ◆ Subscriptions involve signing a license
- ◆ The license sets the business terms and the terms of use
- ◆ The license (or contract) overrides copyright law
- ◆ Libraries devote significant time to negotiating terms (but we can't always get what we want)

# Living with the License

- ◆ The license may determine:
  - Who may use the database, journal, or book
  - What they may (and may not) do with it
- ◆ The goal of negotiations conducted by the KU Libraries is to assure that whatever you could do under the doctrine of fair use can still be done under our contract

# Who is Covered?

- ◆ The license identifies “authorized users” of electronic resources. At KU, these are:
  - Persons officially registered as full or part-time students in both degree and non-degree programs; faculty (including emeritus faculty) and other members of the teaching staff; administrators; and employed staff
  - Authorized affiliates (affiliated or visiting scholars or researchers, registered participants in outreach programs and internships, etc.) (cont.)

# Who is Covered?

- Other users sponsored by KU for guest accounts in order to complete academic or administrative work
- Any of these at any location in the world, with appropriate authentication
- All on-site (“walk-in”) users within the facilities of the KU Libraries

# Typical License Guidelines

- ◆ You may use the content only for non-commercial educational, clinical, or research purposes
- ◆ You may not share portions of the content in excess of fair use with individuals who are not affiliated with KU
- ◆ You may not systematically print or save substantial portions of an electronic title (e.g., you cannot save an entire issue or volume of a journal on your hard drive)

# Beyond Section 107: New Legislation Governing Use of Digital Content

- ◆ Digital Millennium Copyright Act (1998)
  - Prohibits the “circumvention” of protective measures (e.g., data encryption)
  - Prohibits removal of information imbedded in digital content by the copyright holder
  - Permits libraries to up to three “preservation copies” of a copyrighted digital work
  - Permits digital preservation of material stored in an obsolete medium

# Beyond Section 107: New Legislation Governing Use of Digital Content

- ◆ The TEACH Act (2002)
  - Focuses on use of copyrighted materials in distance education
  - Expands the range of materials that may be “performed” in the electronic environment
  - Expands eligible “receiving locations”
  - Requires that access to digital information be limited to currently enrolled students at the class level
  - Prefers “linking” to “storage”

# New Models for Scholarly Communication

- ◆ Self-archiving by scholarly authors of papers published in conventional journals
  - Portions of the copyright are retained by authors, not transferred to publishers
  - No-fee access through disciplinary and institutional repositories
    - ArXiv.org e-print archive  
<<http://xxx.arxiv.cornell.edu/>>
    - KU ScholarWorks <<https://kuscholarworks.ku.edu/>>

# New Models for Scholarly Communication

- ◆ Open Access Journals
  - Authors retain copyright
  - No fee for readers (or libraries)
  - Revenues are generated from sources other than subscriptions
  - There are 1,288 journals currently available through the Directory of Open Access Journals <<http://www.doaj.org/>>

# New Models for Scholarly Communication

- ◆ Creative Commons Licensing
  - An alternative to copyright transfer
  - Defines explicitly which rights the author retains and which rights she grants to users (e.g., use, reproduction, creation of derivative works)

# For More Information

## ◆ Copyright

- Copyright Management Center (IUPUI)  
<http://www.copyright.iupui.edu/index.htm>
- Scholarly Communication Center – Tutorial Series (NCSSU)  
<http://www.lib.ncsu.edu/scc/tutorial/index.html>

## ◆ DMCA and TEACH Act

- DMCA (American Library Association)  
<http://www.ala.org/ala/washoff/WOissues/copyrightb/dmca/>
- Distance Education and the TEACH Act (American Library Association)  
<http://www.ala.org/ala/washoff/WOissues/copyrightb/distanceed/>

# For More Information

## ◆ Licensing

- KU Libraries' Terms and Conditions for Using E-Resources: <http://www2.lib.ku.edu/electro/terms.htm>
- Liblicense: Licensing Digital Information (Yale University) <http://www.library.yale.edu/~llicense/>
- Okerson, Ann. 1996. "Buy or Lease? Two Models for Scholarly Information at the End (or the Beginning) of an Era," *Daedalus: Journal of the American Academy of Arts and Sciences*, 125 (4), 55-76 (also available at <http://www.library.yale.edu/~okerson/daedalus.html>)



# For More Information



- ◆ Open Access

- Budapest Open Access Initiative (BOAI)

<http://www.soros.org/openaccess/>

- ◆ Creative Commons

<http://creativecommons.org/>

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