

A Discourse on Copyright and Fair Use in Academia

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U.S. Constitution
Article I, Section 8, Clause 8

To 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.

Article 1, Section 8 of the Constitution also grants The Congress such powers as collecting taxes, duties, imposts and excises, paying the debts, providing for the common defense and general welfare of the United States.

But what is copyright?



- Title 17, Section 102 defines copyright protection as subsisting “in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”

102. Subject matter of copyright: In general²⁶

- (a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device
- (b) In other words, copyright is a form of protection for both published AND unpublished works.
- (c) Is this clear? So my question is “is the Vulcan mind meld” copyrighted? Or the contents of one’s brain that is undergoing mind melding?

Mr. Somers, please define “works of authorship.”



- Literary works
- Musical works
- Dramatic works
- Choreographed works
- Pictorial, graphic and sculptural works
- Audiovisual works
- Architectural works
- Sound records

These are broadly defined categories, I know, but they are intended to be inclusive. for instance, musical works includes any accompanying text. Dramatic works includes any accompanying music.

Copyright also extends to compilations and ALL derivative works. However, copyright for compilations and derivative works extends ONLY to the material contributed by the author of the compilation or derivative work. The pre-existing work is covered by the copyright extended to that work.

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work

It's mine, all mine!



It's mine and I get to:

- distribute it
- reproduce it
- modify it
- publicly perform it
- publicly display it
- perform it digitally

Of course, these six exclusive rights have nothing to do with aesthetics! Don't you wish that sometimes copyright didn't extend to public performances?

Also, you can sell your works, you can transfer ownership of copyright to someone else, you can lease or rent your works

You also have the right to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right

Believe it or not, US copyright laws also have provision covering the restoration, preservation and conservation of artwork and other 2-d graphics.

What is NOT protected by copyright?



- Works that have NOT been fixed in some tangible form of expression
- Slogans, familiar symbols, lettering, coloring, lists of ingredients or contents
- Ideas, procedures, processes, concepts AS DISTINGUISHED FROM descriptions, illustrations, or explanations
- Works consisting ENTIRELY of information that is common property

for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded are NOT protected by copyright

standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources

facts are not covered by copyright. this was tested in the 1991 landmark case *Feist Publications v. Rural Telephone Service Co., Inc.* when the US Supreme Court found that for a work to receive copyright protection, it must reflect creative expression or originality. The compilation of a telephone directory by Feist WAS NOT an infringement even though it was compiled from the information in the RTS white pages. The Court noted that the white pages were not copyrightable because it comprised “comprehensive collections of facts arranged in conventional formats.”

Landmark Copyright Laws



- Copyright Act of 1790
- Revision of the Copyright Act (1831)
- Revision of the Copyright Act (1870)
- Revision of the Copyright Act (1909)
- Revision of the Copyright Act (1976)
- Amendment to Section 304 of Title 17 (1992)
- Sonny Bono Copyright Term Extension Act
- Digital Millennium Copyright Act

1790 Act—"An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of Such Copies" Granted American authors the right to print, re-print or publish their works for 14 years + 14 year renewal. Limited monopoly—public domain

1831 revision—28 years + 14 year renewal

1870 revision—registration moved to Library of Congress Copyright Office

1909 revision—28 years + 28 year renewal (extended concept of authorship to include music and protect rights of composers)

1976 revision—preempted all other copyright law: extended term of protection to life of author plus 50 years and works for hire to 75 years. Fair Use was codified and copyright was extended to unpublished works. Section 108 added allowing library photocopying without permission for "purposes of scholarship, preservation, and interlibrary loan under certain circumstances. 1976 also saw the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Education Institutions with Respect to Books and Periodicals." This agreement set the minimum standards of educational fair use (section 107)

1992 revision—automatic renewal / reduced amount of material entering the public domain

Sonny Bono—life + 75 years

DMCA—unauthorized access vs. unauthorized copying

Works in the Public Domain



- Works with expired copyrights
- Works produced by the federal government
- Works that the authors did not claim copyright

BEWARE!!

- Works that do not have copyright notice may still be copyrighted

January 13, 2003

Certain Unpublished, Unregistered Works Enter Public Domain

Certain works that were neither published nor registered for copyright as of Jan. 1, 1978, entered the public domain on Jan. 1, 2003, unless the works were published on or before Dec. 31, 2002.

Under the 1909 Copyright Act, works that were neither published nor registered did not enjoy statutory protection, although they were protected under common law in perpetuity as long as they remained unpublished and unregistered. But under [section 303](#) of the 1976 Copyright Act, works that were created but neither published nor registered in the Copyright Office before Jan. 1, 1978, lost their common law protection and acquired a statutory term of protection that was the life of the author plus 50 years, amended in 1998 to life plus 70 years.

As a result of the 1976 Copyright Act, any of the works in question whose author had died over 50 years prior to 1978 would have entered the public domain after Dec. 31, 1977. To provide a reasonable term of copyright protection for these works, and in light of the fact that these works had enjoyed perpetual protection under common law, Congress extended their term by at least 25 more years. Congress also encouraged publication by providing an additional 25 more years, extended in 1998 to 45 more years, of protection if the work was published on or before Dec. 31, 2002.

That first 25-year period expired on Dec. 31, 2002. Any work that was neither published nor registered as of Jan. 1, 1978, and whose author died before 1933 entered the public domain on Jan. 1, 2003, unless it was published on or before Dec. 31, 2002. If the author died in 1933 or later, the work will be protected for 70 years after the author's death, due to the passage of the Sonny Bono Copyright Term Extension Act in 1998.

Fair Use: Now we're getting somewhere



Fair Use of copyrighted works includes “such use by reproduction in copies . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright .”

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Fair Use: It has its limits



Questions to ask yourself:

- Why are you using the copyrighted work?
- What is the nature of the copyrighted work?
- How much of the copyrighted work are you using?
- How does your use effect market value of the copyrighted work?

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work—each type of work actually has its own set of exclusive limitation rights. For instance, Section 110 of Title 17 covers limitations for “certain performances and displays”, including performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made ;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Fair Use: Reproduction by libraries and archives



It is NOT an infringement of copyright if a library or archives reproduces NO MORE THAN ONE COPY of a work and to distribute it, if and only if

- it is made without commercial advantage;
- the collections are open to the public;
- the notice of copyright appears on the reproduction

The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if —

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if —

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy

Fair Use: Rules of Thumb



Multiple copies for classroom use:

- Poems (250 words)
- Articles, stories, essays (2,500 words)
- Excerpts from longer works (10% of work or 1,000 words, whichever is less)
- One chart, picture, diagram, graph, cartoon, or picture PER book or periodical
- Two pages from an illustrated work with less than 2,500 words (i.e., children's books)

Fair Use: Rules of Thumb



Single copy for research or lesson preparation:

- One chapter from a book
- One article from a periodical
- One short story, poem or essay
- One chart, graph, diagram, drawing, cartoon, picture from a book, periodical, or newspaper

Fair Use: Rule of Thumb



Videos in the classroom can be used in the classroom or similar place “dedicated to face-to-face instruction” without restrictions of length, percentage or multiple use if the use is instructional.

This applies to videotapes (purchased or rented), DVDs, and laser discs

Fair Use: Rules of Thumb



Live “off the air” broadcasts may be used for instruction ONLY. Tapes made from broadcasts may be used for instruction ONLY.

This does NOT apply to cable television!!!

You are allowed to use these for 10 school days ONLY. Then they must be destroyed.

Questions?



Thank you for participating in the presentation.

This is not an easy topic because the copyright laws apply to a variety of media and formats; they apply to classroom use and non-classroom use; they are subject to change.