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# Copyright and "facts": issues in licensing and redistribution for social science data professionals.

CANNON, S.

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# Copyright and “Facts”: Issues in Licensing and Redistribution for Social Science Data Professionals

San Cannon  
Federal Reserve Board  
IASSIST 2010

Disclaimer: I am not a lawyer and do not assert that this discussion is a substitute for legal advice. The analysis and conclusions set forth are those of the author and do not indicate concurrence by the Federal Reserve Board or its staff.



# What is copyright?

- In the US, it's a bundle of rights:
  - Reproduce (copy) the work
  - Prepare derivative works from the work
  - Distribute copies of the work
  - Perform the work publicly (e.g., song)
  - Display the work publicly (e.g., painting)
- Internationally, the rights are similar:
  - Mostly governed by Berne convention and WIPO Copyright treaty
  - EU has some special cases



# Why should you care?

- Copyright does not subsist in facts but it can in collections of facts – e.g. databases.
- Copyright protection under U.S. law requires “originality” – very low, but not non-existent standard.
- Some places still use “sweat of the brow considerations”.
- **Problem:** most determinations are based on copyright infringement claims (ex post).
- **Point:** assume any dataset is subject to copyright (ex ante).



# EU Database directive

- Directive 96/9/EC on 11 March 1996
- Provides *sui generis* protection - specific protection for databases separate from general copyright law.
- Spells out definition of database, protection requirement, rights and infringement, exceptions, and terms of protection.
- Meant to try to introduce consistency across the EU but adoption, interpretation and implementation are varied.



# Fair use

- An exemption from copyright infringement under U.S. law that allows for use of copyrighted material without owner's consent under certain circumstances.
- By law, “fair use” is a case-by-case determination that is made based several 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.



# The “fallacy of fair use”

- Using an entire dataset is almost never “fair use” (quantity consideration)
- Even small amounts of info can violate copyright (300 words of Ford memoirs, 11 words in news clip case)
- Most datasets have (potentially considerable) market value – therefore unauthorized use generally has market effects which means it’s not fair use.
- Fair use is a judgment after the fact. A fair use ruling in a court case may not undo any damage from the case having been filed in the first place.



# Why copyright may not matter

- Many datasets are now published with specific licenses or “terms of use” which define a user’s rights.
- In many cases, these terms may (will?) be more restrictive than what copyright provides.
- If data are licensed, fair use doesn’t apply.
- You don’t need to sign a contract to be bound by terms – “click wrap” and “browse wrap” licenses are common.





# Example

- “But it’s free! I got it off the web”
- Actual terms of use statement for CRB “free” data:

The Information provided by Commodity Research Bureau [crbtrader.com](http://crbtrader.com) web site is owned by or licensed to Commodity Research Bureau - [crbtrader.com](http://crbtrader.com) and any user is permitted to store, manipulate, analyze, reformat, print and display information from Commodity Research Bureau - [crbtrader.com](http://crbtrader.com) only for such user's personal use. **In no event shall any user publish, retransmit, redistribute or otherwise reproduce any information from Commodity Research Bureau - [crbtrader.com](http://crbtrader.com) in any format to anyone.**



# What about government data?

- No agency of the United States government can copyright the works of its own employees.
- Other agencies and institutions can, and do, assert copyright or impose terms of use:
  - “No part or parts of this portal may be modified, copied, distributed, retransmitted, broadcasted, displayed, reproduced, published, licensed, transferred, sold or commercially dealt with any manner without the express prior written consent of the Department.” (Department of Statistics Malaysia)
  - “No part of this material in either its printed or electronic format may be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner.” (UN)

# What about government data? (2)

- The publications and data made available on the current site may be viewed and consulted free of charge; they may be reused, including for commercial purposes, without a license and without payment of royalties, subject only to the following reserves: the user must respect the integrity of the information and data, and mention the source specifically. ” (INSEE)
- “Any distribution and reproduction of information shall be accurate; the Bank of Slovenia shall be cited as the source.”
- “The copyright in the material available on this site is, unless otherwise specifically stated, the property of the Central Bank & Financial Services Authority of Ireland. The consent of the Bank is required before this material or any part of it may be copied or adapted in any form or made available to the public by any method and any such consent is conditional upon appropriate acknowledgement being given of the Bank’s rights” but you can “print out hard copies for personal or business use”



# Words of wisdom

- Always **investigate** possible uses and restrictions on data that you use: public, free, purchased or otherwise.
- **Understand** and **respect** the terms set forth or **negotiate** new ones.
- **Educate** your users on licensing issues: free does NOT mean unrestricted.
- **Befriend** your legal staff – they can make things easier.
- **Never think you can tell what is “fair use.”**



# The last slide

Questions?

[sandra.a.cannon@frb.gov](mailto:sandra.a.cannon@frb.gov)

1 202 452 3710

Thanks for listening!