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Copyright in Libraries: 21st Century Challenges...and Opportunities

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Copyright in Libraries: 21st Century Challenges . . . and Opportunities

**James S. Heller
The College of William & Mary**

**Chinese and American Forum on Legal Information and Law Libraries
(CAFLI)**

**Third International Conference
Shanghai, China
June 12, 2013**

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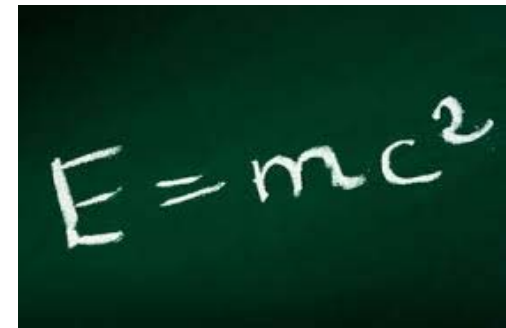
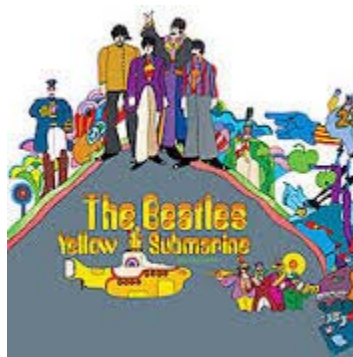
ARTICLE I, SECTION 8

Congress may "promote the progress of science and the useful arts by securing for a limited time to authors and inventors the exclusive right to their writings."



Copyrightable Works

- Articles, books, plays, music, art film, sound recording, architectural works, software
- Original & fixed in a tangible medium of expression
- Not ideas, procedures, processes, systems ...



SECTION 102

Foreign Authors & Foreign Works

- Author from, or a work first published, in a UCC or Berne country
- Country where published protects U.S. authors
- Works published by U.N. or the O.A.S.

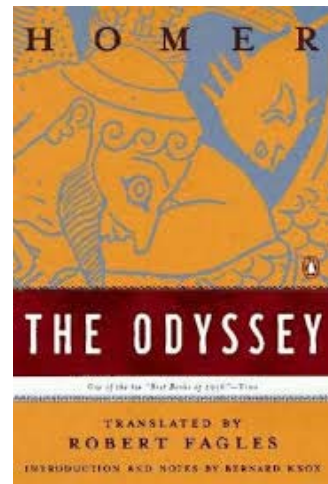


Works in the Public Domain

- Never copyrighted
- Copyright expired
- Works of the U.S. government
- Facts

China Selected Economic Indicators						
General statistics	2004	2005	2006	2007	2008	Trend
Population (mn)	1,300	1,308	1,314	1,321	1,330	
Nominal GDP (USD bn)	1,932	2,244	2,645	3,242	4,522	
GDP per capita (USD)	1,486	1,716	2,012	2,454	3,400	
Real GDP growth (%)	10.1	10.4	11.1	13.0	9.6	
Prices and exchange rates						
CPI inflation (% December over December)	2.4	1.6	2.8	6.5	1.2	
CPI inflation (% change in average index for the year)	3.9	1.8	1.5	4.8	5.9	
Exchange rate (RMB per USD, average)	8.28	8.19	7.97	7.61	6.9	
Fiscal data						
General government fiscal balance (% of GDP)	-1.3	-1.2	-0.8	-0.6	-0.4	
General government expenditure (% of GDP)	17.8	18.5	19.2	19.9	20.8	
General government revenue (% of GDP)	16.5	17.3	18.3	19.9	20.4	
Money supply and credit						
Broad money supply (M2, % of GDP)	158.9	160.7	163.9	163.6	158.0	
Broad money supply (M2, % year-on-year change)	14.6	17.6	16.9	16.7	17.8	
Balance of payments						
Exports (total value, % of GDP)	34.0	37.3	40.1	41.0	32.1	
Imports (total value, % of GDP)	31.4	31.7	32.2	32.2	25.5	
Exports (goods and non-factor services, % increase in USD value)	35.2	27.6	26.9	25.2	17.3	
Imports (goods and non-factor services, % increase in USD value)	35.1	17.4	19.8	22.2	19.4	
Current account balance (USD bn)	68.7	160.8	249.9	372.0	440	
Current account (% of GDP)	3.6	7.2	9.4	11.0	10.1	
FDI (USD bn)	60.6	72.4	72.7	83.5	92.3	
External debt outstanding (USD bn)	247.6	283.8	325.0	373.6	420.0	
Central bank gross FX reserves (USD bn)	610	819	1,066	1,528	1,980	

Source: China Monthly Indicators, THE BEIJING AIG Analysis



The Copyright Owner's Rights

- **Copy**
- **Make derivative works**
- **Publicly perform, distribute, & display**
- **Works of visual art: Attribution and Integrity (Moral Rights)**



SECTION 106

Term of Copyright

- **Individual or Joint authors, and works created in 1978 or later: life of the author + 70 years**



- **Anonymous or corporate authors, or works made for hire: 95 years after publication or 120 years after creation, whichever expires first**

Who Owns the Copyright?

- **Default: the author**
- **Employer if a “work made for hire”**
- **Transfer of rights must be in writing**
 - **May transfer all or just some rights**

SECTION 108(f)(i)

What remedies does a copyright owner have against an infringer and who is liable?



Damages

- Actual damages and profits, or
- Statutory damages
 - \$750 to \$30,000 per infringement
 - willful infringement: \$150,000
 - innocent infringer: \$200
- No statutory damages if --
 - Employee or agent of nonprofit educational institution, library, or archives
 - Acting with scope of employment, and
 - Reasonable belief the use was fair



SECTION 504

Institutional Liability

Vicarious Liability:

- right to supervise
- financial benefit



Contributory Infringement:

- knowledge
- induce, cause, or materially contribute

The Georgia State University Case

Cambridge Univ. Press v. Becker, 863 F. Supp.2d 1190 (N.D.Ga. 2012)

E-reserves for educational use



Fair Use

Favored Uses from the Preamble:

- Criticism
- Comment
- News reporting
- Teaching
 - includes multiple classroom copies
- Scholarship
- Research



SECTION 107

Four Fair Use Factors

- Purpose and character of the use**
- Nature of the copyrighted work**
- Amount and substantiality used**
- Effect on potential market or value**

(Non-publication doesn't bar fair use)

E-Reserve Fair Use Guidelines



- **Articles or book chapters OK; not entire books or journal issues**
- **not substitute for a coursepack – instead supplemental to overall reading**
- **Access for instructors and students during semester**
- **Include attribution & copyright notice**
- **Teacher or library has lawful copy of uploaded content**

E-Reserve – Use Links

- If a work is available online, **LINK TO IT** instead of uploading the file
- Linking is not copying
- Don't link to suspect sites
- Uploading content from subscription databases may violate license agreement



Google Books



and the

HathiTrust Digital Library



HathiTrust Litigation

- **Copyright infringement suit**
- **10M digital volumes and 5M titles (75% still protected by copyright)**
- **Universities' arrangement with Google**
 - **Public domain works available**
 - **Copyright works require owner's permission**
- **Case dismissed**

Copyright and Licensing



First Sale Doctrine

**Owner may sell or otherwise
dispose of a lawful copy**

BUT . . . Licensed Digital Content

19th and 20th Century Legal Publishers

- 1837 - Little Brown
- 1842 - Baker, Voorhies (absorbed by Lawyers' Coop. in 1940)
- 1857 - Bancroft Whitney
- 1863 - Callaghan and Company
- 1868 - Martindale-Hubbell
- 1873 - Shepard's Company
- 1876 - West Publishing
- 1882 - Lawyers' Cooperative
- 1887 - Edward Thompson Company (acquired by West in 1960's)
- 1887 - Matthew Bender and Company
- 1887 - Anderson Publishing Company
- 1897 - Michie Company
- 1900 - American Law Book Company (absorbed by West in 1960's)
- 1913 - Commerce Clearing House
- 1916 - Clark Boardman
- 1932 - Banks-Baldwin (began as Gould & Banks in 1804)
- 1933 - Bureau of National Affairs
- 1933 - Practising Law Institute
- 1935 - Research Institute of America
- 1961 - Warren, Gorham & Lamont
- 1973 - Prentice Hall Law & Business
- 1983 - John Wiley Law Publications

Adapted from
Legal Information
Buyers Guide
© Ken Svengalis

ThomsonReuters in 2013

- Callaghan & Company
- Clark Boardman
- Warren, Gorham & Lamont
- Lawyers Cooperative
- Research Institute of America
- Maxwell Macmillan
- Shepard's (treatises only)
- West Publishing Company
- Banks-Baldwin
- Barclays
- Glasser Legal Works
- Foundation Press
- Federal Publications
- FindLaw
- Harrison Company
- Andrews Publications



Reed Elsevier in 2013

- Congressional Information Service
- R. R. Bowker
- University Publications of America
- Martindale Hubbell
- Butterworths
- Michie
- Martindale-Hubbell
- Shepard's
- Matthew Bender
- LexisNexis
- Mealey's Publications
- Courtlink
- Anderson Publishing
- Gould Publications



Wolters Kluwer in 2013

- **Aspen Law & Business**
- **Commerce Clearing House**
- **Little, Brown**
- **Prentice Hall Law & Business**
- **Wiley Law Publications**
- **Panel Publishers**
- **Loislaw.com**
- **Bowne Publishing**
- **Casenotes Publishing Company**



Legal Publishing in 2013

- 1837 - Little Brown > Wolters Kluwer
- 1842 - Baker, Voorhies > Lawyers Cooperative > Thomson Reuters
- 1857 - Bancroft Whitney > Thomson Reuters
- 1863 - Callaghan and Company > Thomson Reuters
- 1868 - Martindale-Hubbell > Reed Elsevier
- 1873 - Shepard's Company > Thomson Reuters (books) & Reed Elsevier (citor)
- 1876 - West Publishing > Thomson Reuters
- 1882 - Lawyers' Cooperative > Thomson Reuters
- 1887 - Edward Thompson Company > West > Thomson Reuters
- 1887 - Matthew Bender and Company > Reed Elsevier
- 1887 - Anderson Publishing Company > Reed Elsevier
- 1897 - Michie Company > Reed Elsevier
- 1900 - American Law Book Company > West > Thomson Reuters
- 1913 - Commerce Clearing House > Wolters Kluwer
- 1916 - Clark Boardman > Thomson Reuters
- 1932 - Banks-Baldwin > Thomson Reuters
- 1933 - Bureau of National Affairs > Bloomberg
- 1933 - Practising Law Institute (Regents of the State of New York)
- 1935 - Research Institute of America > Thomson Reuters
- 1961 - Warren, Gorham & Lamont > Thomson Reuters
- 1973 - Prentice Hall Law & Business > Wolters Kluwer
- 1983 - John Wiley Law Publications > Wolters Kluwer

Online Legal Publishers

- **1973 - Lexis** (began as Mead Data Central's OBAR in 1971)
 - **1975 - Westlaw**
 - **1985 - VersusLaw**
 - **1987 - Loislaw**
 - **1996 - Findlaw**
 - **1999 - Casemaker**
 - **1999 - Fastcase**
 - **2009 - BloombergLaw**
-
- **1992 - SSRN** (began as FEN – Financial Economics Network)
 - **1999 - bepress**
 - **2000 - HeinOnline** (Wm. S. Hein & Co. began 1961)



Problem License (Contract) Clauses

- **Automatic renewal**
- **Indemnification**
- **Liquidated damages**
- **Unilateral modification by vendor**
- **Binding arbitration**
- **Licensee pays attorney's fees**
- **Confidentiality (non-disclosure) clauses**

The Good License

- **Read the contract**
- **Permanent or temporary access**
- **No barriers to authorized users**
- **Preserve Copyright Act rights**
- **Respect user's privacy and confidentiality**
- **Hold-harmless clause**
- **Read the contract again**

The Library Exemption

A library or employee acting within the scope of employment:

- **one copy**
- **no direct or indirect commercial advantage**
- **open collection (interlibrary loan OK)**
- **copyright notice**
 - **from the copy reproduced, or**
 - **legend**

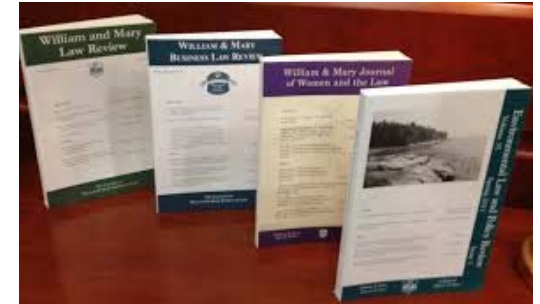
SECTION 108(a)

Copyright in the For-Profit Workplace



Articles, Excerpts & Books

- Single copy
- Becomes user's property
- No notice of impermissible purpose
- Display copyright warning
 - Where orders are accepted & on order form
- Entire Book or Journal issue: if cannot get a new or used copy at a reasonable price



SECTION 108

The Library Exemption

Not --

- related or concerted copying**
 - multiple copies**
 - same material**
- systematic copying**
 - single or multiple copies**
 - same or different material**

SECTION 108(g)

Creating a custom database of articles and other items from a licensed database for use on the library's intranet





Content on the World Wide Web



Taking photos of artwork you own and posting on the institution's webpage



The Performance and Display Teaching Exemption: §110(1)

- **Lawfully made copyrighted works for instruction**
- **Non-profit educational institution**
- **Face-to-face teaching:**
 - **in a classroom or similar place devoted to instruction**
 - **in the course of “teaching activities”**
 - **by students or instructors**

The TEACH Act: §110(2)

Perform, Display, or Transmit copyright works for distance education:

- Under instructor's direction or supervision**
- “Systematic mediated instructional activities”**
- “Directly related and of material assistance to the teaching”**
- Enrolled students**

TEACH Act (cont'd)

- Nondramatic literary or musical works and “limited portions” of other works (e.g., films)**
- Not distance education digital works**
- What teacher would show in a face-to-face classroom**
- Students may only view -- not download**

- Entire performances of nondramatic literary and musical works (music, news, concerts, poem recitations, speeches)
- *Reasonable and limited parts* of a dramatic literary (plays, opera), musical (musicals), or audiovisual works (films)
- Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- “...the fair use doctrine is technologically neutral and applies to activities in the digital environment; and **the lack of established guidelines for any particular use does not mean that fair use is inapplicable.**” (*Copyright Office report, 1999*). Meaning: the TEACH Act does not trump “fair use”.
- “What constitutes a ‘reasonable and limited’ portion should take into account both the nature of the market for that type of work and the pedagogical purposes of the performance.” (*Senate report, 2001*)
- “Fair use is a critical part of the distance education landscape. Not only instructional performances and displays, but also other educational uses of works , such as the provision of supplementary materials or student downloading of course materials, will continue to be subject to the fair use doctrine. **Fair Use could apply as well to instructional transmissions not covered by . . . 110(2)** Thus, for example, the performance of more than a limited portion of a dramatic work in a distance education program might qualify as fair use in appropriate circumstances.” (*Senate report, 2001*)
- In addition, the Congressional Research Service in a 2006 report of the TEACH Act states that “Although what constitutes a *reasonable and limited portion of a work* is not defined in the statute, the legislative history . . . suggests that determining what amount is permissible should take into account the nature of the market for that type of work and the instructional purposes of the performance. For example: [showing] . . . an entire film may . . . constitute a *reasonable and limited* demonstration if the film’s entire viewing is exceedingly relevant toward achieving an educational goal; however, the likelihood of an entire film portrayal being *reasonable and limited* may be rare.” (*CRS study 2006*)
- **NOTE:** Fair Use may authorize the digital copying of materials in some situations where the TEACH Act does not.
- Minnesota State Colleges and Universities System. System Director for Intellectual Property 5.15.2012

Guidance from Publishers

- **Happy to give you advice**
- **Beware of bias favoring copyright owners, including statements at odds with agreed-upon guidelines or the law**



ARL Code of Best Practices





中国科学院国家科学图书馆机构知识库

Knowledge Repository Of National Science Library, CAS

Putting double quotes for precise search

ALL

GO Advanced?

Register

Email

Passwd

☐ Stay signed in [Log In](#)

Help



[浏览]

Communities

Subjects

Content Type

All Items

All Authors

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title: 高校与研究型图书馆关于合理使用的最佳实践规范

author: 研究图书馆协会; 美利坚大学传媒学院社交媒体中心; 美利坚大学华盛顿法学院信息公正与知识产权项目

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Allow modifications of your work?

- ☒ Yes ☐ No
- ☐ Yes, as long as others share alike

Allow commercial uses of your work?

- ☒ Yes ☐ No

License Jurisdiction:

International



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Attribute work to name

Attribute work to URL

Source work URL

More permissions URL

Format of work Other / Multiple formats



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Definition of
Free Cultural Works

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The freedom to use and perform the work: The licensee must be allowed to make any use, private or public, of the work. For kinds of works where it is relevant, this freedom should include all derived uses ("related rights") such as performing or interpreting the work. There must be no exception regarding, for example, political or religious considerations.



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[\[edit\]](#)

Versions of the license

- [3.0](#)
- [2.5](#)

Some Useful Websites

American Library Association: <http://www.ala.org>

Association of American Publishers: <http://www.publishers.org>

Association of Research Libraries: <http://www.arl.org>

Copyright Clearance Center: <http://www.copyright.com>

Creative Commons: <http://creativecommons.org/>

Columbia Copyright Advisory Office: <http://copyright.columbia.edu>

Stanford Copyright & Fair Use: <http://fairuse.stanford.edu>

Copyright Office Circulars: <http://www.copyright.gov/circls/>

**University of Texas - Copyright and the University Community:
<http://www.utsystem.edu/ogc>**

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