Crossing the Line?: Copyright for Libraries

Fred Dingledy
William & Mary Law School, fwding@wm.edu

Repository Citation
Dingledy, Fred, "Crossing the Line?: Copyright for Libraries" (2013). Library Staff Publications. 92.
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CROSSING THE LINE? COPYRIGHT FOR LIBRARIES

FRED DINGLEDY

WOLF LAW LIBRARY, WILLIAM & MARY LAW SCHOOL

DISCLAIMER: This presentation is not intended to be legal advice. Every case is different – be sure to consult a lawyer for your particular situation.

VIRGINIA LIBRARY ASSOCIATION PARAPROFESSIONAL FORUM, MAY 20, 2013

SOME MATERIAL PREVIOUSLY IN “WHAT CAN I DO WITH THIS? DECIPHERING COPYRIGHT AND LICENSE NOTICES” BY BENJAMIN KEELE AND FRED DINGLEDY, HTTP://SCHOLARSHIP.LAW.WM.EDU/LIBPUBS/28/
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What is copyright?

- The bundle of sticks
  - Reproduction
  - Derivative works
    - e.g., translations, remixes, documentaries based on archival footage
  - Distributing copies to public
  - Public performance or display
What is copyrightable?

- 17 USC § 102 - “Fixed in a tangible medium of expression"
- Books, poems, music, plays, choreography, artwork, videos, audio recordings, architectural works
- Can’t copyright ideas
- Can’t copyright facts
Infringement

• Using a right without the copyright holder’s permission or paying royalties

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Fair Use

• 17 USC § 107 – four factors:
  ◦ Purpose and character of use
  ◦ Nature of work
  ◦ Amount and substantiality of portion taken
  ◦ Effect of use upon market for work

• Case-by-case
More on fair use

- Commercial or non-commercial use?
- Limit distribution
- Easy to get permission?
- Everyone doesn’t get “archival” copy

- Non-profit education
- Classroom guidelines
- E-reserve of print scans
- Non-textbooks
- Under appeal to 11th Circuit
Cambridge Univ. Press v. Becker (cont.)

- Ease of purchase
- Limited access
- Narrowly tailored
- User reminders
- No user monitoring required
- De minimis
Fair use best practice codes

- Center for Social Media – Fair Use
  - http://centerforsocialmedia.org/fair-use#node-1647

  - http://www.arl.org/focus-areas/copyright-ip/fair-use/code-of-best-practices
The library/archive exception

- **17 USC § 108**
- **Who can use it?**
  - Copying must be non-profit
  - Collection must be available to non-members
The library/archive exception

- **Short version:**
  - Can make copy if to preserve or replace & if you can’t buy it at reasonable price
  - Must include copyright warning or notice that item is protected by copyright
  - Digital copies can only be accessible on library premises
The library/archive exception

- Patron request
  - Must become patron property
  - Must only be for patron’s private use
  - Must display copyright warning
  - Entire book or journal issue (*rare*): can’t get copy at reasonable price

- ILL copies
  - Making a request
    - Patron request + statement of compliance
  - Filling out request
    - Get statement of compliance
So, what do © notices mean?

- Short answer: not much
- Copyfraud
Give ‘em an inch…

- Nature
  [http://www.nature.com/info/legal_notice.html](http://www.nature.com/info/legal_notice.html)
- “In accessing this Web Site, you agree that the Web Site is made available for your personal, non-commercial use only. Unless you have Macmillan's prior written permission, you are not permitted to copy, broadcast, make available to the public, download, store (in any medium), transmit, show or play in public, adapt or change in any way the material (or any part of it) contained on this Web Site for any purpose whatsoever.”
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But that doesn’t stop some publishers from claiming copyright over their reprinting
Some can be reasonable...

- EBSCOHost
- “...Notwithstanding the above restrictions, this paragraph shall not restrict the use of the materials under the doctrine of ‘fair use’ as defined under the laws of the United States.”
Some notices permit copying

- Copyright owners can give blanket permission for whatever uses they want.
- Notice
- License
  - e.g., Creative Commons
Permissive notice

- Museum Anthropology Review

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Common conditions

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- Noncommercial
- Educational
- Others are possible
Where are © notices?

- Generally where we expect them to be.
  - Books: Title page, or page after
  - Serials: Near masthead
- Web:
  - Top/bottom of page
  - “About” page
  - Terms of Service
On the Internet ≠ Free
On the Internet ≠ Free

(Note: Screenshot has been altered to remove thumbnail of Getty Images picture)
On the Internet ≠ Free

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- type of image: any type
- region: any region
- site or domain: not filtered by license
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- file type: not filtered by license
- usage rights: free to use, share, even commercially
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Further Resources I


Further Resources II

- Creative Commons, [http://creativecommons.org/](http://creativecommons.org/)
- Copyright Term and Public Domain in the U.S., [http://copyright.cornell.edu/resources/publicdomain.cfm](http://copyright.cornell.edu/resources/publicdomain.cfm)
Further Resources III

- University of Minnesota Libraries: Copyright Information and Resources, http://www.lib.umn.edu/copyright/
- University of Texas Libraries Crash Copyright Course – Copyright in the Library, http://copyright.lib.utexas.edu/l-intro.html
- Stanford University Libraries: Copyright & Fair Use http://fairuse.stanford.edu/
Further Resources IV


Questions? & Thanks!

- Fred Dingledy
  - fwding@wm.edu