2011

What can I do with this?: Deciphering copyright and license notices

Benjamin J. Keele
benjamin.j.keele@gmail.com

Fred Dingledy
William & Mary Law School, fwding@wm.edu
What can I do with this?
Deciphering copyright and license notices

Benjamin Keele and 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 Annual Conference, October 27, 2011
These slides are available at http://scholarship.law.wm.edu/libpubs/28/
The unauthorized reproduction or distribution of this copyrighted work is illegal. Criminal copyright infringement, including infringement without monetary gain, is investigated by the FBI and is punishable by up to 5 years in federal prison and a fine of $250,000.
This work is licensed under the Creative Commons Attribution-Noncommercial 3.0 Unported License, which permits noncommercial copying, distribution and adaptation with attribution. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc/3.0.
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
- Usually sent warning letter first
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

- Non-commercial use (library) given more leeway than commercial use (copy shop course pack)
- Limited distribution helps
- Courts will consider if permissions easily available (e.g., from Copyright Clearance Center)
- Can’t create personal “archival” copy of articles/chapters for everyone in department
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. Lots of FUD (fear, uncertainty, & deception)
- © owners have rights, just not as much as notices say. No real incentive to be accurate, so © holders tend to make over-reaching notices – “copyfraud”
- Take notices with a big pinch of salt
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.”
© on Great Expectations has expired

Formatting alone is not copyrightable

Copyright © 2008 Accessible Publishing Systems PTY, Ltd. ACN 085 119 953

The text in this edition has been formatted and typeset to make reading easier and more enjoyable for ALL kinds of readers. In addition the text has been formatted to the specifications indicated on the title page. The formatting of this edition is the copyright of Accessible Publishing Systems Pty Ltd.

Set in 13 pt. Verdana

FALSE!

ReadHowYouWant partners with publishers to provide books for ALL Kinds of Readers. For more information about Becoming A Registered Reader and to find more titles in your preferred format, visit: www.readhowyouwant.com

© claims on the public domain
WORKS OF FEDERAL GOVERNMENT EMPLOYEES ARE ALSO PUBLIC DOMAIN

But that doesn’t stop some publishers from claiming copyright over their reprinting

In: The EPA and The Clean Air Act: Authority and Regulation… ISBN: 978-1-61728-937-8
Editor: Ashley B. Roberts

Chapter 5

TESTIMONY OF ROBERT J. MEYERS, PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY, BEFORE THE SUBCOMMITTEE ON ENERGY AND AIR QUALITY, COMMITTEE ON ENERGY AND COMMERCE

Robert J. Meyers

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss with you today the potential for regulation of greenhouse gases (GHGs) under the Clean Air Act.
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.
- Can either be just written in the notice, or refer to some standard license.
- Creative Commons is the producer of the most common licenses, but there are others.
Permissive notice

- Museum Anthropology Review

Copyright Notice

Authors who publish with this journal agree to the following terms:

1. Authors retain copyright and grant the journal right of first publication with the work simultaneously licensed under a Creative Commons Attribution License that allows others to share the work with an acknowledgment of the work's authorship and initial publication in this journal.

2. Authors are able to enter into separate, additional contractual arrangements for the non-exclusive distribution of the journal's published version of the work (e.g., post it to an institutional repository or publish it in a book), with an acknowledgment of its initial publication in this journal.

3. Authors are permitted and encouraged to post their work online (e.g., in institutional repositories or on their website) prior to and during the submission process, as it can lead to productive exchanges, as well as earlier and greater citation of published work.

4. While MAR adopts the above strategies in line with best practices common to the open access journal community, it urges authors to promote use of this journal (in lieu of subsequent duplicate publication of unaltered papers) and to acknowledge the unpaid investments made during the publication process by peer-reviewers, editors, copy editors, programmers, layout editors and others involved in supporting the work of the journal.
Permissive notices

• Florida State University Law Review

Copyright © 2011 by the Florida State University Law Review
Member, National Conference of Law Reviews

The Florida State University Law Review hereby grants permission for copies of all articles on which it holds the copyright to be made and used by nonprofit educational institutions, provided that copies are distributed at or below cost, the author and journal are identified, and proper notice is affixed to each copy. All other rights are reserved.
Permissive license logos

GNU Public License

Attribution NonComm

Free Cultural Works

Public Domain
Common conditions

- Attribution—give proper credit
- Noncommercial—primary purpose is not to make $$$
- Educational—only for classroom or research use
- Others are possible
Where are © notices?

- Generally where we expect them to be.
  - Title page, or page after (“copyright page”)
  - Near masthead of serial
- For web pages, check top and bottom of page, about page, and terms of service.
- Mostly useful for finding copyright owners or checking for licenses
Further Resources I

Further Resources II

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

- University of Minnesota Libraries: Copyright Information and Resources, [http://www.lib.umn.edu/copyright/](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](http://copyright.lib.utexas.edu/l-intro.html)
Questions? & Thanks!

- Fred Dingley
  - fwding@wm.edu
- Ben Keele
  - bjkeele@wm.edu

- These slides are available at
  http://scholarship.law.wm.edu/libpubs/28/