2013

Crossing the Line?: Copyright for Libraries

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

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©rossing 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

• Association of Research Libraries Code of Best Practices in Fair Use for Academic and Research Libraries
  ◦ 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

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Set in 13 pt. Verdana

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- Noncommercial
- Educational
- Others are possible
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  ◦ Serials: Near masthead

• Web:
  ◦ Top/bottom of page
  ◦ “About” page
  ◦ Terms of Service
On the Internet ≠ Free

Images may be subject to copyright.
On the Internet ≠ Free

Price a rights-managed image

<table>
<thead>
<tr>
<th>License summary</th>
</tr>
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<tbody>
<tr>
<td>1. Image usage</td>
</tr>
<tr>
<td>Creative image #: BA0305-001</td>
</tr>
<tr>
<td>Use: Web and app</td>
</tr>
<tr>
<td>Format: Web - Corporate and promotional site</td>
</tr>
<tr>
<td>This use covers: Commercial or promotional use on a website, including as a design element on a corporate website. (Includes use in flash or video on a corporate website. Does not include paid advertising, for example, “Web-Advertisement.”)</td>
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<table>
<thead>
<tr>
<th>2. Usage specs</th>
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<tbody>
<tr>
<td>Size: Low resolution - Up to 180 x 150 pixels</td>
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<tr>
<td>Placement: Home page</td>
</tr>
<tr>
<td>Start date: 02 May 2013</td>
</tr>
<tr>
<td>Duration: Up to 1 month</td>
</tr>
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<tr>
<th>3. Target market</th>
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<tbody>
<tr>
<td>Territory: United States</td>
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<tr>
<td>Industry: Education</td>
</tr>
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(Note: Screenshot has been altered to remove thumbnail of Getty Images picture)
On the Internet ≠ Free

Then narrow your results by...

- image size: any size
- aspect ratio: any aspect ratio
- colors in image: any color, full color, black & white, this color: [red]
- type of image: any type
- region: any region
- site or domain: any site or domain
- SafeSearch: any SafeSearch
- file type: any file type
- usage rights: not filtered by license, free to use or share, free to use or share, even commercially, free to use, share or modify, free to use, share or modify, even commercially

[Advanced Search]
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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/
- 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/
- James Heller, Paul Hellyer, & Benjamin J. Keele, The Librarian’s Copyright Companion (2d ed. 2012)
Further Resources IV


Questions? & Thanks!

- Fred Dingledy
  - fwding@wm.edu