

Copyright Issues for Students and Researchers

Introduction

The entire landscape of the laws and rules of copyright is, to put it nicely, a mess. There are currently several factions and other issues confusing the landscape. The problems is that libraries, schools and other research driven interests would like copyright terms limited while authors, publishers (particularly recording and movie producers), estates and others would like the terms lengthened. The entire issue of electronic media (mainly the Internet) has also added to the complications. Congress has the responsibility under the US Constitution for copyright laws and regulations; however the sheer volume of compromises and exceptions they have put into their recent legislation has almost made current copyright regulations unintelligible.

The *Digital Millennium Copyright Act of 1998* is much talked about and debated in library and publishing circles. In short this act primarily has to deal with sound and video recordings, the reformatting of items from one medium to another, and certain aspects of the Internet. The summary of the law can be read at <http://www.loc.gov/copyright/legislation/dmca.pdf> but in short there is little practical application of this law to the typical seminary student or faculty member. There are issues as they relate to study materials and distance learning scenarios, but the law stipulates that further study and recommendations to Congress be made by the Library of Congress.

There are really only a few copyright related issues that students and researchers need to concern themselves with: (1) Fair Use; and, (2) Public Domain. The Library of Congress is responsible for issues related to Copyright. For detailed investigation related to Copyright see their website at <http://www.copyright.gov/>

Copyright and Fair Use

The main question related to students and researchers as it relates to copyright is determining what does and does not constitute *Fair Use*. Similar to the somewhat convoluted issues related to *Public Domain*, the issues of *Fair Use* are also somewhat muddled, mainly because the rules have been left intentionally vague.

This section is from the Library of Congress web page on Fair Use:

One of the rights accorded to the owner of copyright is the right to reproduce or to authorize others to reproduce the work in copies or phonorecords. This right is subject to certain limitations found in sections 107 through 118 of the copyright act ([title 17, U.S. Code](#)). One of the more important limitations is the doctrine of "fair use." Although fair use was not mentioned in the previous copyright law, the doctrine has developed through a substantial number of court decisions over the years. This doctrine has been codified in [section 107](#) of the copyright law.

Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered "fair," such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair:

- The purpose and character of the use, including whether such use is of 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 distinction between “fair use” and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. *Acknowledging the source of the copyrighted material does not substitute for obtaining permission.* (Emphasis Mine)

The 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law cites examples of activities that courts have regarded as fair use: “quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author’s observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.”

Copyright protects the particular way an author has expressed himself; it does not extend to any ideas, systems, or factual information conveyed in the work.

The safest course is always to get permission from the copyright owner before using copyrighted material. The Copyright Office cannot give this permission.

When it is impracticable to obtain permission, use of copyrighted material should be avoided unless the doctrine of “fair use” would clearly apply to the situation. The Copyright Office can neither determine if a certain use may be considered “fair” nor advise on possible copyright violations. If there is any doubt, it is advisable to consult an attorney.

In a nutshell these are general guidelines for *Photocopying* and *Fair Use* issues:

- A student, researcher or professor may make copies of sections of books or periodical articles for personal use as it relates to their research, writing or studies. Individuals are responsible for their copying practices and any copyright infringement. For instance, copying a book, or even a substantial portion of a book that is required study text in a class, when that book is readily available in a bookstore, would be a violation of copyright.
- There is no particular limit to the length or how much of a book may be copied for personal research use. In some circumstances, copying an entire book could be considered acceptable (see the *Sonny Bono Copyright Term Extension Act of 1998*).
- Once the research project is completed the copied material may be maintained in the individual’s files for future reference. However, should their library ever be sold or dispersed, the copied material must be destroyed.
- Items in *Public Domain*, which is anything published before 1923 and those items afterwards that qualify (see below), have no restrictions whatsoever as it relates to copying or even re-publishing.
- Copies of individual periodical articles or sections from books may be copied for classroom use by a professor, or any instructor engaged in non-profit work (e.g., a Sunday School teacher). The practice of collecting several journal articles or book excerpts and placing them in a syllabus is considered putting together an anthology and requires permission for those items under copyright protection. There is also a “spontaneity clause” that allows a faculty member to make article cop-

ies of something that may catch his eye in the moment and acquiring permission would be impractical, but do not hide behind this clause over-much.

- Items written by students or faculty, including syllabi, papers for courses, tests, as well as theses and dissertations are protected by copyright, even if they are not “published with notice.” The use of a © is no longer required, but for works considered important it is certainly advisable. The proper manner to list a copyright statement is: “Copyright © 2003, by Dennis M. Swanson”

Copyright and Public Domain

The concept of *Public Domain* applies to those documents and other intellectual property that is no longer protected by *Copyright*. That is, once an item goes into *Public Domain*, anyone can use it, reprint it, copy it, republish it, etc., without regard to any compensation to anyone. The problem is to determine exactly when an item passes from *Copyright Protection* to *Public Domain*. The following chart is designed to provide a guideline and is adapted from Lolly Gasaway’s published by the University of North Carolina and used with permission.

<i>Date Work is Created</i>	<i>Copyright Protection From:</i>	<i>Term or Length of Copyright</i>
Published before 1923	In the Public Domain	None: All works written before 1923 no longer have any copyright protection
Published from 1923 to 1963	When Published With Notice ¹	28 years which could be extended by 67 years. If not renewed automatically goes into Public domain.
Published from 1964 to 1977	When Published with Notice	Originally a first term of 28 years. Now automatically renewed for an additional 67 years.
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright.	Life of the Author(s) ² + 70 years or 12-31-2002, whichever is greater.
Created before 1-1-78 but then published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life of the Author(s) + 70 years or 12-31-2047, whichever is greater.
Created 1-1-78 or Later	When the work is published in a tangible medium of expression.	Life of the Author(s) + 70 years (or if it is a work of corporate scholarship, the shorter of 95 years from publication, or 120 years from creation).

¹ The Copyright Acts of 1909 stipulated that a Notice had to be in the work or the item immediately went into Public Domain. That provision, for intents and purposes, was eliminated in 1978.

² In multi-author works, the lifetime of the longest living author.

