



ADVENTURES IN UNDERSTANDING THE JUNGLE OF COPYRIGHT LAWS

BY LAURA WALTH

Copyright and fair use laws are difficult to define and dangerous to interpret. But I can offer you tips to help you evade the wildlife and cut your way through the dense undergrowth of tangled words and phrases.

The technology of today is changing the laws of yesterday. Now in addition to “copy rights” we have what is called “electronic rights.” These issues arose because the contracts by which publishers acquired print rights were either silent or vague and uncertain on rights for new electronic publications. Publishers argued that electronic databases used online were covered under the “collective works” section of the United States Copyright Act. The courts rejected the arguments, saying that use was separate and not contemplated by the foregoing provisions. (For more detailed information on this topic, see Electronic Rights: The Supreme Court’s “Tasini” Ruling at <http://www.ivanhoffman.com/tasini.html>.) So the electronic age forced us to negotiate a whole new set of rights.

To understand some of these laws and to find out more about them, please join me on this adventure through the jungle of copyright laws. For those of you who are like me, just an everyday librarian, let me take you on the adventure I had when I decided to explore and understand copyright laws. I’m not claiming to be an expert. I chose to write on this topic to learn more about it.

In the 11 years I have worked for the Public Library of Des Moines as a reference librarian, I have never personally known any librarian who does not adhere to the copyright laws. It seems that most librarians tend to be more cautious than ignorant when it comes to claiming we know what the copyright laws are.

My own journey began with the need to define what copyright means. That may sound like a simple task; however, in the process I discovered there was more to it than just simply stating a definition. Since I’m writing about copyright laws and libraries adhering to them, I wanted to make sure I was not breaking any laws myself.

In reality, there are not many librarians sitting behind bars for not adhering to the copyright laws. Perhaps just the mere thought of that possibility is what triggers an initial reaction in my mind when I get a reference question regarding copyright laws. It reminds me to be cautious and not to interpret the law. What I recall from library school and a copyright workshop is not so much what the laws are, but that we should not attempt to *interpret* what we read. That’s easier said than done when it comes to citing the law and having someone ask you what that means. So we inform the patron that we can only read what the law states. That explains why librarians don’t memorize everything we learn, especially when it comes to the laws. These visions of going to jail for “practicing law without a license” encourage us to look up the laws rather than rely on our memories and risk interpreting them.

Defining Copyright Law: Welcome to the Jungle

In my research I came across many sources that gave definitions of copyright. My next question was, “How do I define this law without interpreting what I have read in my own words?” I was curious as to the difference between defining the copyright law and interpreting what I read in my research. It was this curiosity that led me to want to know the difference between defining something and interpreting it. So the first thing I needed to do was look up the words “define” and “interpret.” After seeing the word “authority” in the definition of “define,” my next step was to find two sources that we librarians might turn to when looking for more than just a traditional dictionary definition of the word “copyright.” I chose the *World Book Encyclopedia* and *Black’s Law Dictionary*. I was curious to see the difference between these two sources. What I found was a simple straightforward explanation in the *World Book Encyclopedia* and an interesting choice of words in *Black’s Law Dictionary*.

World Book states, “Copyright refers to a body of exclusive rights that protect the works of authors, artists, computer programmers, and other creative people against copying or unauthorized public performance. Copyright generally extends to original works of literary, dramatic, musical, artistic, or intellectual expression.”¹

The definition of copyright from *Black’s Law Dictionary* states, “Copyright. The right of literary property as recognized and sanctioned by positive law. An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a specific period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.”² Of course it goes on in more detail.

“It’s amazing how many links these Web sites contain that guide us through the process of locating specific copyright information. I think of these links as my machete to clear the pathway to the answers I am seeking.”

I couldn’t help but chuckle when seeing the words “positive law” and “intangible, incorporeal” in the next sentence. By definition, “intangible” means “Incapable of being defined or determined with certainty or precision: vague, elusive.”³ Apparently these contracts by which publishers acquired print rights weren’t the only things that were vague and uncertain. The word “incorporeal” pertains to something existing only in contemplation of the law. Therefore, my interpretation of that would be that even the law is incapable of defining with certainty the definition of copyright, yet it exists in contemplation of the law. Of course I wouldn’t say that if you were a patron asking me to define the copyright law! That was just my interpretation of what I read from a librarian’s point of view. So you see, we librarians aren’t the only ones who have difficulty defining today’s copyright laws, especially in the electronic era.

Many Web Sites Offer Good Copyright Information

It’s amazing how many useful Web sites there are! Let me share a few that I found.

For seeking permission to reproduce articles published in periodicals, see the Copyright Clearance Center, Inc. at <http://www.copyright.com>. If you are seeking information on how to obtain a copyright, see the United States Copyright Office/The Library of Congress at <http://www.copyright.gov>.

When patrons have asked me difficult copyright questions in the past, I have given them the phone number for the copyright office in Washington, D.C., 202/707-3000. While I was doing the research for this article, I decided to try that number myself just to see what would happen.

That was an adventure in itself! There were many options to choose from. I chose the second one. I was given a message to call back. The message states it is best to call between 9 a.m. and noon, Tuesday through Thursday. However, the office is open from 8:30 a.m. to 5 p.m., Monday through Friday. The direct number the message gave was 202/707-5959.

I was able speak with an information specialist the next day. She provided a wealth of information when I simply explained to her that sometimes we get questions regarding music being in public domain and we aren’t sure how to answer that. She explained that music published before 1923 is public domain. Anything after that may not be. However, arrangements are copyrighted. For additional information pertaining to this, look for the information circular #22 (on how to investigate the status of a work) on the copyright office’s Web site. If you want to find

out how much is charged for royalties on copyrighted music, circular #73 contains information on the mechanical license.

For additional information on copyright and fair use regarding libraries, see the Copyright & Fair Use page from Stanford University Libraries at <http://fairuse.stanford.edu/library> and ALA’s Conference on Fair Use Joint Statement Released May 1998, also known as “CONFU,” at <http://www.ala.org/washoff/confu.html>. If you’re like I was and need a crash course in copyright laws, see Georgia Harper’s Copyright Crash Course at <http://www.utsystem.edu/ogc/IntellectualProperty/cprtindx.htm>.

The course gave me a better understanding of the various issues involved in copyright laws. It’s amazing how many links these Web sites contain that guide us through the process of locating specific copyright information. I think of these links as my machete to clear the pathway to the answers I am seeking. The search engines (I used Google) are the vehicles to get me out of the jungle.

Tasini, Fair Use, Trademarks: More Things to Trip You Up

It was through a Google search that I was able to obtain information regarding a Supreme Court ruling that affects publishers, freelance writers, and libraries. It is the much-talked-about *Tasini* ruling. Because of this ruling, Gannett Co., Inc., the publisher of our local newspaper, *The Des Moines Register*, is not releasing any of its copy for retrieval on our electronic databases. This ruling not only affects the parties involved, it also affects service to our patrons. It is especially difficult to locate and retrieve past articles without this service.

What I found interesting in researching the history of the copyright laws is that even before the electronic issues came into existence there were always issues involving copyright. Fair use seems to be one of those issues. The Web site I found most useful was the aforementioned Copyright Crash Course. This site includes many useful tips for libraries and faculty, and it is easy to understand. I encourage all of you to at least look at it. For those of you who barely have time to look at anything, I have listed some links from the Web site Fair Use of Copyrighted Materials and paraphrased what they cover

(<http://www.utsystem.edu/ogc/IntellectualProperty/copypol2.htm>). This should save you some searching time:

- Who owns what? (This explains ownership of copyrights.)
- Creating multimedia works (This link has to do with acquiring rights.)
- Copyright in the digital library (This covers copyrights and the library.)
- Copyright management (Policies that the University of Texas uses)
- Licensing resources (This lists examples of what an owner and a user can each do with a book under copyright law.)
- Online presentations (Libraries are one of the topics on this list.)
- Off-site (This contains links of copyright resources for libraries and educators.)

Keep in mind that even if copyright law does not protect all or part of a work, other laws may protect it. You may need to consider rights of privacy and publicity, ask permission to use a trademark or service mark, or get a license to practice a patented process or system. Discussing these rights and interests is beyond the scope of this article, but I wanted to remind you to be aware of them. They represent another difficult path that some of us will have to trudge through eventually.

Because the law no longer requires a notice, the presence or absence of a copyright symbol or notice no longer carries the significance it once did. To help determine whether something may be in public domain, see Lolly Gasaway's "When Works Pass Into The Public Domain" chart (<http://www.unc.edu/~uncnlg/public-d.htm>). For works created after March 1, 1989, the absence of a notice is not an indication that it is in

the public domain. We have received calls at our library requesting such information, and it is not always easy to determine if what patrons are asking for is in the public domain. Because we do not want to give out incorrect information, we are not always able to answer questions like this. We give them resources to pursue their question further. This is one to add to the resource list.

Is Anything Really 'Fair' out in the Jungle?

Fair use also applies to making copies of copyrighted works, making derivative works (e.g., digitizing slides), distributing works (including electronic distribution), and displaying and performing works publicly. For illustrations of potential fair use scenarios and the four factors that must be taken into account for analyzing whether it is fair use or not, see the Legal Information Institute's US Code Collection at <http://www4.law.cornell.edu/uscode/17/107.html>. The following information is quoted from Sec. 107, Limitations on exclusive rights: Fair use:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon

the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Libraries' Special Rights

If you continue to the next page of the above Web site you will see information pertaining to Section 108 of the copyright law. This describes how our libraries are authorized to exercise special rights in addition to fair use. Some of these special rights include archiving lost, stolen, damaged, or deteriorating works; making copies for library patrons; and making copies for other libraries' patrons (interlibrary loan).

"Ignorance of the law is no excuse."

In my adventure through this tangled jungle of copyright laws I learned that there are a number of things to be considered when someone is seeking permission. This information is particularly useful for those calls we get that we may not be able to answer directly. The wonderful thing about this Web site is the ability to click on a list to get the specific information you are seeking. The following is the list quoted from the Copyright Crash Course, "Copyright Law in the Electronic Environment" section, at <http://www.utsystem.edu/ogc/IntellectualProperty/faculty.htm>:

- Why Copyright?
- When Does Copyright Become an Issue?
- Who Owns What?
- How Does Analog Fair Use Apply to the Multimedia World?
- Specific Copyright Issues
 - The archival collection
 - I found it on the Internet
 - Digitizing analog images
 - Incorporating others' works into new works
 - Supplemental course materials (coursepacks and reserves)

Research copies
Licensing access to materials

- Scholarly Electronic Communication

Beware Individual Liability and Infringement Danger

The next time someone inquires about copyright laws, consider your own liability for copyright infringement. Copyright owners have sued and will most likely continue to sue individuals. Remember that individuals are liable for their own actions. The penalties for infringement can be very harsh, especially for willful infringement. For more details on penalties for infringement see the Legal Information Institute "US Code Collection" at <http://www4.law.cornell.edu/uscode/17/504.html>. This will take you to Title 17, Chapter 5, Sec. 504, which covers Remedies for Infringement: Damage and Profits.

Willful infringement means that you knew you were infringing and you did it anyway. However, even if you didn't know that you were infringing, you might still be liable for damages. Ignorance of the law is no excuse. The good-faith fair use defense is a special provision of the law that may apply even if the copying at issue was not a fair use. It only applies if the person who copied the material reasonably believed that what he or she did was fair use. Although this defense does not make a likely prospect for a lawsuit, if we disregard sound advice about fair use, a court could be free to award the highest level of damages available.

Evading the Wild Animals

There are so many things to take into consideration when it comes to finding our way through this dangerous jungle of copyright laws that you may wonder if you'll ever see the light of day. What I discovered from writing this article is that we do not have to be experts at these laws to be able to find information that is useful. The laws will change as technology changes. It is our responsibility to adhere to the laws and to become aware of the changes. It may not be as troublesome as you imagine. For example, I found it interesting how easy it was to obtain permission to use some of the information from Georgia Harper's Copyright Crash

Course by simply e-mailing her and asking. Imagine how many more people are going to benefit from her efforts by simply knowing this Web site exists.

It seems that even law dictionaries are incapable of defining copyright with any certainty! So we librarians aren't the only ones having difficulty with it.

I hope that after reading this article you will be more aware of what the copyright laws are and where you can learn more about them. Don't be afraid to explore those Web sites and to find your way through the wild territory of U.S. copyright laws. Learning about the laws even a little at a time is better than being confused by them forever. 

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