

# The New & Updated Copyright Primer PowerPoints



A Survival Guide to Copyright and  
the Permissions Process

Developed and written by the members of the  
AAP Rights and Permissions Advisory Committee  
(RPAC)

# *Disclaimer*

These slides are only intended to provide a brief background to the basics of copyright. It is recommended you research the information contained on these slides in order to have a fuller understanding of the topics covered.

# *Legislative Background*

- **United States Constitution**  
Article I, Section 8
- **Title 17 -- United States Code**
- **Major Legislation**  
1909, 1976, 1988 (Berne), 1998 (DMCA)
- **The Federal Courts**

# *Definition of Copyright*

## **Section 102(a) of Copyright Act:**

- Copyright protection subsists, ..., in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

# *Definition of Copyright*

- Key elements: original work and fixed in a tangible medium of expression.
- Copyright ownership begins as soon as a work is created and fixed in tangible form.
- Ownership vests with the author, except in cases where the work has been created under a ‘work made for hire,’ in which case the employer is considered the author

# *Definition of ‘Work made for hire’*

A work made for hire can be a work created within the scope of employment or specially ordered or commissioned for use in one of the following categories:

**a contribution to a collective work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas; part of a motion picture; or other audiovisual work; IF the parties expressly agree in a written instrument (signed by both parties) that the work shall be considered a work made for hire.**

# *What's Protected*

## **Section 102(a) of Copyright Act:**

- Literary Works (including compilations)
- Musical Works (including accompanying words)
- Dramatic Works (including accompanying music)
- Pantomime & Choreographic Works
- Pictorial, Graphic, & Sculptural Works
- Motion Picture & Other Audio Visual Works
- Sound Recordings
- Architectural Works
- Computer Programs (generally considered literary works)

# *What's Not Protected*

## **Section 102(b) of Copyright Act:**

- works not fixed in a tangible form of expression (i.e. improvisational performance not written or recorded)
- titles, names, short phrases, slogans, familiar symbols or designs (these items may be protected under trademark or service mark laws)
- listings of ingredients or contents
- ideas, procedures, methods, systems, processes, concepts, principles, discoveries, devices (these items may be protected under patent law)
- standard calendars, rulers, lists or tables taken from public domain documents or sources and other works containing no original authorship



# *Notice of Copyright*

- Works published prior to March 1, 1989 must contain a copyright notice to avoid loss of copyright. For works published after that date, copyright notice is voluntary, although it is still recommended for some legal, but mostly commercial, purposes.
- A proper copyright notice must include the symbol “©” or word “Copyright” or abbreviation “Copr.”; the copyright year (first year of publication); and the name of copyright owner.

# *Concepts & Other Categories*

- **Originality and fixed in tangible medium**
  - applies to any format
- **Fixation**
  - Ideas are not protected by copyright, but ideas fixed in a tangible medium of expression are protected by copyright
  - This is referred to as the idea/expression dichotomy
- **Originality**
  - Facts alone are not protected, there must be a minimal amount of creativity
  - Cannot copy something that already existed

# *Concepts & Other Categories*

**Facts within a compilation may be protected under certain circumstances:**

- **Compilation**

- a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

- **Collective Work**

- a compilation of materials that separately constitute independent works, such as an anthology, encyclopedia, or periodical issue.

# *Concepts & Other Categories*

- Under Section 103 of Copyright Act, **Derivative Works** are defined as recasting, adapting, transforming already existing work

**Derivative Works** include but are not limited to the following:

- translations
- musical arrangements
- dramatizations
- motion picture versions
- abridgements
- condensations

# *Exclusive Rights of Copyright*

## **Author's exclusive rights under copyright (Section 106 of Copyright Act):**

- reproduce the work
- prepare derivative works
- distribute copies publicly
- perform the work publicly
- display the work publicly
- perform work publicly via a digital audio transmission (sound recordings)

# *Limitations on Exclusive Rights*

## *Fair Use*

- Under Section 107 of Copyright Act there are a number of uses of copyrighted material that may be deemed fair and are therefore permissible:
  - criticism
  - comment
  - news reporting
  - teaching (including spontaneous multiple copies for classroom use; however, not all teaching uses constitute fair use)
  - scholarship, or research

# *Limitations on Exclusive Rights*

## *Fair Use*

To determine if the defendant's use is fair the court should look at the following listed in Section 107 of Copyright Act:

- purpose and character of use (i.e. is the use of a commercial nature or for a nonprofit purpose)
- nature of work
- amount and substantiality of portion used
- effect of use on potential market for value of copyrighted work

# *Limitations on Exclusive Rights Reproduction by Libraries*

Section 108 of Copyright Act permits public libraries, public archives and their employees to reproduce and distribute copyrighted materials for the following noncommercial purposes:

- replace damaged or lost copy
- backup copy
- a single photocopy for patron for private scholarship, or research (entire works only if the work cannot be obtained at a fair price)



# *Limitations on Exclusive Rights: TEACH Act*

- “TEACH” is acronym for the “Technology, Education, and Copyright Harmonization Act of 2002.”
- Allows for exemption of certain performances and displays for educational uses by amending Section 110 of the Copyright Act.
- Expands the scope of educators’ rights to perform and display works, allowing for the digitization of works for use in digital distance education.
- Certain requirements must be met, e.g., the user must be from an accredited, non-profit educational institution; the material must be presented at the direction of an instructor as part of a class session; the transmission is limited only to students officially enrolled in the course; plus others.

# *Duration of Copyright*

- Under current law (works created on and after Jan. 1, 1978):
  - When vested in the author – life of the author plus 70 years.
  - When work for hire or in scope of employment – 95 years or 120 years from date of creation (whichever expires first).
  - In cases of a joint work, the term lasts for 70 years after the death of the last surviving author

*Note – There have been a number of increases in duration since 1970. Most recent update (CTEA of 1998) has been reviewed by Supreme Court in Eldred v. Ashcroft, a challenge to CTEA.*

-For anonymous and pseudonymous works, the term is 95 years from first publication or 120 years from creation, whichever is shorter

# *Duration of Copyright*

- **Works originally copyrighted before 1950 and renewed before 1978:**
  - These works have automatically been given a copyright term of 95 years (a first term of 28 years plus a renewal term of 67 years).

# *Duration of Copyright*

- **Works originally copyrighted between Jan. 1, 1950 and Dec. 31, 1963:**
  - Copyrights in their first term on Jan. 1, 1978 still had to be renewed in order to be protected for the second term.
  - If a valid renewal was made at the proper time, the second term was 67 years. However, if renewal was not made, copyrights secured between 1950 and 1963 expired on Dec. 31 of their 28<sup>th</sup> year.

# *Duration of Copyright*

- **Works originally copyrighted between Jan. 1, 1964 and Dec. 31, 1977:**
  - The copyright law was amended in June 26, 1992 to make renewal optional.
  - The copyright is still divided into a 28-year term and a 67-year renewal but if a formal renewal is not made, the renewal vests on behalf of the appropriate renewal claimant on Dec. 31 of the 28<sup>th</sup> year.

# *Public Domain*



- **Public Domain**

- Works created by a federal government employee during the course of his employment
- Works published before 1978 w/o proper © notice
- Works dedicated to the public domain by their creator
- Works whose copyright term has expired

# *Registration / Renewal*

- **Registration of Copyright**

- Not mandatory under law

- Required to institute an infringement suit; to obtain statutory damages; for official recognition of ownership, etc. (note this only applies to works of U.S. origin)

- **Renewals no longer required**

- Law amended in 1992 to make renewal automatic for all works published between 1/1/64 and 12/31/77

# *Transfer / Termination*

- **Transfer of Rights – Section 201(d)**
  - any of the exclusive rights may be transferred
  - must be in writing, signed by author
  - may be recorded in US Copyright Office
- **Termination of Rights – Section 203**
  - rights may be terminated by © owner



# *Remedies*

## **Sections 501-511 of Copyright Act**

- 501 – Infringement (violations of any of the exclusive rights)
- 502 - 503 – Remedies for Infringement (injunctions or impounding/disposition)
- 504 – Damages (actual and additional profits or statutory)
- 505 – Costs and attorney's fees
- 506 – Criminal Liability
- 507 – 3 year statute of limitations for civil proceedings; 5 years for criminal

# *Supplementary Information*



- DMCA
- Fair Use case law
- Copyright Glossary
- Copyright Links

# DMCA

- Digital Millennium Copyright Act (DMCA) enacted in 1998.
- **Main purpose** – to bring copyright law into the digital era; to implement two World Intellectual Property Organization (WIPO) treaties adopted in 1996.
- **WIPO treaties** – (1) Copyright Treaty – entered into force in the U.S. in March 2002; and (2) Copyright and Performances and Phonograms Treaties Implementation Act of 1998 (WIPO Treaties Act)

# *DMCA Highlights*

- Illegal to manufacture or provide devices or services that circumvent encryption or other technological measures used to control access.
- Illegal to knowingly alter, remove, or falsify CMI (Copyright Management Information).
- Establishes civil and criminal penalties for violations of the prohibitions regarding circumvention and CMI.
- Preserves existing rights of copyright owners.
- Limits liability of Internet Service Providers (ISPs).
- Limits liability of libraries and educational institutions.

# *Fair Use – Case Law*

- **Parody**

- Campbell v. Acuff-Rose – 2 Live Crew’s parody of “Pretty Woman” a permissible fair use. Supreme Court held it was a “transformative use” of the original. 2 Live Crew used the guitar riff and parodied some of the lyrics of the song.
- SunTrust Bank v. Houghton-Mifflin – Eleventh Circuit Court of Appeals overturned injunction preventing publication of “The Wind Done Gone.” Court held this was a fair use/parody of “Gone With the Wind.”

# *Fair Use – Case Law*

- **Computer Programs**

- Sega Enterprises v. Accolade – Ninth Circuit Court of Appeals held reverse engineering of a computer program a permissible fair use. Accolade created a competing product to Sega's game cartridges for Sega Genesis game. Accolade had disassembled the Sega object code. The court used a public policy approach in deciding the case, as Sega's monopolization of the market was counter to the statutory purpose of Copyright Act.

# *Fair Use – Case Law*

- **Educational Uses**

- AAP Guidelines for Classroom Photocopying
- Kinko's case 1991 – Kinko's photocopied copyrighted material (book chapters made available for sale to students) without permission. The District Court held this was infringement.
- MDS case 1996 – Michigan Document Services (a copy shop) photocopied copyrighted material and included in and sold as coursepacks to students. Sixth Circuit held this was infringement as copying was done without permission.

# *Fair Use – Case Law*

- **Another important case:**
  - AGU v. Texaco 1992 – The Second Circuit held that Texaco employees making single copies of articles from journals not a fair use. The end result was that Texaco paid a seven-figure settlement to the publishers in the dispute and a retroactive licensing fee to the CCC. The decision signifies the importance of photocopying licenses.



# *Copyright Glossary & Acronyms*

AAP	Association of American Publishers
ARL	Association of Research Libraries
ASCAP	American Society of Composers, Authors and Publishers (music rights clearinghouse)
BERNE	The Berne Convention for the Protection of Literary and Artistic Works is a multilateral copyright treaty administered by the World Intellectual Property Organization (WIPO)
BMI	Broadcast Music Inc. (music rights clearinghouse)
CCC	Copyright Clearance Center (US reproductions rights org.)

# *Copyright Glossary & Acronyms*

CD-ROM	Compact Disc with Read Only Memory
Compilation	A work created by the collection and assembling of preexisting materials, of including facts and data, coordinated in such a way that the resulting work as a whole constitutes an original work of authorship.
CONFU	Conference on Fair Use, convened after the issuance of a white paper on IP rights, the final report was issued in 1997
Copy	One of multiple physical manifestations of a work. A copy can include manuscripts, pages, books, posters, canvases, computer files, and images stored on digital media (DVD, CD-ROM, computer hard drive)

# Copyright Glossary & Acronyms

- Coursepacks      Compilations or anthologies of photocopied sections from various sources which are distributed to students
- CTEA              Copyright Term Extension Act (also known as Sonny Bono Copyright Term Extension Act): extension of basic terms of copyright protection under U.S. law to match the European Union's term of "life of the author plus 70 years"
- Derivative Work      Work based on additional authorship added to one or more preexisting works where such original works have been transformed into a new work such as translations, abridgments, adaptations for film or theater, photographs or artwork that have been electronically manipulated, etc.

# *Copyright Glossary & Acronyms*

DMCA	Digital Millennium Copyright Act; enacted 10/28/98: Major provisions include those dealing with Circumvention Access Controls, Copyright Management Information, and Online Service Providers; updates current copyright law exemptions for library preservation and replacement of copyrighted works by permitting limited use of digital technologies. It also provides for studies on “distance education.”
DRM	Digital Rights Management
DVD	Digital video disc

# *Copyright Glossary & Acronyms*

## Fair Use

A limitation on the exclusive rights of the copyright owner that allows copies of a work to be made without permission. Section 107 of the Copyright Act lists four factors to consider:

- (1) purpose and character of the use;
- (2) nature of the copyrighted work;
- (3) amount and substantiality of what is used relative to the whole;
- (4) effect of the use on the potential market for the copyrighted work.

## FEP

Federation of European Publishers

## GATT

General Agreement on Tariffs and Trade

# *Copyright Glossary & Acronyms*

IFFRO	International Federation of Reproduction Rights Organizations
Infringement	Violation of any of the exclusive rights of the copyright owner
IPA	International Publishers Association
License	Legal agreement granting permission to exercise specified rights to a work
MPAA	Motion Picture Association of America
NET Act	No Electronic Theft Act: Amended portions of 17 U.S.C. and 18 U.S.C. (1997) Digital Theft Deterrence and Copyright Damages Improvement Act of 1999 increased by 50% the statutory penalties for copyright infringement and facilitates prosecution of online piracy under the NET Act of 1997

# *Copyright Glossary & Acronyms*

PD	Public Domain: A work whose copyright has expired or which is not otherwise eligible for copyright protection, such as works by the U.S. government. Such works may be copied without restriction in that particular country.
PSP	Professional/Scholarly Publishing
Publication	A work is published when it is distributed or offered to the public by sale, rental, performance, display, or other methods making one or multiple copies available.
SSP	Society for Scholarly Publishing
STM	International Association of Scientific, Technical and Medical Publishers

# Copyright Glossary & Acronyms

**Subsidiary Rights** Rights beyond the initial grant of rights to publish a work in a specific territory. These include paperback, book club, serial, anthology, volume, commercial and other such rights.

**TRIPs** Trade Related Aspects of Intellectual Property Rights

**WIPO** World Intellectual Property Organization

**Work for Hire** A copyrightable work that is prepared by an employee within the scope of his employment or work that is specifically ordered or commissioned and fits into one of the categories enumerated in slide 6. The employer or commissioner of the work is considered the author for purposes of copyright in the United States.

**WTO** World Trade Organization: A rules-based, member-driven organization. All decisions are made by the member governments, and the rules are the outcome of negotiations among members.



# Copyright URLs

**AAP is not responsible for the content on any of the websites listed below**

## **Government**

<http://www.loc.gov/copyright/circs/> (General guidelines)

<http://www.loc.gov/copyright/> (Home page)

<http://www.uspto.gov/web/offices/dcom/olia/confu/> (Fair Use guidelines)

## **Copyright Clearance Center**

<http://www.copyright.com/CopyrightResources/default.asp>

## **Organizations**

<http://www.publishers.org/> (American Association of Publishers)

<http://www.ala.org/> (American Library Association)

<http://www.nacs.org/public/copyright/> (National Association of College Stores)

<http://www.aph.org/custom/index.html> (American Printing House for the Blind web site)

# Copyright URLs

## University web sites


<http://www.utsystem.edu/OGC/IntellectualProperty/> (General guidelines, University of Texas System)

<http://www.lib.utsystem.edu/copyright/> (Copyright Tutorial, University of Texas System)

<http://hemingway.hrc.utexas.edu/watchfiles/search.htm> (Copyright holder searches, Harry Ransom Humanities Research Center at The University of Texas at Austin)

<http://www.library.jhu.edu/elp/useit/copyright/index.html> (General guidelines, The Sheridan Libraries of The Johns Hopkins University)

<http://fairuse.stanford.edu/> (Fair Use guidelines, Stanford University Libraries)



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