

Internet Law Week 4

Copyright 1: Direct infringement and remix culture

Things have changed since the first Copyright Act

- Copyright has gotten longer
 - 14 years, renewable once -> author's life plus 70 years
- Copyright has gotten wider
 - Right to publish or vend books, charts, and maps -> right to copy, distribute, create derivative works, publicly perform or display
- Copyright infringement has gotten easier / Copyright covers more
 - Manual copying -> digitized copying machines
 - Only printers could copy a book -> anyone can copy with a computer

U.S. copyright is as old as the Constitution

Article I, Section 8, clause 8: "The Congress shall have power ... To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;"

How many "copies" have you made today?

- Have you browsed a website?
- Have you forwarded an email?
- Have you taped or TiVo'd a television show?
- Have you played a song on an iPod or MP3 player?
- Have you used the library's photocopier?
- Have you run a program on your computer?

Old Wine in New Bottles?

- Same root principles, different focus
- Translation: How do we interpret the constitutional and statutory language to make sense of the new technology?
- Does the law need to be updated? In which direction, if so?

Why copyright?

- "To promote the progress of science and useful arts"
 - Give authors and artists an incentive to create and publish, so the public gets access
 - Locke's labor theory
 - European moral rights

Is any information “property”?

- Excludable:
 - real property can be fenced or locked up
 - IP can be locked as embodied in tangible items
- Rivalrous:
 - real is - my sheep graze on the commons, yours don't have so much grass
 - IP isn't - I read your story, my neighbor can enjoy it as much (perhaps more)

§ 106, Exclusive Rights: Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce
 - (2) to prepare derivative works
 - (3) to distribute
 - (4) to perform publicly;
 - (5) to display publicly; and
 - (6) to perform digitally (sound recording)
- Limitations include Fair Use (§ 107) and First Sale (§ 109)

Real vs. Intellectual Property

	Real property	Intellectual property
Rivalrous:	Yes	No
Excludable	Yes	Not except as embodied in real objects

§ 107 Limitations on exclusive rights: Fair use

- The fair use of a copyrighted work... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. [T]he 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.

Copyright Act, Title 17 U.S.Code

§ 102, Subject Matter

- Copyright protection subsists, in accordance with this title, 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
- In **no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery**, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

• Direct infringement: (§ 501)

- “Anyone who violates any of the exclusive rights of the copyright owner ... is an infringer of the copyright”

NotPics

- The owner of NotPics, Inc., a bulletin board service, thinks it has a bullet-proof way to serve up the most popular images without having to take any pictures: Crawl the web for image files and download them in two parts. Then instruct paying subscribers to re-assemble the parts on their own computer. That way, NotPics says, there are no “copies” of the images on its computers.
- Do you agree?

FreeRepublic

- The website FreeRepublic.com hosts bulletin boards for conservative commentary. As Wikipedia describes, “Free Republic’s content consists largely of news stories and opinion pieces posted by its active user base, and discussion of these pieces by the users, and informal chat.” Often, the discussions criticize the “liberal bias” of the media, illustrated, the users argue, by the columns and articles posted.
- Are these users infringing copyright?

Reading is Fundamental

- You buy a book. When you finish reading it, you can give or lend it to a friend or use it as a doorstop.
- You buy an e-book and load it onto your computer, clicking through a license agreement as you do so. Can you give or lend it to a friend?

Google Print

- Google recently announced a new program, Google Print, under which it would expand its search to the library shelves. Google will scan books from libraries (including the New York Public Library) and give the libraries an electronic copy. Google will use the scans to add book listings to search results. In response to search queries, users will be able to browse the full text of public domain materials, but only a few sentences of text around the search term in books still covered by copyright. Google permits publishers to “opt out” of having their books scanned, but will otherwise scan everything on the shelves.
- Copyright concerns?

Alice in Wonderland eBook

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First published in 1865
by Marshall & Co., London
Revised 1893 by D. Appleton & Co., New York

For information
about VolumeOne and our print, contact:
Drew Zellmer (project@vco.net)
1522 W. Augusta Blvd.
Chicago, IL 60622-2299 USA
(312) 733-2425

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- What if Google offers to sell access to more than just a snippet?
- What if a third-party creates a “Stephen King reassemble”

Remix Culture

- Creative Commons
- Grey Tuesday
- “Semiotic Democracy” (William Fisher)