

**THE UNITED STATES COPYRIGHT LAW DILEMMA:
A SYNTHESIS OF COPYRIGHT APPLICATIONS THAT AFFECT
THE USE OF DIGITAL PRINT-ON-DEMAND TECHNOLOGY**

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by

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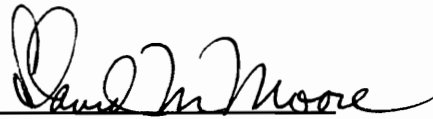
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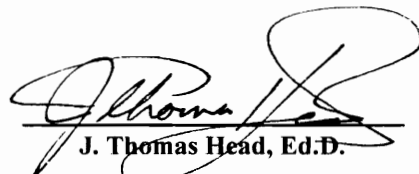
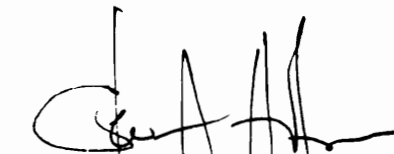

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(ABSTRACT)

This study explores the problem of "fair use" in copyright as it applies to the use of POD's, print-on-demand systems, by education and business entities. This qualitative research instrument offers an explanation for the discrepancy between current copyright statutes and the application of these statutes by the US Courts toward regulating the "fair use" doctrine as it applies to POD technology.

This synthesis examines the "gray areas" of the US Copyright Act of 1976 and the Copyright Amendments Act of 1992 in conjunction with the ever-changing legal opinions that continuously shape and mold court opinions into copyright ideals. In order to achieve this goal, the following criteria is discussed: 1) the rights of copyright owners; 2) limitations of exclusivity in copyright; 3) judicial and statutory factors in "fair use"; 4) court rulings that affect the common educational and business use of copyright protected materials; and 5) the affect of copyright rulings upon the use of high technology equipment that is presently in use or will be

introduced into the market place soon. In effect, this study responds to the copyright dilemma as it pertains to "fair use" upon POD's, digital high speed copy systems, computers/laser printers, video taping systems, audio taping systems, live presentations, transmitted presentations, and other information systems.

The following questions will be considered and discussed: 1) What is the history and intent of the fair use doctrine as it applies to the Copyright Act of 1976 and Copyright Amendment Act of 1992; 2) What is the affect of present copyright laws upon POD's; 3) Has court litigation in the last decade restricted the "fair use" doctrine by limiting the uses of copyrighted materials by educational and business entities?

Finally and most importantly, in the interest of preserving, improving, and perfecting the relationship between POD users, in both education and business, and the international copyright proprietors, including members of AAP and SPA, this dissertation has explored and developed a copyright user's and owner's "Model of Rights".

Acknowledgements



To Tricia
Love of My Life



To my sons, Cam and Matt, for understanding that their dad is a big kid at heart and did, as Rodney Dangerfield, go *Back to School*.



I am very grateful to my advisor, Dr. Mike Moore, and to my doctoral committee, Dr. John Burton, Dr. Tom Head, Dr. Glen Holmes, and Dr. Terry Wildman. They will always be valued friends and mentors. Their support, high scholarly standards, scholastic integrity, genuine concern, and unlimited patience have given me a burning desire to continue with my writing and research even as I questioned my long standing desire to fulfill this ambition.

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Chapter I

Introduction

Printed pages are "comatose, but not dead," retorted a speaker at the Xplor Conference and Exhibit held in Denver on November 14-19, 1993 (Roorbach, 1994, p. 4). If you feel that you have heard this before, it is probably because this as well as other predictions concerning the demise of the printed page has been a favorite playground for those who make such predictions since the early 1970's. The fact is that American education, government, and business facilities produce over 400 billion copies per year, approximately one million copies per minute, every day of every year. In 1992 there were over seven million copiers in operation in the U.S.A., an increase of three million copiers since 1987. Copier researchers inform us that by the end of 1994, there will be nine million copiers producing an anticipated volume of 550 billion copies per year. This projection does not include those reproductions made by print-on-demand systems (POD's), laser printers, offset printing, Risographs, spirit duplicators, and other print, visual, or audio reproduction systems (Editors, 1992).

The comatose printed page prediction may be gaining believers as PC's are being used for far more than just an "authoring device". POD's, E-mail, electronic bulletin boards, and networking are all changing the concept of the personal computer (PC) into an information disseminating device which has traditionally been left to the conventional copier or press. The comatose idea may also be a factor in the way the Association of American Publishers (AAP) and the courts have approached new

interpretations of intellectual property law; copyrights, patents, trademarks, and works-for-hire.

Business, government, and educational institutions have been involved in an evolution of technology so vast that it has placed a burden upon their staff's ability to teach and complete research. This burden has been caused because of the advancement from mechanical technology to electronic digital technology. With this advancement, teaching, production and research has become complicated both from a legal and technological viewpoint (Helm, 1986).

The proposed digital superhighway is full of both legal loop holes and technological pot holes. "In a touch of irony, one of these technology road demons was encountered during Vice President Al Gore's recent guest celebrity talk session on CompuServe. Current technology limited participation to only 900 select members" (Smith, 1994, p. 6). Television and C-SPAN were the communication instruments that got the vice president's message to the masses. A legal loop hole became apparent when Compton's New Media was granted a patent on the data search and retrieval technology that will be the controller for the majority of future information CDs. If this patent is allowed under copyright statutes, all future CD developers will be legally required to pay either a licensing fee or copyright royalties to Compton's. It is strongly believed that this patent is unwarranted and will probably be overturned during the litigation and appeal process: however, the granting of this unwarranted patent serves as a warning of ill-advised copyright policy decisions that could have a dramatic effect upon the future use of digital technology (Smith, 1994).

Another problem area for AAP and copyright law legislators is the rapid acceleration of professionals moving from low-technology equipment such as typewriters, overhead projectors, and film projectors to high technology systems such as computers, digital printers, POD's, digital copiers, color copiers, cable television, satellite transmissions, closed circuit TV and publish-on-demand systems have caused both ethical and legal considerations. Ethically, professionals know that it is wrong to steal copyrighted material, but limited funding, time restraints, teaching, and production demands force them to simply "borrow" on occasion. Legally, borrowing copyrighted materials for educational or business purposes, without permission, can be a crime punishable by a fine and/or a jail term.

The American Association of Publishers (AAP) believe that at least 40 percent of all reproductions of copyrighted materials are not being reported for royalty considerations. Because of this belief, AAP has stepped up its enforcement policy of tracking down and litigating copyright infringers. In the past, educational institutions have not been the primary targets of AAP's enforcement tactics. In the future, AAP has indicated that educational institutions will be probed for copyright infringement on an equal basis with business. AAP has pronounced a war on any type of copyright infringement and their pronouncement makes it clear that educational users should comply or suffer the consequences.

Professionals should realize that ignorance of copyright laws is not a viable defense. Copyright protection is defined as a way "to promote the progress of science and useful arts" (US Constitution, Article 1, Section 8). If documents, computer software, videotapes, films, CD's, television

broadcast, or any other copyright protected media is duplicated without permission or authorization then those educators and other end-users engaged in the copyright violations endanger themselves and their institutions in the following ways: 1) they render themselves liable for litigation and prosecution, 2) they render their institution liable for litigation and prosecution, and 3) they may inadvertently jeopardize the creation of future educational materials by depriving the creators of these works-for-profits of capital which is needed to foster the creation of new materials. On the other hand, the use of technology as a tool for research may be hampered by outdated copyright statutes that allow profit seekers to retard the growth of publishing and print-on-demand technology.

Statement of the Problem

Article 1, Section 8 of the US Constitution declares that "The Congress shall have the power... To promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." This copyright statute is similar to a "deed" to intellectual property. It gives the owner the exclusive right to reproduce or copy the work, to distribute, to sell reproductions, to display or perform the work in public, and to sell the rights of the work either in full or in part through contract or by royalties.

On January 1, 1978, a very different copyright statute became law. As of that date, any work of authorship created in any fixed tangible format automatically and immediately was protected legally as a copyrighted property. This means that when a creator's pen leaves the paper or when his/her camera clicks, the project's creator owns an immediate copyright in

that work. This holds true legally in every case as long as the work's creator is not being paid and is not creating for an employer (Wilson, 1990).

The most confusing aspect of copyright law is the concept that a copyright cannot protect ideas; however, it may protect particular expressions of ideas. If by an extreme element of chance, two photographers independently took identical photographs of the same item, both of the photographs could be copyrighted by both of the photographers. This is only one of the many concepts in copyright law that confuses litigators and judges alike. Because of these multiple copyright legal conceptions, right or wrong, copyright law is literally changing daily because of decisions based on the multiple number of US court systems interpretations of copyright law.

This descriptive research instrument proposes to explore the problem area of "fair use" in copyright law as it applies to both the use by business and education of print-on-demand (POD's) systems in the United States. This dissertation will offer an explanation for the discrepancy between current copyright statutes and the application of these statutes by the courts toward regulating the fair use doctrine as it applies to print-on-demand technology.

Need for the Study

Adobe Software Corporation co-founder, Chuck Geschke, recently announced in the March 6, 1994 edition of Infoworld that his company:

is about to take the next big step, which is to take the information that printing and publishing companies have always produced and move into the process of not only creating it electronically but

distributing it and finding and managing it electronically. The real vision of the company is to be a catalyst for moving information publishing from paper, and in effect film media with video, into a fully electronic age. The timing is right in terms of the technology and technological infrastructure. (p. 4)

President Clinton's administration is strongly supporting a \$200 billion "information superhighway". Communication experts and business leaders are demanding that the administration and congress put this goal of constructing such a superhighway on the same priority basis as the "man on the moon mission" during the Kennedy administration (Talab, 1994, 11). Every aspect of the digital revolution in this information age is happening at lighting speed and this is a source of great concern for American Association of Publishers (AAP) and Software Publishers Association (SPA). They believe that their membership could jointly be losing tens of billions of dollars yearly through illegal copying by end-users both in education and in the business world. Their answer is to police the illegal use and copying of both copyright protected printed materials, as well as computer software, and prosecute any and all violators of the copyright statutes. During the last few years, it is obvious through litigation research that most law suits involving copyrights has been in the area of software infringement.

Because of the constant and unrelenting lobbying by the SPA and the AAP, a bill that made software piracy a felony became effective under the Bush administration in 1992. This means that if a person or an entity is found guilty of copyright infringement through software piracy, he/she

could be fined as much as \$250,000 and serve five years in prison. Even with this stringent new infringement law, both individuals and organizations are blatantly committing copyright fraud every minute of every day. The reasoning behind this infringement ranges from "I didn't know it was copyrighted" to a blatant disregard for the law.

Copyright education is the answer. Professionals should become familiar with copyright law basics in order to minimize the potential dangers of noncompliance and infringement. Either of these actions pose questionable ethics and professional non-responsibility on the character and the conduct of the end user. Professionally, educators and business persons should gain an understanding of the doctrine of fair use and of other components of the US Copyright Law in order to enjoy the rewards of research, scholarship, and teaching. Ethically, professionals should become aware of the numerous guidelines that have been set-up in order to determine fair use in duplicating copyrighted materials for business, research, or classroom use. For protective reasons, end-users need to stay abreast of the courts interpretation of copyright law and of derivative fair use guidelines. Legally, professionals need to be aware of licensing agreements for copyrighted materials and to be cognizant of any licenses governing the regulation of high technology systems as they become available to the marketplace. As with any law, ignorance is not a viable excuse!

Purpose of the Study

This study will examine the "gray areas" of the US Copyright Law in conjunction with the ever-changing legal opinions that continuously shape

and mold new court opinions into copyright ideals. The purpose of this study will be four-fold. First it will consider the historical intent and selected effects of the fair use doctrine of the US Copyright Act through a literary review. In order to achieve this goal the following criteria will be discussed: 1) the rights of copyright owners; 2) limitations of exclusivity; 3) both judicial and statutory factors of fair use; and 4) recent court rulings that affect the common educational and business use of copyrighted material. The second purpose will be to discuss the effect of copyright law on high technology systems that are either being used in business and universities now or will be in use soon. In effect the study will look at the copyright dilemma as it pertains to fair use on print-on-demand systems, digital high speed copy systems, computers and laser printers, video taping systems, audio taping systems, live presentations, transmitted presentations, and other high technology systems that have not been formally introduced to the marketplace at the present time. Thirdly, this study will look at the Basic Books v Kinko's Graphics Corporation (1989) court ruling and other copyright cases in order to explore the possibility of the judicial systems restrictive interpretations and ambiguity in limiting fair use in educational facilities. The fourth purpose of this study will be to develop a format from the research that will enable this researcher to design a pamphlet and a recommended "Model of Rights" for the copyright user that will be a simple-to-use and instructive in content concerning facts that teachers and other professionals need to know about "fair use" and copyright law.

In order to investigate this study, the following research questions will be considered:

- 1) What is the history of the "fair use" doctrine as it applies to the US Copyright Law?
- 2) What is the effect of the copyright law upon high technology digital print-on-demand systems?
- 3) Did the Basic Books v Kinko's Graphics Corporation (1989) and other recent court ruling's restrict the "fair use" doctrine by further limiting educational and business uses of copyrighted materials?

Procedure and Review of the Literature

Most research is, in reality, a review or an expanding of previous studies. A review of literature is pertinent to the concerns of this research endeavor because it will be descriptive in design and will rely upon previous studies, case law, and interviews as a basis for its results and possible implications. The paper will be presented in a narrative format.

This study will combine a literary review (past events) with an analysis of the applicable case law. Any study of copyright law has to be focused on the division of rights and rewards of the originators and of the end-users, because of this "the historical method [which] seeks to assess meaning over some significant period of time" (Lang & Heiss, 1984, p. 66) provides an intellectual view of the circumstances that lead to the development of the provisions of copyright law and its subsequent interpretations by the courts. Gottschalk (1969) provides an additional rationale for utilizing the historical method in conjunction with a legal analysis:

"History," said Charles Seignobos, "is not a science, it is a method (procède de connaissance)." By that he meant that the historical

method may be applied to the subject matter of any discipline.... [F]or... disciplines such as law... knowledge of genesis, precedent, previous setting, past analogies, and contrasting situations has an obvious value. (p. 29)

Legal thinking which involves:

ascertaining the fit between a set of facts and printed rules or cases... representing what the goals of a particular law are, what behaviors it permits or prohibits... [and] representing how the printed rules may reach beyond behaviors explicitly described to cover others... (Stratman, 1990, p. 166)

is well suited to the extrapolation of the copyright crisis to the digital print-on-demand setting.

"The combination of critical historical inquiry with the legal analysis of statutory law (constitutional provisions and legislative or statutory enactment) and case or common law (principles applied by the courts in deciding issues not covered by statutory law)" (Spiegel, 1991, p. 6) provides a more complete foundation for the criticism and interpretation of the application of copyright doctrine in digital POD, print-on-demand, technology.

Collection, analysis, and interpretation of research materials, such as statutes, legislative histories and cases, form the basis of this document. The primary data base for the study was federal district, federal appeal, and Supreme Court cases from the early 1700's to 1994. Other materials researched included legal commentary by practitioners for insight into the development and application of copyright concepts and doctrine. Specific

attention was given to those cases involving copyright disputes that could be cross referenced between both business compliance and non-compliance and those of educational institutions. The cases usually involved the production of anthologies or copying in general specifically linked to educational end uses. The primary research instruments used were WESTLAW and LEXIS, computerized legal research programs, with up to date information concerning Supreme Court cases as reported in The Federal Reporter, and federal district court cases in The Federal Supplement. The United States Patent Quarterly and Copyright Law Decisions were also used as research instruments in order to trace applicable copyright cases. ERIC and Dissertation Abstracts were also used to identify and trace pertinent abstracts.

Three areas of concern will be dealt with in the review of literature for this study: 1) the history, literary reviews, and intent of the copyright law and the fair use doctrine as it applies to the end-user; 2) the effects of copyright law on high technology reproduction equipment, POD's, and systems used in business and educational facilities; and 3) if the Basic Books v. Kinko's (1989) and other copyright cases restricted the fair use doctrine by further limiting the use of copyrighted materials. The review of literature is presented accordingly.

History and Intent of The Copyright Law

Copyright law originated in 1709 in England with the Statute of Anne; soon after the law was created, the courts began to recognize that some uses of copyrighted material without permission was "fair abridgment", now known as fair use in America (Smith, 1991). The law was

created for the purpose of providing an incentive for creative individuals to produce intellectual works for public dissemination (Copyrights Act, 1976). Only items in a fixed format are under the control of the copyright law. Fixed format is defined as any tangible fixation such as actual writings on paper or digital transposed software instructions located upon a computer disk.

Those artist, writers, and other creative individuals who in the pursuit of intellectual and artistic works create worthy beneficial materials deserve a reasonable reward for their efforts. Under this premise, copyright legislation was intended to provide incentives and to protect the financial interest of those creative persons by prohibiting others from misusing or reproducing their protected works (Helms, 1986). In theory alone, the interest of the public and the interest of copyright holders should compliment one another, while in fact they are often in habitual and gridlocked conflict.

Copyright law is not a right of "Eminent Domain" nor is it a codification of a "human right". "It is simply a legislative recognition of the belief that creative people create all of societies benefits, and creative people will create more if there is an incentive for them to continue to create" (Smith, 1991, p. 6). When authors and other creative people are encouraged to create for the good of the public domain, then and only then are the objectives of the copyright laws met.

POD Systems and Copyright Law

Virtually every professional in this country is involved in the reproduction of copyrighted material. Recent changes to the regulations

and to the copyright law, including America's decision to become a signatory to the European Berne Convention, have eliminated the need for prior registration of material in order to qualify for protection of works under the present copyright law (Smith, 1991). The only exceptions to this rule are those works whose copyrights have expired or material owned by the US Government because it is excluded by Section 10 from copyright law protection (Copyright Act, 1976). At the present time copyrights with automatic extensions may legally last until 50 years after the death of the author or creator.

Since most professionals copy or reproduce for academic purposes and since most of that material is used directly in the classroom or for research, some of the materials may be used with permission and some may be used without permission under the provisions of the fair use doctrine. Because of the gray areas caused by the fair use doctrine, most business persons and educators don't really know when or whether they are in compliance with copyright regulations. This ambiguity is usually caused because the user doesn't understand the fair use doctrine and does not understand whether or not the system that he/she is using is a fixed format instrument (Hall, 1992).

Helms (1986) believes that educators are vaguely aware of restrictions on copying or reproducing anything for the classroom. It is believed that educators may duplicate one copy of any work for each student in a course as long as they meet three tests: 1) the brevity test; 2) the spontaneity test; and 3) the cumulative effect test. Again, the gray area appears in all of these tests and will be explained in this research.

Through the use of many task force articles on copyright issues, this research instrument will explain the when and by what means copyrighted materials may be used by business and educators. It will also categorize reproduction systems and equipment and list guidelines as to when and how copyrighted material may be reproduced on POD's, computers, copiers, duplicators, videotapes, audio tapes, CD's, TV's, and other reproduction devices. (Copyright Act, Article 107 & 108, 1976).

Legal/Historical Case Studies on Copyright and Fair Use

The following case studies and articles relating to copyright case law and fair use will be used in order to present a legal and historical narrative that will cover both the arguments of the courts and those of the end-users.

- 1) Basic Books v. Kinko's Graphics Corporation (1989) On March 28, 1991. Judge Constance Motley's ruling lists many of Kinko's defense claims, item by item, and rejects almost every argument. She ruled against the fair use claim on every defense item listed concerning course packet reproduction.
- 2) Fisher, W.W., Harvard Law Review, "Reconstructing The Fair Use Doctrine". This article examines the "fair use" doctrine and points to what Mr. Fisher considers to be its defects and then goes on to consider "fair use from an economic perspective and as a social tool.
- 3) Dratler, Jay. University of Miami Law Review, "Distilling the Witches' Brew of Fair Use in Copyright Law".

This study evaluates two Supreme Court cases involving fair use, The Sony Case (1982) and Harper and Row v. Nation Enterprises (1985). Mr. Dratler criticizes the court's decisions in both cases, arguing that the court ignored

section 107 of the Copyright Law. He thinks that lower courts are doing a better job than the Supreme Court in deciding the intent of the Copyright Law.

4) Leval, Pierre N. Harvard Law Review. "Toward a Fair Use Standard". Judge Leval is a jurist in the same district as where the Kinko's case was heard. He has heard two famous cases involving fair use, both of which were over turned by the Court of Appeals. This is his attempt to define the issues and propose some methods that other judges could use in determining whether or not a use is fair.

5) Weinreb, Lloyd L. Harvard Law Review. "Fair's Fair: A Comment on the Fair Use Doctrine". This is a good general article on fair use with some personal proposals of his own, and a companion article to Judge Leval's article.

6) Anonymous, Harvard Law Review. "Clarifying the Copyright Misuse Defense: The Role of Antitrust Standards and First Amendment Values". Written in April of 1991, this is a recent discussion of the defense of copyright misuse linked to a charge of infringement. This is the only article to date that links these two concepts of copyright infringement and misuse.

7) Case law involving photocopying:

a) Addison-Wesley Publications v. New York University
(1982)

b) Harper & Row v. American Cyanamid Company (1981)

c) Harper & Row v. Squibb Corporation (1982)

d) Basic Books v. Gnomon Corporation (1980)

e) Basic Books v. Kinko's Graphics Corporation (1989)

f) Basic Books v. Michigan Copy Center (1992)

8) Case law involving computer programs:

a) Apple Corporation v. Franklin Computer Corporation
(1983)

b) Apple Corporation v. Formula International, Inc. (1983)

Limitations

This research study, for the greater part, deals with the application of copyright law as it applies to both business and education. A later chapter will deal with the distinct differences of copyright law as it applies to education versus business applications. This paper is not intended to be used as a guide for adherence to copyright law. It is intended to bring to the attention of POD users the distinct gray areas in fair use that need to be considered and acted upon by both the Courts and the Congress of the United States. It is written to warn the end-user of the dangers he/she face upon the copyright path that will eventually lead to the promised digital information superhighway.

Definitions of Terms

All definitions of terms are defined in an appendix (see Appendix A) to this dissertation.

Summary

Since technological advancements have made it so quick and easy to copy or reproduce copyrighted material, end-users have a very necessary and special need to educate themselves concerning copyright law and the fair use doctrine. Does the duplication of materials substitute for the use or purchase of the original material in such a way that it may cause harm to the

copyright holder? Is the material in question actually protected under the copyright laws? These are just two questions that an end user must answer ethically and legally before duplicating any works.

In the past, a lack of specific information has been a factor in the copyright violations involving educational and business institutions. AAP has made it clear that they now believe that there is enough information available on copyright issues and that they intend to litigate educators as they would any business, if violations are considered deliberate. By deliberate AAP means noncompliance, not willful noncompliance, just noncompliance. This simply means that the user can not expect mercy from the AAP or the courts because of gray areas in fair use nor can he/she plead ignorance as a defense. Copyright law places restraints upon teaching and research for educators and other professionals, but laws can be changed and are not immutable. Professional users may work with the Congress to modify these laws, however until the laws are changed, they must recognize and observe the legal requirements of the copyright laws. This paper is being designed to help professional end-users understand fair use and the copyright laws in order that he/she may make quick, safe, and satisfying decisions regarding compliance.

Chapter Outline

Chapter I is an introduction to the study and identifies the research problem, the importance of the study, its purposes, procedures, review of literature and limitations.

Chapter II introduces the concept of intellectual property, copyright, "fair use", and work-for-hire within the scope of the 1976 Copyright Law.

Chapter III looks at the historical development of copyright law and traces the origins from the first recorded copyright/legend through the "Statute of Anne" and the development of the US Copyright Statute of 1790.

Chapter IV discusses the Copyright Act of 1976 and the stigma of digitization that has led to confusion, an abundance of litigation, and compromise.

Chapter V investigates the growth of digital imaging techniques through scenarios that demonstrates the problems that this age of digital technology has forced upon the US Copyright Laws.

Chapter VI explores fair use in copyright and its restrictions upon new technology and POD.

Chapter VII reviews judicial interpretations and rulings based on the Copyright Act of 1976. Actual case law is presented and explored.

Chapter VIII discusses the implications of compliance factors regarding Copyright Statutes as it applies to business, education, and the individual.

Chapter IX reflects upon the development of a "Model of Rights" for POD users. Models of compliance and cooperation are developed for both the end-user and the copyright owner.

Chapter II

Intellectual Property

"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" (United States Constitution, Article I, Section 8).

This law was created for the purpose of providing an incentive for creative people to produce intellectual works for public dissemination. Only items in a fixed format fall under this law. It is not possible to copyright an unrecorded conversation or an undocumented idea.

Consequently copyright law is not a codification of a human right, instead it is a legislative recognition of the fact that when creative people create all of society benefits, and the underlying assumption is that creative people will create more if they have an incentive to create. (Smith, 1991, p. 2)

Intellectual property law is concerned with copyrights, patents, and trademarks.

A rose is a rose is a rose, but a copyright is not a patent or a trademark, even though all three terms name varieties of intellectual properties (valuable intangible properties of the imagination) which, in this country, have their origins in our Constitution. (Wilson, 1990, p. 11)

For the purposes of this study, we shall limit our explanations to copyrights, fair use, and work for hire.

Copyrights and Fair Use

Copyright is a form of protection provided by the laws of the United States (Title 17, US Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the copyrighted work in copies or phonorecords;
- To prepare derivative works based upon the copyright;
- To perform the copyrighted work publicly; and
- To display the copyrighted work publicly (Copyright Office, Circular 1 1992).

Copyright law has become known as "a system of protection for the intellectual arts" (Kitch & Perlman, 1979, p. 20), however "the origins of copyright are extremely monopolistic and exclusionary in nature" (Spiegel, 1990, p. 30). "Copyright (from the Latin word copia, plenty) means, in general, the right to copy, to make plenty" (Bowker, 1912, p. 1); therefore, it is no surprise that the development of copyright was conceptualized within the printing trade for protective, exclusionary, and monopolistic reasons (Spiegel, 1991).

"Copyright is like a deed to the rights of an intellectual property" (Wilson, 1990, p. 13). It is that portion of federal law that protects intellectual property from piracy by others who wish to prosper from the work of the author, artist, or creator. It is illegal for anyone to violate any of

the rights provided by the Act to the owner of the copyright. These rights are not unlimited in scope, Sections 107 through 119 of the Copyright Act establish limitations of these rights:

- Section 107. Fair use;
- Section 108. Reproduction by libraries and archives;
- Section 109. Effect of transfer of particular copy or phonorecord;
- Section 110. Exemption of certain performances and displays;
- Section 111. Secondary transmissions;
- Section 112. Ephemeral recordings;
- Section 113. Scope of exclusive rights in pictorial, graphic, and sculptural works;
- Section 114. Scope of exclusive rights in sound recordings;
- Section 115. Scope of exclusive rights in non-dramatic musical works;
- Section 116. #2 exclusive rights in non-dramatic musical works;
- Section 116A. Negotiated license for public coin-operated phonoplayers;
- Section 117. Limitations on exclusive rights: Computer programs;
- Section 118. Use of works in non commercial broadcasting;
- Section 119. Secondary transmissions of superstations for home viewing.

(Copyright Act, 1976)

Two great express trains, called copyright and fair use, are speeding to take advantage of a single piece of track that is digital information. Unless there is substantial rethinking of the definitions and assumptions of fair use and of copyright law, a mighty collision lies ahead, featuring scholarly writers and publishers especially. Indeed,

the disruption could be so severe that it might not be reparable short of completely rewriting our copyright law. (Hilts, 1992, p. 35)

Technology, new educational philosophies, and the need to expose the public, students, to a rapidly growing database of knowledge have combined to create an ever-growing concern for the use of materials that are copyrighted. Universities and educators are caught in a great dilemma: a) they must adhere to the copyright laws, and b) they have to use all available resources in order to teach in an ever changing society that is involved in a vast age of information (see Appendixes B and D). Publishers are involved in producing and protecting their copyrights and litigating in order to define those rights.

Since the 1976 Copyright Law was passed and implemented in 1978, the issue of copyright compliance has been a recurring dilemma for universities and copy centers. In order to furnish their customers, students and educators, with the information they need in order to teach and learn, many information suppliers, copy centers and educators, are torn between compliance with a law that is open to many interpretations and the Association of American Publishers, AAP, who seem to delight in both criminal and civil litigation.

The publishers and owners of copyright material position their stance on three basic assertions: 1) a right to make a profit from literary creations, 2) copying is unethical, and 3) it is their legal responsibility to protect their copyrights (Clark, 1985). Publishers and owners do not take issue with the fact that the Constitutional copyright clause addresses the promotion of the arts and sciences before it addresses the rights of the

authors/owners. They do dispute any and all interpretations of the purpose of the clause which is to stimulate the development of original works. Under the current Copyright Law, the owner of a copyright has five exclusive rights: 1) to prepare copies of the work, 2) to prepare derivatives, 3) to distribute copies of the work, 4) to perform the work, and 5) to display the work. The AAP would like everyone and anyone who violates any or all of these five exclusive rights, without express authorization, to be considered guilty of copyright infringement automatically by the courts. This would set a critical precedence and literally take copyright law back to the middle ages concept of the "Stationers Company". After all, the 1976 Copyright Law did include a fair use doctrine (Copyright Office, Circular 2, 1993).

Fair use is an exception to the copyright rights of a copyright holder. The doctrine allows persons other than the copyright holder to make limited use of a protected work without requiring permission from the copyright holder (Seeligson, 1991). As an example, in most cases, a book or movie reviewer may quote small portions of a copyrighted book or film without the permission of the copyright owner. In a different scenario, a researcher or scholar may quote small parts of another's academic work in writing a scholarly article or in other literary works without the permission of the owner.

In the Copyright Act of 1976, Congress defined fair use in its entirety as follows:

Notwithstanding the provisions of Section 106, 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 with the copyrighted work as a whole;
- 4) the effect of the use upon the potential market for or value of the copyrighted work. (p. 13).

All courts and their judges are suppose to apply these four factors when deciding whether a particular reproduction constitutes fair use. Congress implied that all four factors were equal in importance; however in Harper & Row v. Nation Enterprise (1985), the court ruled that the "market effect" factor was ...

undoubtedly the single most important element of fair use. This one court ruling has, in effect, changed the Copyright Law of the US. The final effect of the fair use portion of the Copyright Act is to allow the courts to apply the doctrine of fair use on a case-by-case basis. (Seeligson, 1991, p. 8)

Work-for-hire

Section 101 of the 1976 Copyright Act provides that a work made for hire, work-for-hire, (sometimes referred to as rights-to-work) is "a work prepared by an employee within the scope of his/her employment" (p. 8).

Intellectual works developed under work-for-hire are considered to be authored by the employer and so the employer, not the employee-creator, owns the copyright in its entirety. Does this work-for-hire doctrine apply to academia in creating intellectual property that is copyrightable, and do faculty members employed by universities by-pass this statute?

A business professor writes a popular and scholarly textbook on the principles of management. A professor of education creates a software program that helps students understand the basics of instructional technology. A professor of art creates a clay sculpture in a campus studio. All of these creative endeavors are copyrightable. However, are they copyrightable by the faculty member as the creator of the intellectual property or are they considered as works-for-hire that are owned by the university?

Even though this question would be deemed as ludicrous and offensive by most faculty members:

the fact that universities have previously been uninterested in the copyrights of professors' scholarly writings should not lull faculties into a false sense of security. No cases decided under the 1976 Act have wrestled with the work-for-hire question in the university setting. And yet, it only takes the assertion of one university to open the floodgates. (Rome, 1988, p. 55)

The importance of intellectual property has not gone unnoticed by colleges and universities. This is indicated by the results of a study conducted by Society of University Patent Administrators (SUPA) (Erbish, 1985). Of those surveyed, 97% of universities had a patent policy intact and 69% had a copyright policy in effect. Although "universities have previously been uninterested in the copyrights of professors literary/art/music works," (Rome, 1988, p. 67) it is an area that will draw more attention as the financial stakes become more apparent. This actually parallels the financial interest in patents by educational institutions:

Historically, academic investigators had disdained the patenting of research results on the grounds that they were paid to disseminate knowledge to the public. By 1980, however, as the magnitude of government support diminished in response to changed economic conditions and the value of endowments in real dollars continued to shrink, university administrators found it increasingly difficult to fund research by traditional means. The patenting of research results afforded universities a self-help opportunity to share in the profits that industry reaped from the works of their faculty and staff-sometimes with spectacular results-while contributing to a nationwide drive for greater competitiveness on international markets. (Reichman, 1989, p. 644)

As an example, Stanford University has a copyright policy where "the university assumes ownership of software, and then shares royalties on an equal basis with the inventor, his/her department, and his/her school" (Lauren, 1985, p. 35). The administration and the faculty member view this

policy in different perspectives. The Graduate School Dean stated that, "I've heard very little flak from the faculty over this new policy. I believe that they are satisfied" (Lawren, 1985 p. 35). A faculty member in the Computer Science Department of Stanford stated, "I don't know anyone at Stanford, who works with software, who thinks the policy is anything but a disaster" (Lawren, 1985, p. 35).

The initial focus of the work-for-hire dispute at universities is on the financially lucrative area of computer software, however the focus could change and apply its concept to all copyright materials as part of a comprehensive intellectual properties policy. The law of property is of mammoth proportions and involves more than just intellectual properties [Figure 1]. Only by understanding the history, the legal provisions, and judicial rulings, as well as the unique culture and politics within the universities, may policies be developed for the universities to shift from non-ownership positions to ownership positions concerning claims for works developed by the faculty.

The history of copyright is covered under chapter 3 of this paper. Legal issues have been plentiful and cases have multiplied in numbers. The 1909 Copyright Act was very ambiguous when it came to intellectual property law and required a great deal of judicial interpretation as it does today in the 1990's. Several of these cases established that corporations could be the authors and owners of works prepared by their employees through work-for-hire even though the corporations were not capable of intellectual effort nor the actual authors of the work in question as depicted and adjudged by the following court cases:

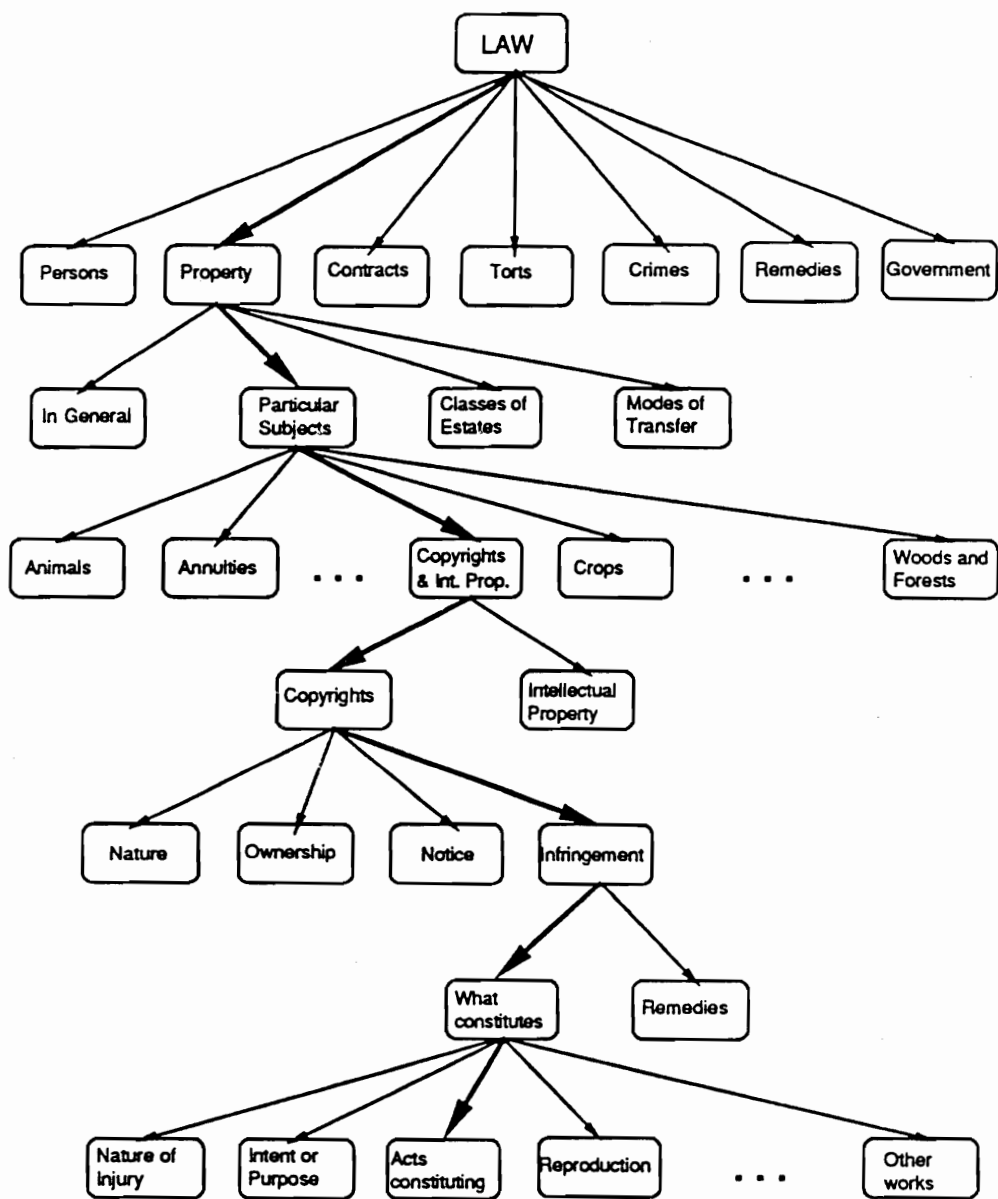


Figure 1: The Roots of Copyright Law

- 1) Gaumont Co. v. Hatch (1913)
- 2) Yale University Press v. Row, Peterson & Co. (1930)
- 3) Vitaphone Corporation v. Hutchinson Amusement Co (1939)
- 4) Dan Kasoff, Inc. v. Palmer Jewelry Mfg. Co. (1959)
- 5) Tobani v. Carl Fischer, Inc. (1938)...was important in that it asked

the court to interpret three conflicting statements:

the argument that section 24 cannot be the basis upon which to grant a right of renewal to an employer for hire makes ineffectual the mandate of section 62 which clearly provides that it is applicable to the entire act. In the face of this clear provision, it cannot be argued that an employee for hire is an author under some provisions of the act while not under others. (p. 60)

- 6) Shapiro, Bernstein & Co. v. Bryan (1941)...this ruling concurred

Number 5:

The simplest meaning of the words is that when an employer has become the proprietor of the original copyright because it was made by an employee for hire, the right of a renewal goes with it unlike an assignment. (p. 700)

- 7) Lin-Brook Builders v. Gertler (1965)...Ninth Circuit Court decided:

we believe that when one person engages another, whether as an employee or as an independent contractor, to produce a work of an artistic nature, that in the absence of an express contractual reservation of the copyright in the artist, the presumption arises that the mutual intent of the parties is that the title to the copyright shall

be in the person at whose instance and expense the work is done. (p. 300)

These rulings etched-in-stone that the employer owns the copyright if there is no other previous agreement in force at the time of the intellectual property's creation.

In Murray v. Gelderman (1977), the Fifth Circuit Court noted that it had not been called upon to apply the doctrine of work-for-hire on a previous occasion, nevertheless found the "general principles" to be "fairly clear". The courts overview of the factors to be considered in designing a work-for-hire are a summation of the factors test which had been developed under the Copyright Act of 1909:

Whether the work was created at the employers insistence and expense or, in other words, whether the motivating factor in producing the work was the employer who induced its creation... whether the employer had the right to direct and supervise the manner in which the work was being performed... Actual exercise of that right is not controlling, and copyright is vested in the employer who has no intention in overseeing the detailed activity of any employee hired for the very purpose of producing the material...the nature and amount of compensation or the absence of any payment for the work may be considered but are of minor importance. (p. 775)

All the cases litigated under the Copyright Act of 1909 eventually led to an agreement in general principle that guided the doctrine concerning works-for-hire:

...all rights to a work produced by an employee within the scope of his employment vest in the employer...the basic rationale for this ruling is that the work is produced under the employer's direction and at his expense. Consequently, since he bears the risks he ought to be entitled to reap the benefits. (Cambridge Research Institute, 1973, p. 101)

As can be seen from the previous court cases, the principle involved in work-for-hire was not definitive nor was it binding until many years of judicial decisions made it so. The new Copyright Act of 1976 only filled the void from where the old copyright laws left us with a multitude of litigation's. In 1984, however, the Court of Appeals for the Second Circuit decided a case, Aldon Accessories, Ltd. v. Spiegel, Incorporated (1984), that turned section 101 of the Copyright Act on its head. "The court's interpretation...enlarged the possible areas of dispute and made it much more difficult for any party to be certain whether a particular work is a work made for hire" (Hamilton, 1987, p. 1293).

A work for hire is a work prepared by what the law calls an employee working within the scope of his employment. What that means is, a person acting under the direction and supervision of the hiring author's instance and expense. It does not matter whether the for-hire creator is an employee in the sense of having a job with the hiring author. What matters is whether the hiring author caused the work to be made and exercised the right to direct and supervise the creation. (Copyright Act, 1976, p. 8) (Copyright Office, Circular 9, 1991)

The court had decided that an independent contractor was not defined as an employee and therefore maintained the right of authorship.

Trademarks and Patents

"A trademark is a singular name or image that identifies a product or a family of products" (Whitmer, 1994, p. 68). Trademark protection simply means that a competitor is prevented from using a similar mark in order to market and sell its products. (Copyright Office, Circular 13, 1991)

"Patents are granted for inventions or discoveries of processes that are demonstrably both new and non obvious" (Whitmer, 1994, p. 69). The Supreme Court has ruled that real and pure mathematical algorithms are not patentable, however in the case of software the court declares that the ideas that the algorithms express can be patented. For example:

Adobe has a patent for a method of displaying and printing multitone images derived from gray scaled images, such as duotones of black and white continuous tone photos in photoshop. Adobe is open to licensing the product, but it doesn't have to. Unlike copyrights, a patent infringer can be held liable even if the offender had no prior knowledge of the existence or nature of the patent in question.

(Whitmer, 1994, p. 70)

The approval process for patents may take several years , up to 20 or more. Software may be defined in terms of method patent, which allows a life of 17 years from the application date.

The only reason that patents are mentioned in this paper is to expand upon the fact that some software manufacturers and vendors are treating software as an invention rather than an expression of an idea, copyright, and

are seeking protection through the PTO, Patent and Trademark Office rather than through the Copyright Office. The reasoning is that the inventor is protected from infringement at the time the patent is applied for , rather than when it is approved, and the infringer does not have to have prior knowledge of the existence or of the nature of the invention in order to be prosecuted by the patent holder.

Chapter III

The Historical Development of Copyright Law

In order to understand the significance of the US Copyright Law, the historical development of copyrights from early times, first century BC., through the 1992 Copyright Amendments Act, Title 17 of the US Code of Copyright Law must be considered. The purposes of this historical exploration is to highlight those historical events that have had significance in the long developmental period of US Copyright Law and to give the reader a firm basis in understanding why copyright laws are so complex and contain so many gray areas.

The Greeks became interested in "literary works accumulation," libraries, during the first century BC. In the city of Alexandria, the center of Greek culture, large libraries were built and filled to capacity by original literary treasures as well as copied works. The Greeks had a large number of scribes who were always in the production of copying original books and other literary works for these new information centers. However, the vast Greek accumulation of literary treasures came to an end in the year 642 AD. when the Moslems overran the Greeks and conquered Alexandria. Not only did the Moslems conquer Greece, but they also destroyed the libraries including the vast collection of literary and artistic treasures that had taken hundreds of years to accumulate (Wittenberg, 1978).

According to legend, around the same time the Greeks were accumulating their vast literary treasures, Saint Columba had a scribe reproduce a copy of Psalter by the author Finnian. Upon the complaint of

the author to the court of King Diarmed, this first copyright complaint was settled by the proclamation: "to every cow her calf, and accordingly to every book its copy" (Wittenburg, 1957, p. 18). This was the first recorded decision/legend, 567 AD., resembling any type of protection for literary authors and their works.

The invention of ways to reproduce literary works in mass at economical prices goes back in history prior to the invention of the printing press. First Greek and later Roman libraries grew out of an interest in learning. Many books and scrolls were distributed throughout both empires. In Rome, Atticus actually trained large numbers of slaves to take dictation. In a Roman revival of learning and prosperity, both public and private libraries were in a utopian period of growth and needed every book and literary work that could possibly be obtained, original works or copied works. It is said that Atticus had over one thousand slaves trained as scribes in order that he could reproduce over one thousand copies of a small book of poems in a single day (Wittenburg, 1957). The production mode of this Roman publishing and printing empire was quite simple; one slave would read a pirated literary work aloud while hundreds or, in many cases, thousands of literate slaves would simply copy/scribe the book as it was being read (Clark, 1985). These Roman and Greek publishing houses were quite effective as production facilities, however the grammar and spelling were often-times another matter for concern, especially those books that had to be translated from one language to another. The copying of literary works was so popular in Rome that wealthy householders also engaged in copying original works for their personal libraries, again by using the

talents of their learned slaves (Wittenberg, 1978). These wealthy Romans had both reading and writing slaves. The reading slaves were used much as we use tape recorders in today's society. The reading slaves were simply an instrument that allowed their masters to listen to books for their leisure and pleasures without the "hassle" of having to cast their eyes upon the pages of the literary work. In some cases, the master was illiterate and hid the fact from his associates by using a "learned slave" as a trusted and rewarded partner (Wittenberg, 1957).

During and after the decline of Rome, the church became involved in reproducing and copying books. Starting around the year 500 AD., these religious organizations remained in control of copying literary works throughout the majority of the following seven centuries. Monks became the literary reproduction units as they worked in the scriptoriums of the monasteries to copy books that were used principally within the church. Throughout the middle ages, there were very few lay writers and a very limited number of literary works were achieved.

After the arrival of the new learning centers, universities, in the twelfth and thirteenth centuries, laymen were once again in charge of copying books and other literary works. Wholesale copying of anything readable that would yield a profit was reproduced, usually with slave-like labor. The universities and the monasteries co-existed and some new works did appear. University scribes were paid, but they were paid for copying not for producing original ideas in their writings. Much like the monasteries, the universities were under the control of the church and the influence of church ideals were smothering new literary works. However,

non-church scribes were entering the field of writing and soon a black-market trade in manuscripts was built in a new, slow, and positive direction.

Throughout these hundreds of years, not a single law protected the interests of the author/artist. Before the printing press was invented, Paris had more than ten thousand human-copiers employed in reproducing manuscripts and other literary works. All of these books were being duplicated without the consent or payment to the original authors (Wittenberg, 1957).

Marmontel in his memoirs tells of an interview with Bassompierre, a bookseller of Liege. The bookseller had done a right good business in selling Marmontels works. So much so, that when the author visited his town, the bookseller called upon him to thank him for the services he had rendered the community. Marmontel wanted more than praise; he was angry. "What," he cried. "You first rob me of the fruits of my labors, and then have the effrontery to come and brag about it under my nose!" The bookseller was amazed; he had never given a thought to an author's right to share in the proceeds.

"Monsieur," he said, "you forget Liege is a free country and we have nothing to do with you and your privileges". (Wittenberg, 1978, p. 6)

Throughout these early times, there was no law to protect the interest of the author/artist. The real value was presumed to be in the worth of the paper stock and in the production modes and distribution outlets for the work, not in the ideas nor in the minds of expendable people. The physical qualities of the work far out shadowed the human genius that brought life to the literary work or art form. After all, the paper that the ideas were printed

upon lasted longer than that of the life of its creator, the generator of the ideas. As manuscripts and other literary endeavors became more popular and reproduction techniques more prevalent, authors became aware of the value of their trade and protested the duplicating of their ideas. Rights of literary property remained legally unprotected until the fifteenth century, when the introduction of the printing press to Europe made the rewards of publishing or plagiarism far greater than ever before (Bugbee, 1967).

In 1467, the art or craft of printing was promoted in the city of Venice. Printing licenses that in effect produced printing monopolies were awarded by government officials. These printing monopolies were called "privilegii". This "privilegii" was granted as a right of the state on the theory of eminent domain and the governing bodies right to hold a monopoly on printed properties. Once again, the authors rights were overlooked and considered as insignificant by-products of the printing trade in general (Putnam, 1885).

In 1486, the rights of authors were finally considered when the Venetian government allowed an author, Marc Antonio Sabellico, the right to control his original literary publication, Decades rerum Venetarum (Bugbee, 1967). Sabellico was the first author to gain copyright protection for his work. Over the next five year period, several other authors were granted copyright protection in Venice. In 1491, Peter of Ravenna, a publicist, gained exclusive copyright protection for both he and the publisher of his choice to print and distribute his literary endeavor, Phoenix (Putnam, 1885).

In spite of the copyrights that had been created, Venetian publishers frequently printed the works of authors without their consent and sometimes in the face of their protest. In 1544-45, the Council of Ten, seeking to protect authors issued a decree that prohibited the printing of any work without the written permission of the author or his heirs. Otherwise protected books that had been copied would be seized and burned. The infringer would be imprisoned for one month... This was the first generalized copyright law recorded in history. (Bugbee, 1967, p. 46)

After the Council of Ten issued its copyrights ruling, other countries enacted similar copyright legislation within their own laws. In France under the reign of Louis XII, the ruling body outlawed the use of letters of the king in any unauthorized publications (Putnam, 1885). Authors in England did no better than authors in other countries when it came to copyright law. The Church, Parliament, the Crown, and the Courts influenced all trade concerns and copyright was no different. They legislated by the rule of "how empty will this make our coffers," not by human rights nor for the good of the citizenry. Germany, however, issued protection in 1501 for the literary works of a nun who had been dead for 600 years (Putnam, 1885). The copyright gray area had begun.

The introduction of the printing press in England coincided with two other great historical events, namely the Renaissance and the Reformation. The Renaissance changed the attitudes of both the European and English society toward literacy, learning, books, and teaching. It became fashionable for the powerful and the "well heeled" to become educated.

Until this time in history, it was with pride that the rich and powerful, even the kings of England, would boast that they were unable to read or write. The Reformation contributed to the literacy of this age because the ability to read scripture was thought to be necessary for the salvation of the soul. Throughout the sixteenth and seventeenth centuries there was a considerable increase in the literacy of the citizens of England and a large market for books and other literary works (Bugbee, 1967).

William Caxton, the first English printer, set up a printing business in Westminster in 1478. Caxton formed a brotherhood of booksellers called the Craft of Stationers. This brotherhood and the printing business was obviously of great concern to the crown and to the church. This new printing press and the brotherhood threatened both the control of literary works reproduction and the stability of income derived from the Crown's business of copying books. For the first time in history, people of modest means could afford access to printed works. The Crown, prodded by the church, could no longer tolerate the unchecked distribution of heretical and treasonous copies of their writings. This printing mechanism threatened the Crown's stability and control, so the Crown chose to grant privileges by the control factor of granting licenses to both the press and the printer through the issuance of a proclamation by Richard III in 1484. The powerful recognized the potential benefits of this new printing technology and the potential monetary increase to its own coffers by advertising their own viewpoint through the use of print. This group was also instrumental in convincing King Richard III of the broader social gains of allowing

increased access to writings. Because of this pressure, Richard III allowed the importation of books by declaring that:

Any artificer, or merchant stranger, of what nation or country he be, for bringing into this realm, or selling by retail or otherwise, any books written or printed, or for inhabiting within this said realm for the same intent, or any scrivener, alluminor, reader, or printer of such books. (Wittenberg. 1978, p. 11)

Because of this import ruling, many printers went out of business, bankrupt, and only the socially elite with foreign interest profited. In economic terms, supply far outweighed demand for literary materials.

During the Reformation period, prohibitions against importing books gained importance as printer's guilds pressured the Crown to repeal the importation ruling. In 1553, responding from these pressures, Henry VIII enacted a ruling that legislated stoppage in the importing of books and literary works and reversed the policy of Richard III, fifty years after its introduction. This ruling provided that: "no persons, residents or inhabitant, within this realm shall buy to sell again any printed books brought from any parts out of the King's obeisance ready bound in boards, leather or parchment" (Wittenberg, 1978, p. 11). Henry VIII attempted to control the printing trade throughout his reign. In the year 1538, the first print privilege was granted to Richard Pace by the sovereign for a sermon written in Latin. In 1546, Henry VIII proclaimed his last effort at controlling the press by legislating that:

no printer do print any manner of englishe boke, balet or plays, but he put in his name to the same, with the name of thautour, and daye of

the printe, and shall presente the fyrst copye to the mayre of the towne where he dwelleth ... (Patterson, 1968, p. 25)

This proclamation was the beginning of a period of censorship that would last until 1694 and could have lasted longer had it not been for a statute of Parliament that gave Edward VI the power to repeal all acts dealing with religion (Patterson, 1968). Printing in England was free for a few short years.

Under the Tudor regime of Queen Elizabeth, England once again came under a very stringent system of licensing the press. Nothing could be printed without the express consent of the crown officials who were appointed for no other purpose than to police and control the printing facilities in England. Any individual's literary work had to be approved and also licensed by the crown and a member of the ecclesiastic prior to any printing arrangement.

The use of English censorship took on a new and even harsher meaning under the reign of Queen Mary, the Catholic. She forced upon the people of England the Spanish King Philip, her husband. Because of her ties with the Catholic church, she became concerned with the printing of Protestant books and tried to force her religion upon the nation through the use of censorship especially upon Protestant publications. Mary's priorities were reflective in the chronology of her statutes: first, she declared her birth legitimate and secondly, she declared that all importation of books were to be Catholic publications. "The adjectives 'heretical' and 'seditious' appeared repeatedly throughout her orders until the eighteenth century" (Blagden, 1960, pp. 29-30). This early harsh censorship based primarily

upon Protestant works was in fact an early stimuli for the development of copyright laws.

The most historically significant act of Queen Mary's reign occurred on May 4, 1557. On this date Mary relinquished royal censorship in favor of granting a monopoly, a Charter of Incorporation, to the Company of Stationers (Blagden, 1960). The Stationers were a controlled group of printers and publishers that were organized by Caxton eighty years earlier, to whom the government gave a monopoly in printing books within England. In retrospect, this act was the most important event in Anglo-American copyright history. It proclaimed that only the Stationers had the legal right to produce and print books. The stationers membership role varied but usually stayed in the average range of ninety-seven members, all of whom were residents of London. The stationers were authorized to search houses, businesses, and even seize unauthorized literary works. The average citizen or non-member of the stationers could be imprisoned for unauthorized possession of printed materials or for resisting a search for unauthorized books. The preamble to the Stationers Charter stated that:

The King and Queen, wishing to provide a suitable remedy against thr seditious and heretical books which were daily printed and published, give certain privileges to their beloved and faithful lieges, the ninety-seven stationers, in addition to the normal rights of company. (Blagden, 1960, p. 30)

Because the suppression of Protestant books were of benefit to the Catholic King and Queen, the stationers were instrumental in bargaining authors out of proprietary lucrative contracts and in price-fixing for their

benefit. Since the Crown could only authorize the publications of the stationers, the economic interest of both the Crown and the Stationers became one and censorship was the Crown's way of increasing the size of its treasury. The only exceptions to the control of the Stationers were the printing presses owned by universities that, in turn, were controlled by the ecclesiastics.

This control of the press by the Stationers only remotely resembled copyright as we understand it today; however this stern censorship carried the seeds of copyright. "Centuries later, in Holmes v. Hurst, the US Supreme Court declared that, The Stationers Company was particularly ruthless and exercised the power of search, confiscation, and imprisonment without interruption from Parliament" (Wittenberg, 1978, pp. 14-15).

The Company of Stationers reached its peak of authority with the decree of 1637 as proclaimed by the Star Chamber, officially known as The Lords of the Council Sitting in the Star Chamber. It stated once again that the purpose of the Stationers was to prohibit "seditious, scismaticall, or offensive Bookes or Pamphlets, to the scandal of Religion, or the Church, or the Government" (Wittenberg, 1957, p 16) and made it unlawful to set-up or run a press. Those who disobeyed this proclamation were to be "set in the Pillorie, and whipt through the Citie of London, and suffer such other punishment, as this Court shall Order..." (Wittenberg, 1957, p. 18). With the abolition of the Courts of the Star Chamber in 1641, the Company of Stationers lost the majority of its power and authority (Blagden, 1960). The Stationers monopoly was maintained through a multitude of licensing acts

that was passed by Parliament after 1649 and extended until after the Restoration. The last of these acts of licensing expired in the year 1694.

The origins of copyright was not to have its beginnings in the broad workings of English law but in the rather self-serving regulations of the Company of Stationers. These copyrights started in a very modest way in which a limited number, 20, of master printers worked out a system that would decide who should have the right to print a given book. The system they devised was very simple. When a printer acquired a manuscript from an author that he intended to print, he would register the title of the book on the register of the Stationers Company in the Guildhall of London. If no other member had registered the title, the member/printer making the entry would be recognized as having the exclusive right of printing and subsequent reprinting of that book in England forever. This was known by the Stationers as their right to copy (Wittenberg, 1957).

One of the main reasons for the descent of the Star Chamber was the public defense of John Milton, who wrote and published, The Doctrine and Discipline of Divorce; Restored to the good of both Sexes, from the Bondage of Canon Law, and Other Mistakes. Milton published this literary document without obtaining a license. A complaint was filed against Milton and the litigation was brought before the House of Lords in 1644. During the litigation, Milton presented an eloquent defense for freedom of the press and the freedom of authors to write. Areopagitica: a Speech of John Milton's for the Liberty of Unlicensed Printing to the Parliament of England was an unlicensed publication of Milton that was printed in 1644. Milton's pamphlet was so moving that Parliament refused to punish a man

of such genius. From this lack of litigation, Milton had legal grounds to publish again. Without the Star Chambers approval, he created the masterpiece, Paradise Lost, and he entered into a contractual agreement with Samual Simmons, printer, to publish the book for profit. Milton had set the stage for authors to legally write and publish their works. Milton, however, did not realize this fact and would not have agreed with the conclusions drawn from this litigation (Clark, 1985).

Even though Milton is given much credit for setting the stage for free authorship, he does not deserve as much credit as is usually bestowed upon him. The degree of Milton's devotion to the principles of the free press is very often overstated. He did not advocate that people should be able to publish whatever they wished; in fact, in the Areopagitica of 1644 Milton stated, "Those who otherwise come forth" (other than from the established and legal printeries) "if they be found mischievous, the fire and the executioner will be the timeliest and most effectual remedy that man's prevention can use". Milton actually advocated executing those free-willed authors who lacked the crown's permission to publish (Clark, 1985)..

John Locke wrote Two Treatises on Civil Government in 1690. Locke postulated the theory that an intellectual property right is a personal right of the author. His theory stated that an author's rights were not created by the law of man but rather by the legal consciousness of man. His theory stipulated that copyright was a right growing out of natural law and could not possibly be condemned by man (Ploman & Clark, 1980).

At the turn of the century, 1700, John Locke's argument gained a following in England. The publishing houses found themselves in chaos.

Members of the Company of Stationers had lost their monopoly, and it had been the stationers who had lobbied for the passage of statutory protection. It was at this time that the emphasis was placed upon the protection of copyrights rather than on the control of printing (Blagden, 1960). In 1710 the Parliament passed the first copyright statute, the Statute of Anne, 8 Anne, 1710. This statute declared that:

WHEREAS, printers, Booksellers and other Persons have of late frequently taken the Liberty of printing, reprinting and publishing,... without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their families: For preventing therefore such Practice for the Future, and for the Encouragement of learned Men to compose and write useful Books... (Clark, 1985, pp. 43-44)

The statute explicitly addressed the rights of authors and acted as a protective statute in regarding the rights of learned men to create, compose, and write useful books. The statute granted protection for a period of twenty-one years to authors, or their assigns, of literary works already in print. New copyrights were protected for a period of fourteen years with an additional fourteen years of protection if the author outlived the first period of copyright protection (Wittenberg, 1978).

Anyone could now copyright an original literary work. Even if the Company of Stationers refused to register the copyright in its register, a copyright could be obtained by advertising in a recognized official publication. The Statute of Anne actually limited the rights of ownership in

time, but the statute broadened those rights in regards as to whom could claim ownership.

Because of the Statute of Anne, authors had made significant progress in proclaiming copy rights to their intellectual works. However, authors still were not in a completely equal position with the booksellers. In actuality, booksellers still controlled the trade and economically retained the power over the copyrightable trade. Booksellers assumed that purchasing a copyright from the author gave them the perpetual right to the work. Not one precedent had emerged on the issue of common law copyright (Collins, 1927).

Sixty years after the statute had been passed, the common law rights issue came before the Court of King's Bench. The Seasons, a book, authored by James Thompson was purchased by Andrew Millar, bookseller, and published during the statutory term. After the first expiration of the term, Robert Taylor produced a competing edition of the same book. Millar claimed a perpetual right to the work through common law that extended past and beyond the statutory protection of time. The litigation, Millar v. Taylor was decided in 1769 and the issues of the case were presented and argued with the following decision being stated by Mr. Justice Wiles:

If the copy of the book belonged to the author, there is no doubt but that he might transfer it to the plaintiff. And if the plaintiff, by the transfer, is to become the proprietor of the copy, there is as little doubt that the defendant has done him an injury, and violated his right...But the term of years as secured by 8 Anne. c. 19, is expired. There-fore the author's title to the copy depends on two questions.

First: Whether a copy of a book, or literary composition, belongs to the author, by the common law. Second: Whether the common-law right of authors to the copies of their own works is taken away by 8 Anne. c. 19. (Patterson, 1968, p. 25)

It is important to understand that the litigation was presented in such a manner that the copyright issue had to be treated by the judges as fundamental right of the author. "The court answered the first question in the affirmative, reasoning that a man has a right to the rewards of his labors and a man has a right to protect his fame which exist both before and after publication" (Clark, 1985, p. 43). The second issue was "resolved in favor of the booksellers stating that Statutory law did not replace the common-law right, therefore, the booksellers could obtain copyright and hold it for perpetuity" (Clark, 1985, p. 43). The Statute of Anne had been circumvented and literally changed by a court of law. Thus, the gray area of copyright law continues.

In 1774, the Millar v. Taylor decision was overruled by the Donaldson v. Becket (1769) case. Donaldson was involved in the same work, The Seasons, as Millar. Donaldson had produced an unauthorized edition of The Seasons and an injunction was granted. Donaldson appealed the injunction to the House of Lords. His argument was that the authors common law right to the exclusive publishing, printing, and marketing of his work was taken away by The Statute of Anne. The counter argument was that the work was protected by common law copyright and it was protected by a clause of perpetuity.

The Donaldson case had generated a lot of confusion within the English judiciary system. The House of Lords finally decided the case after seeking advisory opinions from several English courts: The King's Bench, The Court of Common Pleas, and the Exchequer. Historically, these advisory opinions are cited but of no real consequence to the case at hand. Eleven judges answered five questions as presented to them by the House of Lords. The advisory opinions insisted that the perpetual common law right had a place in the law; however, they responded that the Statute of Anne preempted that right in favor of a limited term. This was the view that finally found its way into the American jurisprudence system through the case of Wheaton v. Peters (1834).

On the other hand, the debate that went on in the House of Lords indicated that the decision did not rest on the principle of statutory law replacing the principles of common law in the case of Donaldson v. Beckett (1769). The House of Lords ruled that no common law on copyright existed. Lord Camden eloquently argued in judicial prose that:

So little did they dream of establishing a perpetuity in their copies, that the holders of them finding no privilege, no licensing act, no Star Chamber decree to protect their claim, in the year 1708 came up to parliament in the form of petitioners,...[to] induce parliament to grant them a statutory security... Some authors are as careless about profit as others are rapacious of it; and what a situation would the public be in with regard to literature, if there were no means of compelling a second impression of a useful work... All our learning will be locked up in Tonsons and Lintons of the age, who will set what price upon it

their avarice chuses [sic] to demand, till the public become as much their slaves, as their own hackney compliers are. Glory is the reward of science; and those who deserve it scorn all meaner view. I speak not of the scribblers for bread, who tease the world with their wretched productions; fourteen years is too long a period for their perishable trash. (Lord Camden, 1708, 17 Parliament, Hist. Eng. at 1000)

Lord Effingham noted the negative impact that the common law would have on liberty of the press. Lord Lyttelton was the only jurist that argued for the common law right by urging "that the science of literature, though not tangible, was nevertheless property, and that it must receive a very sensible shock from the reverse of the decree" (Reynolds, 1991, p. 19). The vote was twenty-two to eleven to lift the injunction.

The battle, as far as the British Courts were concerned, of the booksellers and authors ended in the late 18th Century. Copyright had become an author's right and this is the interpretation that a new nation, America, would perceive copyright law in the near future.

Development of Copyright in America

If there was any copyright law in colonial America following the Revolution, no trace was left for historians to follow. In the days of colonial America, it would not be surprising if there had not been any concern about copyright law. History tells us that there were no writers guilds or any structural association for authors or booksellers in colonial America. There were very few professional writers, authors, or artist. Although there were certainly newspapers and other documents being

printed, most books were imported from England. Even the Articles of Confederation did not address the copyright issue (Bugbee, 1967).

The initial copyright movement in colonial times was begun by a group of American writers. While seeking protection for their own works, these authors went about convincing the American colonies that they would never be able to boast of her own literature until authors were protected from piracy. The authors played upon the ego and pride of the young American Colony by stating that "America would never be able to join the ranks of other great civilizations until she protected her writers and artist" (Bugbee, 1967, p. 106). Thomas Paine wrote:

The state of literature in America Must one day become a subject of legislative consideration. Hitherto it hath been a disinterested volunteer in the service of the Revolution and no man thought of profit; but when peace will give time and opportunity for study, the country will deprive itself of the honour and service of letters, and made to prevent depredation on literary property. (Bugbee 1967, p. 105)

The development of copyright in America differed greatly from that in England. The earliest legislation focused on the rights of authors and the General Court in Massachusetts enacted the first known copyright statute in America on May 15, 1672.

In ansr to the petition of John Vsher, the Court Judgeth it meete to order, & be it by this Court ordered & enacted, that no printer shall print any more coppies then are agreed & pajd for by the ouner of the

said coppie or coppies, nor shall he nor any other reprint or make sale of any of the same, without the sayd ouners consent, vpon the forfeiture and poenalty of treble the whole charges of printing, & paper, & c., of the whole quanty paid for by the ouner of the coppie, to the said ouner of the coppie, to the said owner or his assignes. (Reynolds, 1991, p. 23)

Before the Constitutional Convention in 1787 "the plight of an author under the Confederation... was similar to that of an inventor: legal security was to be had only at the price of long and expensive travel, lobbying, and multiple application" (Bugbee, 1967, p. 296). "Lobbying by Noah Webster, who was anxious to protect his spelling book, and other authors led eventually to all of the original states, except for Delaware, to pass some form of copyright law by the end of 1786" (Bugbee, 1967, p. 117).

The first of the states to enact a copyright law was Connecticut [Figure 2]. The legislation, "An Act for the Encouragement of Literature and Genius", was enacted in January, 1783. The preamble to the Connecticut Act stated that: It is perfectly agreeable to the Principles of natural Equity and Justice that every Author should be secure in receiving the Profits that may arise from the sale of his Works, and such security may encourage Men in Learning and Genius to publish their writing, which may do Honour to their Country, and Service to Mankind. (Bugbee, 1967, p. 258)

In March of 1783, a committee consisting of Hugh Williamson, Ralph Izard, and James Madison was formed to consider "the most proper means of cherishing genius and useful arts throughout the United States by securing to the authors or publishers of new books their property in such works" (National Archives, folios 113-14). This committee was instrumental in getting most states to pass their own copyright laws expediently after the Connecticut success at passage of copyright legislation. Under the Articles of Confederation, the copyright provisions of the colonial states provided limited protection for authors and a penalty for violators of the different state copyright laws. In the Federalist No. 43, James Madison declared that the states could not separately make effective provision for protection under copyright laws (Latman, 1985). The laws did "spread...the concept of securing an author's property, sole property, literary property and copyright..." "The copyright laws enacted by the colonial states during the 1780's furnished both experience and precedent upon which Federal legislation could later be erected" (Bugbee, 1967, 117). There were many state legislators among those delegates who met in Philadelphia on September 5, 1787. These delegates had a vast amount of experience in the ratification process involving various state copyright laws. The argument of intellectual property were not new to the majority of the delegates and the state models were fresh in their memories. "There was no recorded debate in the Convention...when the proposed intellectual property clause was presented, and it was approved unanimously" (Bugbee, 1967, p. 137). President Washington addressed the second session and showed his support for copyright legislation: "...Nor am I less persuaded that you will agree with

me in opinion, that there is nothing which can better deserve your patronage than the promotion of science and literature" (Bugbee, 1967, p. 137). Article 1, Section 8, Clause 8 of the United States Constitution provides that the congress shall have the power...

To promote the Progress of Science and the Useful Arts... by securing for limited Times to Authors and Inventors the Exclusive Right to their respective writings and Discoveries...To make all laws which shall be necessary and proper for carrying into Execution the Foregoing Powers"...(US Constitution, Article 1, Secion 8,)

The Constitution was ratified on September 17, 1787 and rightfully ascended as the supreme law of the new United States of America. James Madison, who spearheaded the copyright law, defended the copyright clause in the Constitution by writing: The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged in Great Britain to be a right of common law. The public good fully coincides with the claims of the individual. In 1787, Madison stated that "the states cannot separately make effective provision...[Figure 2] and most of them have anticipated the decision of this body by laws that have been passed at the instance of Congress" (Bugbee, 1967, 142). Based on the Constitutional grant of power, the first copyright act was enacted by Congress in 1790 by the "Act of May 31, 1790". Resembling the Statute of Anne except in formal details, this act granted copyright protection to books, maps, and charts (Kaplan, 1967). Statutory revisions were made in 1802, 1831, 1856, 1865, 1870, and 1874; the list of copyright items protected expanded

Connecticut - "Whereas it is perfectly agreeable to the principles of natural equity and justice, that every author should be secured in receiving the profits that may arise from the sale of his works, and such security may encourage men of learning and genius to publish their writings; which may do honour to their country and mankind."

North Carolina - "Whereas nothing is more strictly a man's own than the fruits of his study, and it is proper that men should be encouraged to pursue useful knowledge by the hope of reward; and as the security of literary property must generally tend to encourage genius, to promote useful discoveries, and to the general extension of arts and commerce: ..."

Massachusetts - "Whereas the improvement of knowledge, the progress of civilization, the public weal of the community, and the advancement of human happiness, greatly depend upon the efforts of learned and ingenious persons in the various arts and sciences: As the principal and beneficial exertions of this nature , must exist in the legal security of the fruits of their study and industry to themselves; and as such security is one of the natural rights of all men, there being no property more peculiarly a mans own than that which is produced by the labor of his mind ..." (this statute was later copied by the states of Rhode Island and New Hampshire).

Figure 2: Early State Copyright Acts

steadily, largely in response to new technologies of reproduction and communication (Kitch, 1979). By the end of 1909, historical and other prints, musical compositions, printed dramas, photographs and negatives, paintings and other fine arts were all copyrightable under the law.

The Copyright act of 1909 established major revisions and remained in effect until the most recent Act of 1976. Congress approved a new Copyright Act on October 19, 1976. This 1976 Act went into effect on January 1, 1978. The new law represented a substantial revision of the 1909 law by lengthening the term of a copyright from a maximum of fifty-six years to life of the author plus fifty years and the abolition of any renewal term. Common-law copyright was abolished for all unpublished works and the congress provided for any works fixed in any tangible means of expression, whether published or unpublished (Wittenberg, 1978). The fair user doctrine was introduced and has become a thorn in the side of those who try to interpret copyright legislation. One thing is very obvious in copyright law, as new technology increases, more gray areas occur. The laws are interpreted by the courts, who in turn change the spirit of the law to fit the present dilemma where they find themselves.

Technology and copyright are fierce adversaries. The advent of digital technology, computers, desktop publishing, and technological networking has given both business and education the ethical problem of whether knowledge should progress in the face of the limitations in copyright law. The American Association of Publishers, AAP, are the modern day equivalent of the Company of Stationers. The power of the

AAP's lobbying efforts are "thunderous" as shown in recent federal court cases, i.e., Basic Books v. Kinko's Graphics Corporation (1989).

As of 1980, Public Law 96-517 modified the 1976 Copyright Act in addressing issues raised by the use of computer technology. Computer programs are basically legislated as a special kind of literary work and the rights to that work, program, are not passed to the purchaser but are basically leased for the purpose of being used on one piece of equipment and can only be copied for back-up purposes as per Section 117 of the Copyright Act. Other "gray areas" are brought into light through sequential use of computer programs, where one copy of a program is accessed by multiple users. There are many other areas for concern that may only be settled in a court of law. The problem lies in the courts ability to understand and rule correctly on the issue at hand, because they, in effect, are changing the law by the ruling they make.

Chapter IV

The Copyright Act of 1976

Our forefathers, who framed the US Constitution, lived in a time when naiveté, science, and philosophy bore the fruits of prosperity. New ideas and inventions changed the way citizens of the new world viewed their lives and the conditions in which they could prosper in a frontier that offered rewards on many new fronts. Because of this strange and delightful explosion of thought and technology, the framers of the Constitution provided for the encouragement and reward of these creative people through Article I, Section 8, Clause 8 of the US Constitution by empowering Congress "to promote the Progress of Science and the Useful Arts, by reserving, for Limited Times to Authors and Inventors, the exclusive rights to their respective Writings and Discoveries. The theory was that "Americans would write great books and invent useful inventions if they were rewarded for their efforts" (Wilson, 1990, p. 11).

Over the decades many legislative attempts were made, some successfully, to revise the copyright laws of the United States. The most Legislative attempts, however, were made to revise the Copyright Act of 1909. These included the "Dallinger bill" of 1924, the "Perkins bill" of 1925, the "Vestal bills of 1926 & 1930, the "Sirovich bill" of 1932, the "Duffy bill" of 1935, the "Daly and Sirovich bill" of 1936, and the "Thomas bill" of 1940. Most of these bills were based upon the work-for-hire issues at the time of there introductions to Congress. "World War II interrupted these drives toward a general revision of the copyright law. The technological advances of the war and post-war periods made even more

apparent the necessity of a general revision of existing copyright law" (Grossman, 1977, p. 376).

In fact, "an overhaul, rather than a revision of the 1909 Copyright Act, was needed" (Penchina, 1987, p. 381). Under the authorization of Congress, a true revision process was started by the Copyright Office in 1955 which produced:

a series of extensive studies of major copyright problems. This was followed by a report of the Register of Copyrights on general revision in 1961, by the preparation in the Copyright Office of a preliminary proposed draft bill, and by a series of meetings with a panel of consultants consisting of copyright experts, the majority of them from outside the Government. (Intellectual Property Series, 1984)

The new copyright law "was not hastily drafted; it would represent the culmination of 20 years of research" (Smith, 1989, p. 26) and the process of development would generate more than 30 studies, three reports issued by the Register of Copyrights, four panel discussions issued as committee prints, six series of subcommittee hearings, 18 committee reports, and the introduction of at least 19 general revision bills" (Litman, 1987, p. 865).

During the final stages before the passage of the Copyright Act of 1976, two identical bills were introduced in December of 1975 to both the US House and Senate. The bills attacked the concept of "systematic reproduction" and defined it to the satisfaction of the library's lobbying group and congressional copyright hawks. Much to the delight of the library group the subsection (g) of section (2) was amended to read:

Provided, that nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work. (Copyright Act, Section 108, 1976)

This amended provision was adopted and although it is a part of section 108, to many it was an extension of "fair use" guidelines, section 107, and could be used by any library including corporate facilities. This amendment did not, however, completely resolve the conflict. The term aggregate quantities as to substitute for a subscription to or purchase of such work (Copyright Act, 1976) gave way to many interpretations and muddled the "copyright waters". To help solve this dilemma, the Senate-House conference committee included in its report a system of guidelines that was agreed by committee members to be reasonable and definitive. These guidelines were developed by The National Commission on Technological Uses of Copyright Works (CONTU). These have become known as the "Rule of 5". The most important parts of the guidelines read as follows:

[T]he words "...such aggregate quantities as to substitute for a subscription to or purchase of such works" shall mean:

(a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives ("a requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines shall

specifically not apply, directly or indirectly, to any request of a requesting agency for a copy or copies of an article or articles published in any issue of a periodical, the publication of which is more than five years prior to the date when the request is made ...

(b) With respect to any other material described in subsection 108 (c), (including fiction and poetry), Filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collection of work) during the entire period when such material shall be protected by copyright. (US Department of Commerce, Publication 259 749)

The above documentation is presented to demonstrate the complexities of dealing with amending and re-amending the Copyright Statutes and to demonstrate how easily "gray areas" may occur in legislation, especially in something as universally important as copyright. Since the enactment of the Copyright Act of 1976 some 18 amendments have been enacted. These amendments do not include the multitude of court cases that have had an enormous influence upon the meaning and translation of both the Copyright Act and those amendments that have followed the litigation process.

Copyright 101

Copyright is a form of protection provided by the laws of the US (title 17, US Code) to the authors of an "original works of authorship" ... this protection is available to both published and unpublished works ... Section 106 of the Copyright Act gives the owner of the copyright the exclusive right to do and to authorize others to do the following:

- To reproduce ...
- To prepare derivative works ...
- To distribute copies or phonorecords ...
- To perform the copyrighted work publicly ...
- To display the copyrighted work publicly ... (Copyright Office, Circular 1, 1992)

Copyright is a matter of conflicting interests: nationally the conflict is between copyright owners and end-users; internationally the conflict is usually between exporting and importing entities. The extent of the conflict is aggravated by the use of POD systems and other digital and copying technologies which permit users to conveniently and inexpensively reproduce practically any copyrighted work in existence.

On January 1, 1978, a new United States Copyright Law became effective. For every copyrightable work, that is, for any poem or record or short story or musical composition or any other original product (digital) of the imagination created on or after that date, the law is very different from what it was for those works that were created earlier. First, any work of authorship created after December 31, 1977 is protected immediately at the moment the work is fixed in a tangible format (Copyright Office, Circular 5, 1993).

Although a copyright, itself, a set of intangible legal rights which are entirely separate from any physical object which embodies the work, under the 1976 Copyright Act the existence of copyright is triggered by the reduction of the work to a tangible form that allows the work to be perceived by the senses. (Wilson, 1990, p. 14)

This means that when you input into your computer or when you write your ideas on a piece of paper, you own the copyright in your creation. That is to say, you own the copyright unless you have created the work for someone for whom you are employed full-time and are paid as a creator of the work. In that case, your employer owns the work under the "work-for-hire" provision of the Copyright Act. "If you remember nothing else about copyright law, remember the most basic concept: copyright protects not ideas, but only particular expressions of ideas" (Wilson, 1990, p. 27).

Public domain material is the largest category of scientific, artistic, and literary materials that is not protected by copyright laws. Public domain materials are those works for which copyright protection has expired, such as "the works of dead poets, literary gentlemen who have been dead for a long time, like Shelley, Keats, Shakespeare, and all those other guys you had to read in college" (Wilson, 1990, p. 31). However, you must be sure the works creator has been deceased long enough for the right of public domain to exist. The best way to ascertain this is through a copyright search by either yourself or a professional copyright search agent.

Copyright protection exists from the time the work is presented in a fixed format. At the very instance of being "fixed," the work becomes the property of the creator. However, a work commissioned or a work prepared by an employee within the scope of his/her employment, works made for hire, belong to the commissioner or to the employer (see chapter 2). It is illegal for anyone to violate any part of the rights of the owners as provided by the Copyright Act. However, these rights are not unlimited as provided by sections 107 through 109 of the Copyright Act. The doctrine of fair use

is one limitation afforded the user under section 107 of the Act (Copyright Office, Circular 21, 1992). Fair use will be dealt with in more detail in chapter 6.

The Copyright Act protects original works of authorship that are fixed in a tangible format. The "fixed" idea does not have to be perceptible as long as it can be communicated with the aid of a machine or a device, computer or POD. The following list types of works that are legally copyrightable:

- Literary works
- Musical works, including words
- Dramatic works, including music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works (Copyright Office, Circular 1, 1992)

There are several categories of materials that are not eligible for copyright protection under the Act of 1976. Works that are deemed by the law and/or the courts follow:

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
- The names of businesses, products, or services.
- Stage, pseudonyms, or professional names.

- Works that have not been fixed in a tangible form of expression. For example: improvisational speeches or performances.
- Blank forms, blank checks, order forms, page forms, receipt forms, etc.
- Measuring and computing devices such as rulers.
- Works consisting entirely of information that is common property and containing no original authorship, i.e., weight charts, standard calendars, and sporting event schedules.
- Titles, names, short phrases, slogans, content listings, etc.
- Works by the US Government are not eligible for copyright protection. (Copyright Office, Circular 31, 32, 33, & 34, 1992)

If a copyrighted work was first published on or after March 1, 1989, use of a copyright notice is an option and is not required. If the work was published before March 1, 1989, the use of a copyright notice was required in order for the work to be protected under the copyright statutes. The notice for visual perceptible copies should contain all of the following elements: 1) the symbol ©, the word "Copyright", or the abbreviation "Copr." and 2) the year of first publication or accumulation and 3) the name of the copyright owner, i.e., © 1994 Ron Creech. This notice of copyright ownership should be affixed to the work in such a way that its location would give "reasonable notice of the claim of copyright" (Copyright Office, Circular 1 & 3, 1992).

Even though copyright registration is not mandatory for protection after March 1, 1989, it is still a good idea to register any and all copyrights through the US Copyright Office in Washington, DC in order to assure your

rights in the courts. It is important for authors to understand that there is no legal substitute for proper copyright registration and notice. It is also important to register your copyright in other countries if you plan to export your copyrighted product. Even though the United States is a signatory of the Berne Convention, this does not automatically protect your artistic endeavor in foreign countries. The Copyright Office is primarily an office of record, a place where claims to copyright are registered when the claimant has complied with the requirements of copyright law. Their records (see Appendix F) can only help you in a legal infringement situation if you file your copyright claim (Copyright Office, Circulars 1b, 4, 7d, 8, 12, 14, 22, 38a, 40, 40a, 41, 44, 45, 50, 55, 56, 61, 62, 63, 65, 93, 93a, R96, 96, & 100, 1990's).

Any copyright that was created on or after January 1, 1978 endures from the moment the work was first fixed in any tangible form until 50 years after the death of its author or creator. If the work had two or more authors, then it endures until 50 years after the last survivor of authorship. Works created prior to January 1, 1978 were granted 28 year terms of protection with an option for an additional 28 years if renewed by the author (Copyright Office, Circular 1).

Chapter V

Digital Imaging Pressures

Upon US Copyright Statutes

It only takes a small amount of research to see that digital reprographics technology is leading in both exciting and frightening directions. Exciting for those who see its vast potential applications and frightening for those who view it as a threat to traditional image reproduction technologies. This new technology is very important. Educational institutions, government agencies, and industry as a whole that are not involved in the more sophisticated aspects of electronic imaging (i.e., high-speed copiers, computers, laser printers, digital lithography, etc.) will be left in the Dark Ages when it comes to the aspects of creativity and production. It is also important because the customer/student is quickly moving away from the use of traditional single-color copying or printing in favor of electronic imaging and reproduction that may be produced from start-to-finish in color, or colors, in less time than it took for a traditional black and white print. History tells us that when a new technology becomes cost competitive with its competing technology and when the quality of the output is equal or better than its competing technology, the new technology becomes the "standard" and the old technology is relegated to a more specialized area of the market. We are witnessing this today in the battle between digitized electronic printing and traditional offset printing (Hall, 1992).

Society is progressing into a new specialized world of electronic technology that makes the hi-tech printing systems and the high-speed

copiers of the 1980's and early 1990's look as though they were unsophisticated relics of yesteryear. Traditional printing methods, as we know them, are being left behind by electronic mail and messaging (EMM), CD-ROM discs, print on demand, facsimile or file transmission to intelligent copiers (FAX/IC), on-line computer access and electronic data interchange (EDI).

On-demand-printing is poised for growth:

Electronic printing systems, POD's, - everything from convenience copiers and print-and-bind systems to color digital presses that operate directly from computer input - will likely be embraced by the not-for-profit printing sector, but they may well restructure the entire commercial graphics arts industry by the turn of the century. So said Charles Pesko, a consultant who moderated the GATF conference session on on-demand-printing systems, who added that, ironically, most commercial printers cannot at present identify jobs that lend themselves to on-demand production.

As electronic printing equipment moves on to the next level of quality and productivity, most short-run printing - runs of less than 5,000 - become eligible for production in this fashion. This short-run market segment, which is valued at \$37.7 billion and includes commercial and non-profit printing, includes \$17 billion in single-color work, \$13.2 billion in two or three-color work, and 7.5 billion in jobs involving four or more colors [Table 1]. GATF itself is utilizing an on-demand document printing system at its headquarters

Table 1: POD's Growth

On-Demand Printing Poised for Growth

Electronic Systems Target Huge Short-Run Market

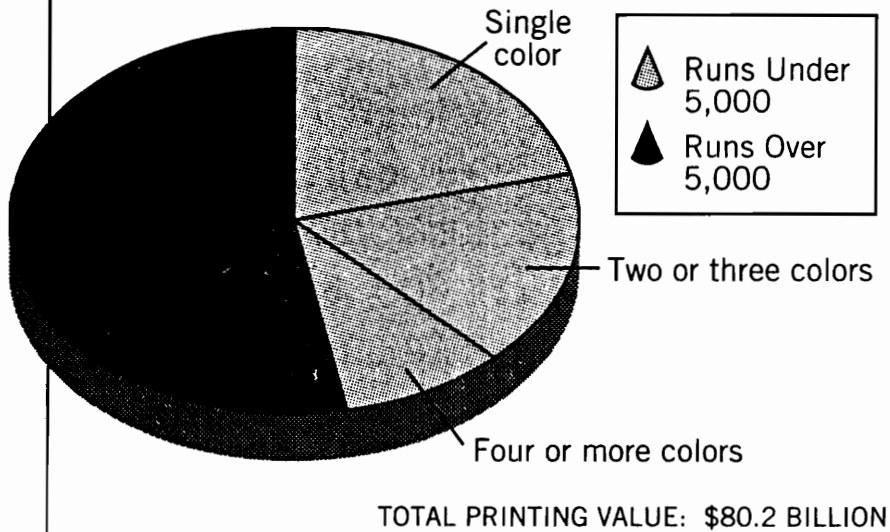


Table presentation from GATF (Technology Alert '94 Conference)

in Pittsburg ... It is producing training manuals, member mailings, letterheads, and technical literature. (Editors, 1994, p. 3)

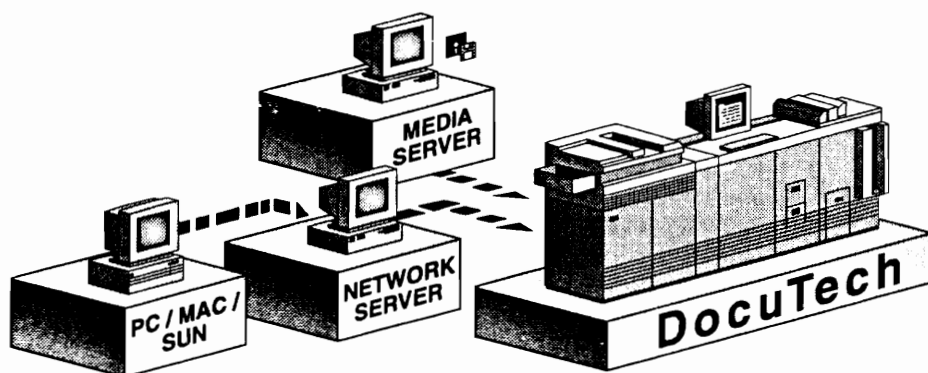
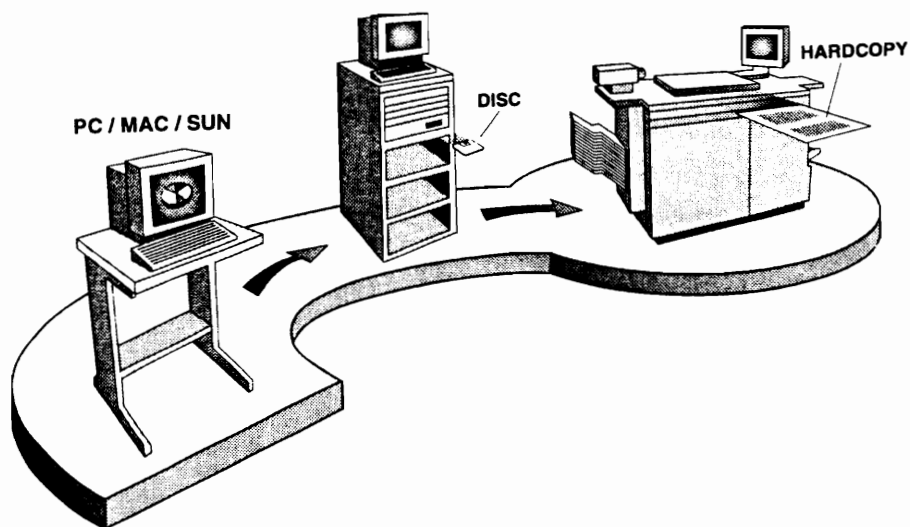
Unfortunately, digital POD technology has evolved faster than copyright legislation. This, simply put, means that current copyright laws are not effective in guiding the public interest. Many educators and other professionals are not aware of the current copyright act and guidelines (Helm, 1986). The pressures of keeping up with the rapid growth of digital technology and the ease of copy and graphic image manipulation is a problem area that needs to be resolved by all parties involved in the digital copyright fiasco.

Harry Benson reported to the International Graphic Arts Education Association that by 1995, five percent of all office documents will be replaced by electronic mail and messaging. By 1998, 65% of external office documents will be replaced by electronic EMM, POD, and FAX. By the year 2000, CD, OLA and POD will replace 65% of traditionally printed technical manuals. In order to drive this prediction into some relevance of fact, we only need to look at what major parts suppliers have been doing over the past 20 years in presenting their manuals to the buyer in the forms of microfiche, floppy discs and CD-ROM discs. This industry has pioneered its way out of a high cost paper presentation system into a productive hi tech digital system that is easy to use and gives its customer base an instant notice of change (Hall, 1992).

Even though the information above seems to infer that the paper and printing based industries are losing market share, they are not. Recent introductions by Xerox and Kodak of their digitized high-speed document

printers are bringing futuristic expectations to the print/copy market now. Both the Xerox Docutech [Figure 3] and the Kodak LionHeart are connected to computers and can provide true electrostatic digital printing on demand. This allows an economical alternative to traditional printing of manuals and other paper based documents. As an example, it is now feasible to print any number of manuals from a computer program fed directly to the digital printer. Today we may need to print 20 copies of a manual for our immediate use and store the information that may be updated or changed into the computers hard drive; tomorrow we may need an additional 14 copies which may also be printed on demand (POD). By using this process, the distributor of the information no longer has to pre-print, inventory, and warehouse large quantities of the printed material because he has instant access to both the information, revisions and the printing process. In order to fill his customer requirements for the printed document, all he/she needs to do is press a few command keys at the computers keyboard.

The Kodak and Xerox systems are the first to reach the market and are very expensive; however, in the near future you will be able to tie personal data bases with desktop publishing programs directly to your computer based connected copier. Color copiers such as the Canon CLC500 and the Xerox 4850 will also be computer connected. This will mean that from your personal database, you will be able to produce printed materials by using either color, multi-color or black toner and ink. In addition to that capability, you may carry your portable computer into a copy center after traveling to a remote location and simply plug it into the



QPTODAY/Spring 1992 □

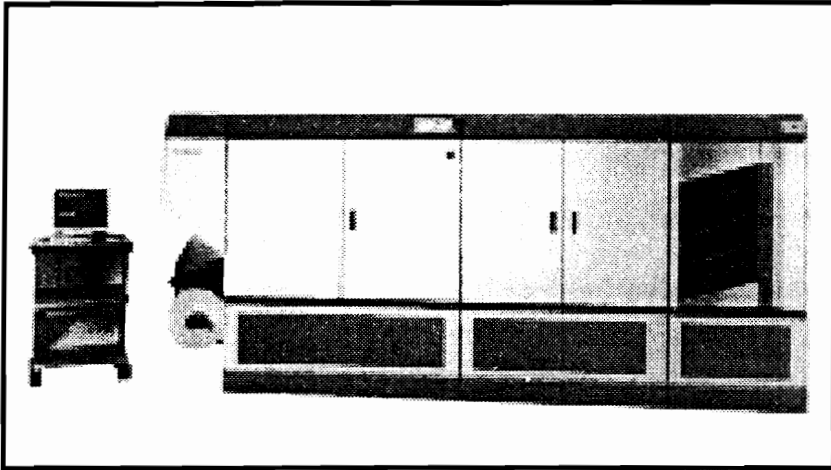
Figure 3: Print on Demand Systems

center's copier and print your document. If for some reason you forgot your laptop, you may access your database at your companies office via modem and accomplish the task as described above or you may simply access the database by inserting your personal disc in the computer based copier at the reproduction center. This will become very prevalent with the advent of the digital information superhighway.

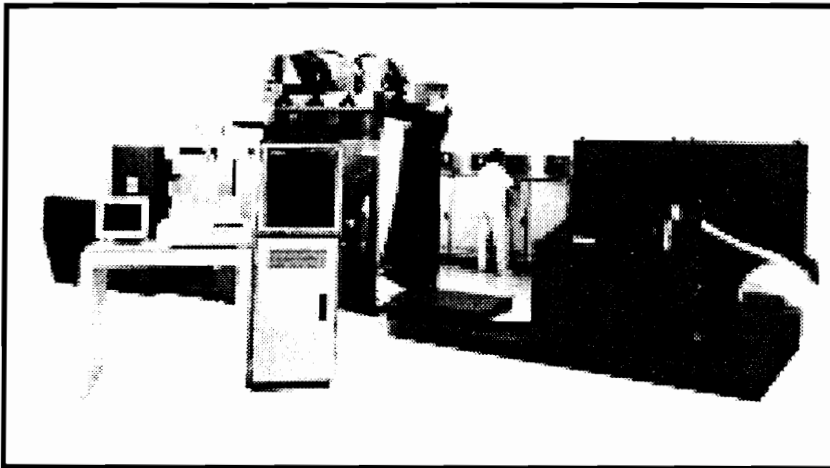
Even though many print users are aware of these sophisticated futuristic developments, there are many others who are trying to figure out what to do with this POD system technology. They can't seem to figure out where or how this affects their industry or their personal lives. It is the purpose of this chapter to identify and clarify even further than the preceding explanations, the digital database printing concepts that are on-line now and those that are soon to evolve into our everyday lives in the form of electronic POD's. "By 2002, alternative print devices will command 20% of total print shipments and the print spending will be nearly three times the current monochrome copier business" (Editors, 1994, p. 20).

The evolution of digital on-demand-printing and copying are staggering:

Larger scale, in-house applications are too much for even the fastest copiers or POD's. There is a twilight zone that exists between the parameters of digital publishing systems and commercial printing. This is the realm of the high-speed electronic printer. High-speed electronic printers are available in both web-fed and cut-sheet configurations. The speed of this type equipment can range up to 300



Delphax ColorFast Series 150 IE



The Kodak 3500 High-Speed Printing System

Figure 4: High Speed Electronic Printing

impressions per minute (ipm). Delphax and Kodak are the big names in this market segment [Figure 4]. (Editors, 1992, pp. 29-30)

This evolution is so vast that it places a burden on the Congress, Senate, and judicial system to change laws that constrain the public from expedient access to politically sensitive and copyright protected documents. With the proper use of this new and time-sensitive document retrieval system, our schools, universities, government, and business sectors may once again act rather than react to educational and economic stimuli.

In order for this paper to progress forward to the impact of instant access and electronic printing-on-demand, we must take a brief look at the history and intent of the Copyright Law as well as a recent copyright case, Basic Books v. Kinko's Graphics Corporation (1989). Copyright law originated in 1709 in England with the Statute of Anne. A few years after the law had been created the courts were already realizing that it was possible to make use of certain copyrighted materials without obtaining permission. This was known as "fair abridgment" and today we recognize that same right in the U.S.A. as "fair use" exemptions. This law was created for the exact purpose of allowing an incentive for those creative beings to produce intellectual works for the good of the public. Only those works that were in a fixed form fell under the direction of the copyright laws. "Fixed form" in this case meant works that were written, filmed, spoken, painted, sculpted, and coded. An example of this would be that a conversation between several people could not be copyrighted because it was not in a fixed format. If that same conversation had been recorded, the recording of that conversation could be protected by the copyright law.

Copyright law also declares that facts cannot be copyrighted, only a particular expression of the facts that an author may have chosen may be copyrighted. However, facts may be protected under the patent law. Our legal system does not recognize copyright law as a "natural right". In contrast, our judicial system does recognize individual property owner's rights as absolute with only a few, well defined, and specific exceptions. One of those exceptions is eminent domain. Since copyright law is an intellectual property, it has been recognized by the courts that no author or artist creates his/her work in a distinct vacuum; all of the populace of the world over the history of mankind has contributed to the creation of a framework of knowledge. Hence, an author of a book is using the work of all those trillions of people who over the course of history have created the language, setting, cultural/ethnic context, and plot to which the book has been written. Because of this, copyright law is not a codification of a human ethical right, but a legislative recognition that creative people create all of a societies benefits with an underlying assumption that these same people will create more if there is an incentive to create more. The objectives of copyright law are only met when creative people are encouraged to create products that are available to the public. Should this creation be eliminated from public use because of profit or other incentives? This is the question that needs to be answered by the Congress and the courts. This is the question that may be holding back the advancement of electronic digital-on-demand copying and printing.

One problem with the advancement of electronic on-demand copying/printing lies in a court decision that was handed down by Federal

Judge Constance Motley on March 28, 1991 in the case of Basic Books v. Kinko's Graphics Corporation (1989). She found Kinko's guilty of being a willful infringer of copyrights owned by five publishing companies and severely fined Kinko's over two million dollars for those copyright violations. The judge, in the opinion of print associations such as NOMDA, PIA, NAQP, and various other printing related associations, overstepped her judicial powers in her decision based on the Copyright Act of 1976. This Act declared that ...

notwithstanding the provisions of Section 106, the fair use of 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 the character of the use, including whether such use is of a commercial nature or is for the 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. (Copyright Act, 1976, p. 13)

While reading the above legislation, one must keep in mind the First Amendment to the United States Constitution. "Congress shall make no law...abridging the freedom of speech, or press..." It is the author's opinion

that it would be very easy to say that in the Kinkos case, the judge overstepped her right to declare blame simply by the fact that she violated the law of the land by an overly restrictive interpretation of the Fair Use doctrine that in itself violates the law of the land in the form of the First Amendment (Seelingson, 1991).

The fair use doctrine has a very long history of allowing limited copying without permission of the copyright holder. However, judges do have the power to grant Fair Use protection to copy all or any portion of a document that is protected by the copyright laws which is not specifically dealt with under Section 107 of the Copyright Act. The specific case in question is merely one case that was tried in New York and does not stand as a total precedent throughout the US. The publishers sued only Kinkos. They did not sue the equipment manufacturer of the machines used by Kinkos nor did they sue any of the many university libraries or printing facilities that sale and distribute millions of copies on a daily basis. Because of this ruling, there is a definite gray area in the use and compliance within fair use, Section 107, of the Copyright Act (Seeligson, 1991).

From a perspective of fair use, compliance with this ruling is virtually impossible. There is literally no way that business or educational institutions can comply with Judge Motley's court ruling. It forces the businessman and educational personnel to become an unwilling partner with publishers who are not willing to take any of the risks involved in producing a product that is produced as a service to the people. It forces all of the US populace to become crooks in the eyes of Judge Motley and her court.

Enough on the copyright ruling, let's move on to create a system within industry, education, and government that will balance the interest of the copyright owners with those for whom the laws were written, the general public. In order to do this we must find an equitable position as to what fair use is. Royalties should be paid in certain situations and on a timely basis; however, permission must be given using the same criteria. A fixed rate with a blanket per-copy cost would give the publishers many millions of dollars a year to add to their industries net profit without incurring any additional expenses. This type of agreement would benefit everyone involved in the publishing industry as well as those in education and business. It would also help foster a growing publishing industry in database computer-to-copier/printer output.

In general, the publishers, education, business, government, and industry would benefit a great deal from a system that would allow the customer to get what they need, when they need it. This is a basic marketing concept that also is for the good of the public domain. How many volumes of printed material would be sold if they had to be ordered three to five weeks in advance? Gearing up our communication and reprographics systems for quick response will greatly increase sales and prepare educational institutions and businesses for future print on-demand systems.

Gearing up our reproduction systems with direct database input is easier said than done. One of the problems has been that equipment manufacturers have not adapted copiers, printers, and other graphic communications equipment with the ability to grow into the world of

digitization. The equipment simply is not able to receive commands from databases. In other words, they can't communicate with each other.

Digitization is an atomic theory of information: data is broken down into tiny particles-bits-during the input procedure. These bits can be stored in an electromagnetic medium such as tapes or disks; altered and rearranged through software programs; moved at will via electronic impulses, optical fibers, laser beams, etc.; and then reconstructed in whole or in part, or in a new form from various parts, on some type of output device. (Clinkunbroomer, 1991, p. 57)

Of course, one of the keys to compatibility between computers and reproduction equipment is the copier's ability to accept digital instructions and information. Ricoh, Xerox, Canon, Kodak, Konica, A.B. Dick, Heidelberger, E-offset, and AM International produce digital reprographics equipment. The problem lies in the fact that at the present time, none of these units offer compatibility with major software programs such as Pagemaker or MicroSoft Word. However, Xerox and Kodak have promised and delivered at least one unit each that can be used with software such as Ventura. Of course Ventura Publishing Company is owned by Xerox. Original equipment manufacturers (OEM's) will have to be less self-serving and enter into the realm of reality by offering systems that will run from popular software programs. As soon as they saturate the market with these high-priced systems, the second generation of POD's, database-to-copier, and press printing systems will be offered at a fairly reasonable price.

With all of this digital cheerleading, more and more companies are making plans to enter the digital arena by budgeting for digital copiers.

Digital copiers represent the leading edge and the affordable aspect of this digital technological revolution. These pioneers, business and universities, of the digital revolution are finding that they may actually decrease the cost of production and distribution of certain printed products through the use of digital copier technology. However ...

training must be taken into consideration. Employees can't be expected to be productive at the moment the equipment is installed. There is a learning curve. The operator, in effect is learning how to operate a new software program as well as a new POD. (Lowery, 1993, p. 4)

Electronic-on-demand printing, POD's, could be the thing dreams are made of if OEM's, SPA, and AAP will get their negotiations in an amiable format and get on with the job. It can be done. R.R. Donnelley and Banta Book are utilizing both their strengths of printing and publishing by joining forces for what may be the business decision of the decade that will enable short-run on-press publication operations to expand to the extreme. The applications for this technology in the book printing world are expansive. Any book or publication can be held in storage, manipulated, updated, and printed in very small quantities only when needed. Inventory is virtually eliminated, and the book is as current as possible when printed.

R.R. Donnelley and Sons, Incorporated has also joined forces with McGraw Hill Publishing Company and is currently operating on-demand textbooks from a plant in Harrisonburg, Virginia. McGraw Hill's electronic database for books is called Primis and will be offered to smaller printers as soon as reasonably priced equipment catches up with database technology.

Besides the failure of manufacturers of electronic printing devices to develop and produce database acceptable equipment, there lingers other factors that may impede the progress of POD's. Publishers must begin their entry into database rental or leasing programs that are not based on the old limited programs of copyright royalty agreements. Universities and business must realize that they have a stake in this database publication effort. Very few schools and industries have offered any serious courses on theory and application of electronic database printing. Until this type of curriculum is offered, it is not hard to understand why high school and college age students have no interest in entering an industry that they and their teachers know very little about. The future of this technology is staggering. It may open up a whole new and exciting part of the "Information Age" if business is not afraid to educate our youth in both the technical as well as the theoretical aspects of this new and growth oriented digital POD's endeavors.

One of the disturbing findings in a study of electronic publishing and imaging job skills conducted by Michael Kleper in 1990, was that the majority of survey respondents were offered little or no formal job training. Some people were left essentially on their own to acquire or develop the basic skills to execute POD projects, or they were left in an uncomfortable position of trying to produce documents without the prerequisite skills. (Kleper, 1994, p. 15)

This lack of formal training accounts for employee frustration and failure. It may also account for the lack of copyright literacy that is attacking all facets of business and education. Interestingly, although small companies

do not offer as much formal training as their larger counter-parts do, they offer as much informal in-house training [Table 2].

Table 2: Where Employees Learn

Company size	Percentage of businesses offering —	
	formal training	informal training
1–24 employees	18.6%	88.3%
25–99 employees	25.9%	91.0%
100–499 employees	36.1%	89.3%
500 or more employees	44.4%	92.3%

Source: “Job Training Approaches and Costs in Small and Large Firms,” Office of Advocacy, U.S. Small Business Administration, 1992.

Chapter VI

Digital POD's and "Fair Use"

There is no doubt that the digital revolution is here and will continue to grow. We see it in the products we buy from consumer electronics to professional equipment used in education, industry, and government. The digital world we live in has been "reduced to the bits and bytes" (Romano, 1994, p. 40) of computers and computer driven equipment. Every change in technology systems has been carefully defined and chronicled in order to understand where we are and where we are going.

Where are we going with all this high-tech digital technology that will travel along a superhighway that presumably will allow us to do many neat things at lighting speed? To be frank, no one is really sure. It is predicted that "wireless technology will profoundly change personal computing by transforming it from primarily a calculating technology to one that's based on communications. Face it, in most offices, PC's and POD's are a new breed of calculator and typewriters" (Davis, 1994, p. 75).

In fact, Bill Gates, CEO of Microsoft, has already started marketing the wireless age. This year he has traveled all over the world sharing a dream of wireless digital technology that will cause the "convergence of major communications technologies that include the telephone, fax, e-mail, LAN, PBX, WAN, and cable TV" (Davis, 1994, p. 75). The problem with this wireless technology is a lack of "standards" and public understanding in technical digital transmission as well as being afraid of technology, or anything, that is new and unproven. The real question is whether American

taxpayers should pour \$200 billion plus into a digital superhighway if wireless technology will render it obsolete in 10 years or less.

Ray Roper, CEO, of Printing Industries of America (PIA) declared that:

With all of the hype about the information superhighway, some graphic arts executives may think that they need to start gearing up now to speed down that highway if they want to be in business in the future. Unless you are one of the 10 or 15 largest printers in the North America, the information superhighway should be of little concern to you today. It will be years before it is built and actually has an impact on your business, much less that of the average commercial firm. ...There is a parallel, however, between the information superhighway of the future and the interstate highway system that was built in the '50's. Some towns suffered while others prospered as the interstate highway was built. Which ones prospered? Those which had easy access to the system generally prospered while those which were miles away from an access ramp generally did not do so well. ... Start building strong digital neighborhoods. Start building strong digital connections with your customers, your suppliers, and others with whom you do business. The stronger your digital neighborhood the more likely that it will be made a part of the information superhighway. If you are the source of valuable digital data, the builders of the digital highway will make access for you and others in your digital neighborhood. (Roper, 1994, p. 4)

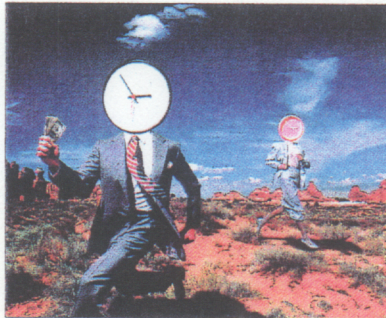
With all this new technology, the ability to manipulate and alter digitized information and images raises a multitude of questions concerning copyright and fair use. With digital scanning an artist can alter a digital image [Figure 5 and 6] on a computer in a matter of seconds. This same image can be transported to a client in the next state or even another country in a matter of minutes with the assistance of a modem. Music can be copied from an on-line service bureau or an article from an on-line magazine may be copied and forwarded to a colleague for his/her enjoyment. All of these scenarios have one thing in common, copyright infringement.

The ability to:

digitally scan and manipulate photographic images has become much easier with the current generation of low-cost scanners. And as this technology becomes more accessible to a host of desktop publishers and electronic designers, the act of photographic piracy will surely escalate...such is the case with a \$1.4 million lawsuit filed recently against Newsday, the nation's second-largest color daily newspaper [Figure 5]. FPG International has accused Newsday of digitally scanning two color photographs from one of its printed photography catalogues without permission, then electronically altering the images as part of a computer-generated montage used with a front-page article. Ironically, Newsday has been a customer of FPG for five years, having obtained more than 175 reproduction licenses to reproduce copyrighted photos. What this case demonstrates is the widespread larceny of printed photographs by unauthorized digital scanning. As much as we believe in the digital future, this case

Stolen Stock or Mistaken Identity?

Stock photography agency **FPG International** filed a **\$1.4 million copyright-infringement lawsuit** in February against Long Island-based *Newsday*, the nation's largest four-color daily newspaper except for *USA Today*. In a civil complaint filed in U.S. District Court, FPG charges that *Newsday*, a wholly owned subsidiary of Times Mirror, digitally manipulated and illegally reproduced two copyrighted photos



from the company's *Selects* catalog, Volume 5, for a Sunday cover illustration on a story about virtual reality.

"As much as we believe in the future of digital delivery, we feel this case sends a critical message to the design community to become more enlightened to the realities of photo piracy in the computer age," says Barbara Roberts, FPG president, in a press release.

Newsday denies the allegations. "*Newsday* is a reputable organization that does not copy freelancers' work without their permission," says Chris Nolan, the paper's attorney. "We did not obtain the images in question from FPG's catalog. We are attempting to ascertain who the true owners of the images are, and we will act accordingly once we do."

Nolan refuses further comment. The newspaper was to submit a brief to the court in response to FPG's suit by March 29.

The cover of the Sunday, November 7, 1993, issue of *Newsday*, whose circulation is 851,000, is a composite computerized image that depicts a woman and a man running across a glowing, futuristic cityscape. Televisions are superimposed on their heads.

FPG charges that the *Newsday* image, versions of which also appeared inside the newspaper's Long Island and New York City editions, was created from two images in its most recent catalog: one by James Porto, of a woman and a man running across a desert landscape with clocks superimposed over their faces, and one by Chris Michaels, of the Dallas skyline at sunset.

FPG charges that the newspaper scanned the two images from its catalog to create the *Newsday* image and tried to camouflage its plagiarism by electronically reversing the placement of the woman and the man in the Porto photo, realigning their shadows, and manipulating some other elements of the images. From scanning through final publication, FPG



charges 14 violations of U.S. copyright code and requests \$100,000 in damages for each.

Figure 5: \$1.4 Million Infringement Lawsuit

sends a critical message to the design community, to become more enlightened to the realities of photo piracy in the computer age. If they don't learn the law and negotiate reasonable fees up front, it will cost them big money in the end.

This court case also sends an important message to commercial printers and prepress houses. Nancy Wolf, a copyright attorney who represents FPG, recounts one unrelated case where a color prepress shop was found guilty of contributory infringement for providing color separations of record cover artwork for an individual who it knew was a counterfeiter. She also notes legislative bills currently before both houses of Congress that will drop the registration of copyright requirement as a prerequisite to filing lawsuits seeking statutory damages and attorney's fees. Expected to pass in 1994, this copyright reform act will make it much easier and potentially more lucrative to sue for infringement. (Michelson, 1994, p. 18)

A few years ago, an artist would have to spend days, even weeks, to alter a photograph as depicted in [Figure 6]. However, today's technology allows a trained computer artist to produce a digital derivative photograph in only minutes. Along the same scenario, a writer can "cut and paste" from on-line programs and produce a written document for publication in a very short time. A musician can search on-line for music compositions and use the same method as the writer in order to make copies of some sheet music that he/she likes. All of these seemingly innocent incidents are copyright infringements that could cause law abiding citizens to become felons in the eyes of copyright laws.

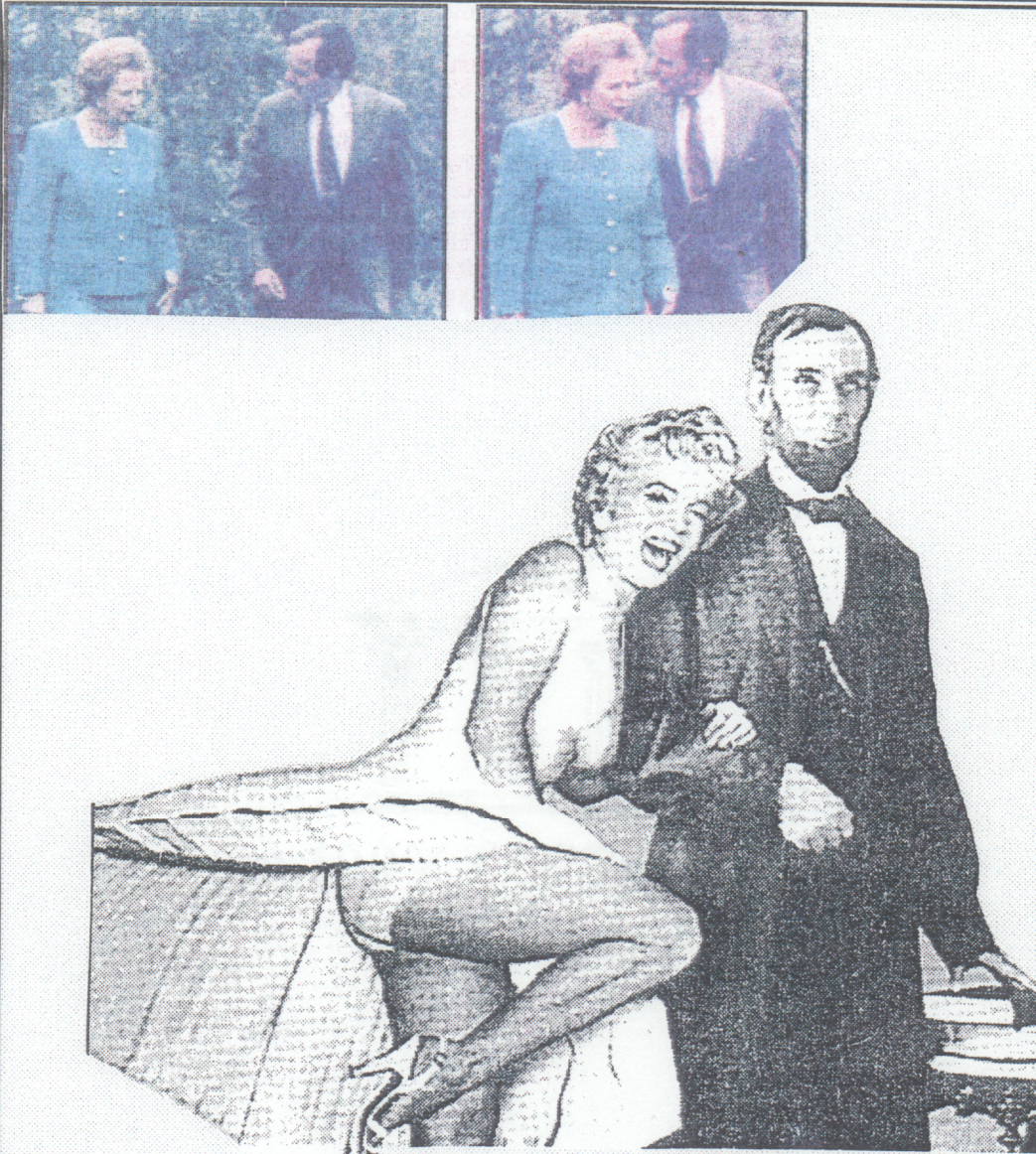


Figure 6: Digital Image Manipulation

Basically, the problem in copyright law is that "technology has far outstripped the legal code for copyrights; there are simply no clear legal definitions in the copyright laws that can cover all the possible permutations of electronically retouching and altering of digital images" (Lee, 1994, p. 86). This is one of the main causes of the copyright gray areas that cause copyright litigation to effectively alter the copyright laws that were passed by Congress.

Most digital technology graphics-users will tell you that the copyright laws are antiques and at least ten years behind new POD's technology needs. However, most copyright lawyers will declare that the copyright laws don't need to be changed or updated but rather adequately applied as new technologies evolve along the digital highway. Attorney's seem to think that each and every image should be treated in a digital world, the same as when it was being produced on a letterpress or on a typewriter in the 1950's. They contend that copyright is defined by exclusive rights that the artist owns and one of those exclusive rights is that of derivative works.

These same attorneys will tell you that there are exceptions and defenses against copyright infringement. Those exceptions to copyright infringement are found in section 107 of the Copyright Act of 1976 under the caption of "Limitations on exclusive rights: Fair use". Educational uses, parody [Figures 6 and 7], and reporting are all allowed limitations on the exclusive rights of copyright owners, if applied and used properly. However, it is almost impossible to find a fair use of copyright in the commercial or industrial section of our society. The courts will usually only consider our areas in fair use; 1) purpose of use, educational or

■ Supreme Court gives comic relief to 2 Live Crew, ruling its version of *Oh, Pretty Woman* should be considered "fair use."

Washington Post

The lyrics

Excerpts of the lyrics of Roy Orbison's 1964 song *Oh, Pretty Woman* and 2 Live Crew's takeoff *Pretty Woman*:

Oh, Pretty Woman
by Roy Orbison
and William Dees:

Pretty woman, walking down the street,
Pretty woman, the kind I like to meet,
Pretty woman, I don't believe you, you're not the
truth,
No one could look as good as you . . .

Pretty woman, don't walk on by,
Pretty woman, don't make me cry,
Pretty woman, don't walk away,
Hey, it's okay
If that's the way it must be, okay
I guess I'll go on home, it's late,
There'll be tomorrow night, but wait!

What do I see
Is she walking back to me?
Yeah, she's walking back to me!
Oh, pretty woman.

Pretty Woman,
as recorded by 2 Live Crew:

Pretty woman, walkin' down the street
Pretty woman girl you look so sweet
Pretty woman you bring me down to that knee
Pretty woman you make me wanna beg please
Oh, pretty woman

Big hairy woman you need to shave that stuff
Big hairy woman you know I bet it's tough
Big hairy woman all that hair it ain't legit
'Cause you look like 'Cousin It.'

Figure 7: Parody & "Fair" Use

commercial, 2) the nature of the copyrighted work, 3) per percentage of the work used as compared to the whole, and 4) the effect of the use on the value of the copyrighted work.

Fair use does not normally extend past the classroom. The use must:

- a) be a part of a systematic instructional activity [section 110 (2) (a)],
- b) be directly related to teaching [section 110 (2) (i)], c) be in classrooms or similar locations [section 110 (2) (i)], d) be without any purpose of commercial advantage [section 110 (4)], e) be without payment of any fee or compensation [section 110 (4)]. (Talab, 1994, p. 12)

It is notable that fair use is an ever changing ideal as directed by our court systems; i.e., fair use is an exemption educators are sheltered by, which in many cases is valid; however now a case has been made and upheld that when university professors enhance their worth, net or otherwise, in the academic community, they are gaining a commercial advantage and lose the advantage of fair use. Another example of the court system changing the intent of copyright law and creating even more gray areas.

US courts are suppose to consider four areas in fair use litigation (worth repeating). The first is the purpose of use, including whether it is for nonprofit educational uses or commercial for profit purposes. The second is the nature of the copyrighted work. The third is amount of the actual work that has been used in relation to the work as a whole. And fourth, is the effect of the use on the potential value of the copyright protected work.

In the real digital world, fair use may come into play with clip art, digitized sound, software and all the other areas that were covered under any older technology.

Courts have found that certain types of interface software that may need to be copied in order to achieve compatibility are not going to be completely protected by the courts. And the use of that is more likely to be viewed as fair use than other types of copyrighted materials. (Lee, 1994, p. 86)

The truth is that not one person nor one court can dictate fair use which means that unfortunately the gray areas of the copyright act are left to confuse all.

Granted, the laws and rights of copyright have remained steadfast but the confusion for creative people who borrow images, or download files are overwhelming and create compliance problems. If you are a graphic artist and you want to borrow images from different areas, at this moment there are not many court cases that provide compliance guidelines that outline the quantity of use that can be viewed as fair use. The fact is if you copy any part of another's copyright protected work, you are on the "virtual edge" of copyright infringement.

A copyright owner has been granted the exclusive right to make copies and prepare derivatives of that work. In this digital age, the real question is how much of an image may be manipulated and still be viewed as fair use by the court systems. In the digital manipulative area of images, it becomes a question of what we can legally copy without breaking the law or being sued.

The associated press recently reported:

The federal government, led by the White House, has boasted of America's high technology prowess, calling it a foundation of the economy and envy of the world...but, lately, government actions have the appearance of harming, instead of helping, that prowess:

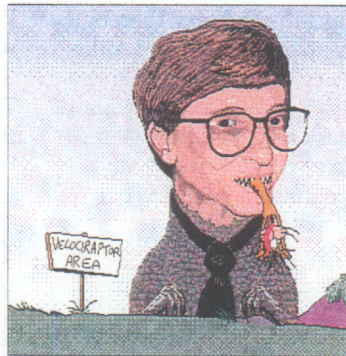
- A Federal Communications Commission decision to cut cable rates was partly blamed for the collapse of two link-ups of big cable and phone companies, including the decision of Southwestern Bell to scrap a \$5 billion partnership with Cox Cable.
- A federal judge set up a hurdle for AT&T's plan to buy McCaw Cellular Communications.
- A patent office decision threw development of computer software on compact discs into a tizzy.
- A justice department anti-trust inquiry into Microsoft Corporation that has lasted for more than three years (Editors, 1994).

Is software protected under the First Amendment? Maybe not. When Delrina released the Opus'n Bill Screen Saver [Figure 8] - a collection of animation's based on Berkeley Breathed's Bloom County and Outland comic strips - the company discovered it does not have the freedom it enjoys in print. As the product, computer screen savers, shipped, Berkley Systems, maker of After Dark, sued Delrina over an Opus 'n Bill module in which Opus tried to shoot down After Dark's flying toasters. Berkley Systems argued that Delrina's toasters were a trademark infringement. A US District Court agreed, ordering the program recalled. That was only the beginning. Three of the



©James Porto/FPG International

This illustration is one of two allegedly pirated by a *Newsday* staff computer illustrator for use on its cover, which prompted FPG's \$1.4 million lawsuit.



PC World (February, 1994)

Figure 8: First Amendment Issues

package's modules and its cover parodied Bill Gates, CEO Microsoft Corporation, and Gates lawyers asked Delrina to remove these references. A Microsoft spokesperson said, "We believe that [Opus 'n Bill] is a commercial product and that Bill Gates has [a right to] control how his likeness is used." Delrina has decided to remove the offending material before being contacted by Gate's attorneys. In Breathed's analysis, "Mr. Gate's people blew their nose our way, and Delrina ducked." Opus 'n Bill is now sold in a censored form with no Gates jokes. Breathed will still lampoon Gates in print but concludes, "If you satire on paper and sell it, it's legal...put the same material on a floppy disk and sell it, it's a court case." (Editors, 1994, p iv)

Even though the circumstances surrounding each of these cases is different, it is a crucial reminder that the government has ended some of the euphoria over the digital information superhighway's luster through litigation concerning both technology growth and the inability to control copyrights and/or patents.

Chapter VII

Copyright Law and Case Studies

The law always has been, is now, and will ever continue to be , largely vague and variable. And how could this be otherwise? The law deals with human relations, in their most complicated aspects. The whole confused, shifting helter-skelter as life parades before it ... more confused than ever, in our kaleidoscopic age. (Frank, 1963, p. 3)

A Word About Law in General

"There are two primary legal traditions in Western Civilizations. The first of these, civil law, is rooted in the Corpus Juris Civilis, a codification of Roman Law compiled under the direction of emperor Justinian (527-565)" (Rose, 1991, p. 91). Civil Law came to our system most recently via the French Code Civil of 1792. This civil code was completed in 1804 under the reign of Napoleon. In the USA, the basic legal system of Louisiana is based on civil law, which makes this state almost impossible for legal entities outside of that state to practice there. The basic idea that surrounds civil law is that the written set of rules is the arbiter of all disputes.

The second tradition of the law is the Common Law. This law emerged primarily from accepted practices and procedures of the merchants in 12th century England. Common law is basically a set of decisions made by the courts over a period of time. In common law, decisions are founded upon the grounds of judicial precedence, not by appropriate rules and written conditions. Throughout the litigation process, each attorney will

present precedents that he/she believes will favor his/her legal stance and will consequently win the judges ruling in his/her favor.

In the United States, three kinds of law may be encountered. 1) Statutory law are the laws passed by Congress; 2) Administrative law is the regulations issued by the agencies of the Executive branch of the government, i.e. speed limits on interstate highways; 3) Common law (described in the preceding paragraph) consists entirely of judicial rulings. Although these three types of law each play a role in the US legal system, we nevertheless basically follow the common law tradition. (Rose, 1991, p. 92)

The doctrine of following precedents is known as "stare decisis", which means to stand by what has been decided. When a judge writes a decision, particularly one that interprets precedents in a new way, he/she is said to be "making the law". This is the gray area concept of copyright law. Changing technology means changing legal precedents, what about stare decisis?

The system of Federal Appellate courts is central to the legal system. There are three levels to the federal hierarchy: District Courts (at least one per state), 13 Courts of Appeals, and the Supreme Court. Each court is bound by its own precedents and those of higher courts, but not necessarily by the decisions of "sister courts". States have a similar distinction between trial and appellate courts, but the number of levels differ from state to state (Rose, 1991, p. 92).

Legal Research Primer (Statutory Law)

The goal of legal research is generally to find relevant court cases with decisions that may serve as a precedent for the litigation at hand. Statutory law for the USA is published chronologically in a series of books called Statutes at Large. The statutes are then organized according to numbered topics called "titles" in the United States Code. As an example, Title 17 constitutes the Federal Copyright Statute. Portions of the statutes are cited by giving the title number, the abbreviation of the code, and the section number, i.e., 17 USC 101. (Rose, 1991)

Copyright Law: Brief

Intellectual law is divided into four categories: 1) Patents, 2) Copyrights, 3) Trademarks, and 4) Trade Secrets. Trademarks are an indication of a company's reputation, and trademark litigation often involves an attempt of selling a fake product as the original or close facsimile. Trade secrets law is usually connected to unfair business practices.

A lot of confusion arises over the similarities between copyrights and patents. Both are mandated in Article I, Section 8 of the US Constitution: "The Congress shall have power ... [t]o promote the Progress of Science and the Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries ..." Both the subject matter and the nature of the monopoly differ between copyrights and patents. Patents are intended to encourage innovation. A patent grants a 17 year monopoly to the inventor. The science or art must be an object or a process; it cannot be an idea. The work patented must be novel, this

simply means that patents must complete the application process within one year and protection includes the application process time.

Copyrights were intended to encourage writing. A copyright may give the author a life plus 50 year monopoly on the right to reproduce the work, and to license that same work, etc. (see Chapters 1 & 2). The Copyright Act of 1976 specifies that the owner of copyrights has certain exclusive rights that only they can validate and use. There are also exceptions to the copyright monopoly, such as the fair use exemption, that allows others to copy the authors works for purposes that are generally associated with criticism or education.

As Judge Learned described:

Borrowed the work must indeed not be, for a plagiarist is not himself pro tanto an 'author'; but if by some magic a man who had not known it were to compose anew Keats's Ode on a Grecian Urn, he would be an 'author' and, if he copyrighted it, others might not copy that poem, though they might of course copy Keats. (Sheldon v. Metro-Goldwyn Pictures Corporation, 1936)

Just as ideas cannot be patented, neither can they be copyrighted. A copyright, pure and simple, is an expression of an idea, not the idea itself. "The boundary between expression and idea is not defined in an exclusive way; i.e., fictional characters for, example, have been found to be ideas in some courts, and expressions of ideas in others" (Rose, 1991, p. 118).

A serious challenge that has been used against publishers is the right of sovereign immunity granted to the individual states under the 11th Amendment to the Constitution to subvert the integrity of the copyright

laws. The 11th Amendment has been used to prevent suits for damages filed by the citizens of one state against another state from being brought to trial in federal courts. The 11th Amendment states that "The judicial power of the US shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the US by citizens of another state, or by citizens or subjects of a foreign state". Several states have cited the 11th Amendment as protecting them from the usual requirement of having to limit copying or copyrighted materials and from having to pay royalties for the use of those materials. This issue is important because if states are exempt from the Copyright Act, then state agencies such as schools and universities are also be exempt. Simply another gray area to be considered in the copyright saga between users and owners.

Copyright law is generally expanding (see Appendixes G and H) to enable it to cover more and more subject areas. This is how the court systems can literally change the intent of the law if not policed and appealed. However, many members of the judiciary, who are active in the administration of copyright law, blame many weaknesses of the copyright law system on the lack of Congress to pay attention to the escalation of new technology and the problems that are caused by POD's and other high technology innovations. "It is not our job to apply laws that have not been written" retorted Justice Stevens in one of his famous decisions" (Toohey, 1984, p. 28). However, many of the court's decisions are based upon the mediators belief in the intent of the copyright laws. Needless to say, many copyright litigation cases are handled by those who judge unwisely and needlessly on practical matters of the copyright dilemma.

Important Copyright Cases

1) Basic Books, Inc. v. Kinko's Graphics Corporation (1989)

Basic Books, Inc. (Harper & Row Publishers, Inc., John Wiley & Sons, Inc., McGraw Hill, Inc., Penquin Books USA, Inc., Prentice-Hall, Inc., Richard D. Irwin, Inc., and William Morrow & Co., Inc.) Plaintiffs brought copyright infringement action against Kinko's which copied excerpts from books without permission, compiled them into university course packets, and sold them to college students. Judge Motley of the US District Court, S.D. New York held that: 1) copying was not "fair use" of publisher's copyrights, and thus, constituted infringement; 2) duplication business (Kinko's) failed to establish claims of anti competitive scheme in support of copyright misuse and unclean hands defenses; 3) publishers were not estopped from exerting claims; and 4) publishers were entitled to statutory damages.

Discussion: This case was distinctive in many respects from those which have come before it. It involves multiple copying. The copying was conducted by a commercial enterprise which claims an educational purpose for the materials. The copying was just that-copying- and did not transform the works in suit, that is, interpret them or add any value to the material that was copied, as would the use of a critic or biographer. In addition, Kinko's was claiming fair use in education as a "for profit" enterprise. Kinko's did not produce any (professor witnesses) to substantiate their claim that course packets are a necessity in the teaching process. They did, however,

produce a Dr. Johnson whose survey of 81 faculty members at the University of California, conducted in August of 1990 showed that 52% of those faculty members provided customized packets for their students; 88% of them did so because there was no adequate books available; 29% did so because it would be too costly for students to buy all the sources; and 95% did so because they claimed their field was changing so fast and they needed updated materials ("Survey of University Professors Regarding Customized Packages" at 15, Economic Development Corporation, 1990).

The court found Kinko's copied excerpts that were not under the fair use of plaintiffs' copyrights and, therefore, constitute infringement. Further, Kinko's defenses of copyright misuse, unclean hands, and estoppel failed. Plaintiff was granted statutory damages, injunctive relief, and attorney's fees plus cost. SO ORDERED (No. 89 Civ. 2807, US District Court, NY).

Judge Constance Motley's ruling , March 28, 1991, lists many of Kinko's defense claims, item by item, and rejects almost every defense argument. She ruled against the fair use claim on every defense item listed concerning course packet reproduction. "This lawsuit represented a warning shot across the bow for copy shops directly, and for higher education indirectly, to remind everyone that there is a copyright law" (Tilson, 1990, p. 44). Most students of copyright consider the issues of this case to have significant effects on faculty members and their ability to teach and to use new technologies in their teaching.

In addition, Judge Motley fined Kinko's \$510 thousand and made the company responsible for the plaintiff's legal fees which were figured to be \$1.9 million. She ruled that Kinko's was not only a willful infringer on the publisher's copyrights without permission but should have known that their use was not a fair use and therefore the judge found them to be "willful" in their actions which accounted for the heavy penalties involved in the case.

It is the view of the NAQP that the AAP entered the lawsuit with the intention of trying to create and enforce a very restrictive conception of fair use as it applies to the materials used in university classrooms. Kinko's made three separate settlement proposals to AAP, all of which were summarily rejected. NAQP stated that it was the intention of AAP to make an example of Kinko's, to limit Kinko's behavior, and to intimidate other companies involved in the same business (Editors, 1991).

As for Kinko's, they appear to have alienated the judge by being very obstructive, failing to obey court orders, and used various delaying tactics (described by the Plaintiff's as the "litigation equivalent of a scorched earth policy"). Kinko's outlined a very aggressive defense strategy in their early documents but appear to have been plagued by indecisiveness. One theory is that Kinko's believed that they were guilty, that the law would not protect their behavior, and their only real chance was to stall and litigate the publishers into a settlement. In spite of the limitations of Kinko's defense, the NAQP believes that they did provide enough testimony to have justified a different verdict. It seems that Kinko's irritated the judge to the point that she was unwilling to give them any benefit of any doubt on disputed testimony. The AAP was successful in convincing the court that Kinko's

was willfully ignoring the copyright law, was making a profit as a consequence of that, could function as well if they were complying with the law, and that other providers of similar services did comply with the copyright law. AAP did a very thorough job in preparing and presenting their case and were able to counter every argument that Kinko's presented (Editors, 1991).

Judge Motley's decision has turned both industry and education's understanding of fair use as it applies to educational purposes on its head. Virtually nothing that is typically used in course packets would qualify as fair use under her ruling. "If fair use applies, one does not need permission, nor must royalties be paid for using the material" (Editors, 1991, p. 5). For practical purposes, her ruling eliminates fair use as a factor in producing anthologies. Her, Judge Motley, opinion states that she "will enjoin defendant from future anthologizing and copying from plaintiff's works without permission and prepayment of fees". It has been assumed within industry and education that (supported by previous court decisions) that if a book was out of print its reproduction was permissible under fair use. Under Motley's decision, this is no longer considered to be a true and ethical use of an authors works.

"An acceptance of Judge Motley's decision, which in effect means an acceptance of AAP's view of what ought to be would, in NAQP's view, lead to the destruction of the course packet industry" (Editors, 1991, p. 5). According to the association, it is not possible for industry or education to produce a product for students that is available when they need it and at a cost that is fair.

In this case, the judge made a number of legal determinations concerning fair use of copyrighted materials produced for sale and distribution to academic markets. We must remember that this is the decision of only one judge, at the lowest level of the federal court system. Judge Motley (1991) declared that "Courts and commentators disagree on the interpretation and application of the four factors, topics of current debate... the search for a coherent predictable interpretation applicable to all cases remains elusive. This is so, particularly because any common law interpretation proceeds on a case by case basis."

2) Princeton University Press, MacMillan, Inc., and St. Martin's Press, Inc. v. Michigan Document Services, Inc and James M. Smith (1992)

Plaintiffs, publishers, filed a complaint of copyright infringement and a motion for preliminary injunction against MDS, Michigan Document Services. At the beginning of the spring semester of 1992, for the University of Michigan in Ann Arbor, it is known that MDS prepared and sold to UM students three course packs containing excerpts from six works for which the plaintiffs own the copyrights. Plaintiffs filed their complaint alleging copyright infringement and a motion for preliminary injunction on February 27, 1992. The complaint lists six claims, one for each of the allegedly infringed works. The plaintiffs seek: 1) preliminary and permanent injunctions to prevent MDS from infringing on their copyrights in present or future works; 2) statutory damages in the maximum amount of \$100,000 from each defendant in each of the alleged

infringements; 3) actual damages as may be proven; and 4) costs and attorney's fees. MDS admits in their response that at the request of professors, they copied materials for use in the professors courses. MDS did not apply for nor receive permission to copy the copyrighted works. They have not paid any royalties for the use of the copyrights and so admit. MDS argues that the use of the plaintiffs copyrights were for educational purposes and for the public good. The court has thus far upheld the preliminary injunction (US District Court, E.D. Michigan, No. 92-CV-71029-DT).

This is an on-going case and is most interesting because the defendant, MDS, has declared that they will fight the plaintiffs to the bitter end. Mr. Smith has declared through NAQP news releases that he intends to print copyrighted anthologies with or without the permission of the publishers based upon their expedient or non-expedient copyright approvals. If MDS does not have a reply from the publisher within a one week period, the company will pay the publisher a royalty of one cent per page and copy the article in an anthology that is being prepared for classroom use.

3) Addison-Wesley Publishing Company (et al.) (AAP) v. New York University (1982)

This case received national attention in 1982 as a result of an out-of-court agreement between nine major publishers and New York University. The suit involved 10 faculty members of NYU and an off-campus copy center for alleged copyright infringement. AAP coordinated and financed the litigation and filed the suit in the US District Court, SD of New York.

They alleged that NYU, 10 professors, and Unique Copy Center violated the Copyright Act of 1976 by exceeding the number of copied anthologies as permitted by the law.

AAP considered the litigation necessary to curtail what the director of the college division of the organization considered increased incidence of copyright infringement which have escalated over the past years due to technology convenience. The AAP did not negotiate with NYU before bringing the suit, and the organization expressed interest that news of the suit would shock other universities and professors into compliance. Carol Risher, director of AAP's Copyright Division, contended that "universities must recognize that they have a responsibility for what their employees and faculty members do, and faculty members must recognize their individual responsibility". Although the NYU suit was the first to name a university and faculty members, the AAP previously forced two chains of campus copy shops to stop copying anthologies. (Tilson, 1990, p. 41)

Because of the suit, NYU agreed to perform the following in order to reach an amicable, practical disposition of the Action by agreement founded on the foregoing premises and founding of copyright policies and procedures:

1.0 A university policy must be adopted and implemented.

1.2 NYU would widely publicize to all present and future members of their faculty the adopted policies.

1.3 NYU would advise the AAP of compliance of the copyright policy.

1.4 NYU would act diligently to foster compliance by all employees.

1.5 NYU would take immediate corrective action against any and all copyright infringement within it's domain.

1.6 NYU agreed to comply with it own copyright policy.

2.0 Upon completion of the NYU policy statement and adherence to such, AAP would drop all litigative efforts.

The important factor of the NYU case lies in the fact that AAP took the initiative to litigate and dictate policy to a state institution of higher learning and with it's employees. They were able to flex their copyright muscle and force compliance without actually entering the court room. And more importantly, AAP scared the educational community into a generalized compliance attitude that unfortunately remains both within the academic world and the business world today. AAP and SPA members are on the litigative offense in copyright infringement cases. (See policy section in chapter IX).

Computer Related Cases

More than 50% of all business software that is in use today is pirated software. In 1992, illegal copying of software cost the software industry \$12 billion. Had these sales been legitimate, at least one-half, \$6 billion, would have been reinvested in the economy, creating new jobs and better products through research and development. In an effort to reduce piracy. Microsoft and other manufacturers work closely with SPA and the Business

Software Alliance, an international agency dedicated to combating piracy, in order to reduce the cost of piracy (Editors, 1994).

Although software piracy is very common, users must become aware of what constitutes infringement through piracy (Figure 9). Most piracy is the result of borrowing software from friends or co-workers without buying a legitimate copy. Infringement also occurs when resellers offer free software with the purchase of computer hardware without paying licensing fees. Another type infringement comes from software and manual counterfeiting.

1) Apple Computer, Inc. v. Formula International (1982)

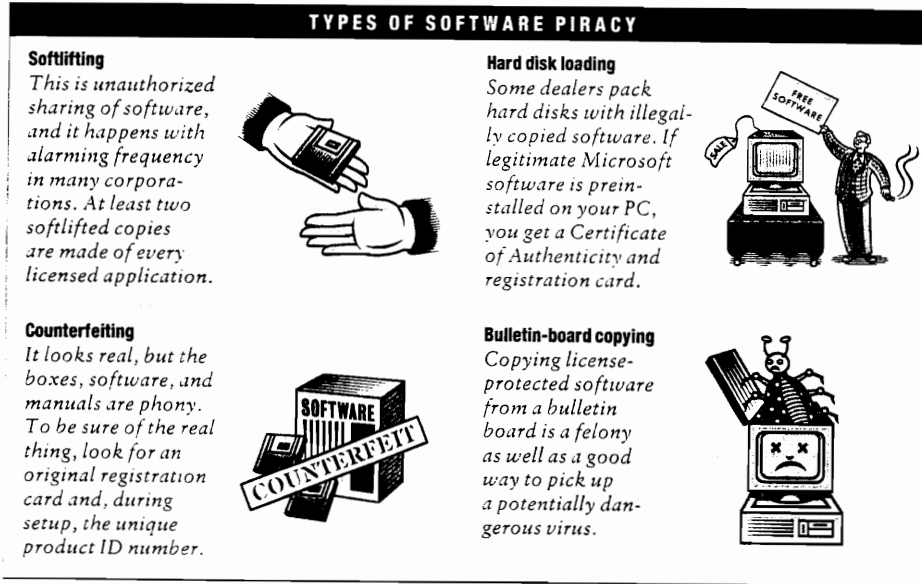
In 1982 a case which challenged infringement of ROM's was settled in favor of Apple Computer, Inc., but was overturned by a higher court in the appeal process during 1984. The courts had decided that there was not a reason to make a distinction between ROM's and application programs. The following points emerged from this suit concerning copyright of computer programs:

1. Computer programs, whether embedded in ROM or printed on paper, are proper subject matter for copyright protection regardless if the program is written for the machine (object code).

2. The computer program and the audiovisual output are two different works and should be copyrighted separately. Protecting the instructions in ROM will not protect the visually perceptible output.

However, failing to protect rights of copyright owners is not excused by the fact that new technologies have made the protection of those rights more

difficult. The very ingenuity of our age which has produced these remarkable technologies should be able to devise the laws to accommodate them (Mathias, 1981).



(Focus, 1994)

Figure 9: Types of Software Piracy

Chapter VIII

POD's, Copyright, Compliance, and Educational Nightmares

Copyright is the Cinderella of the law. Her rich older sisters, Franchises and Patents, long crowded her into the chimney corner. Suddenly the Fairy Godmother, Invention, endowed her with mechanical and electrical devices as magical as the pumpkin coach and mice footmen. Now she whirls through the mad mazes of a glamorous ball. (Chaffee, 1945, p. 45)

Historically, the authors and publishers of copyrighted materials have been lenient in their concerns over educational infringement, piracy, and plagiarism. Manual reproduction of copyrighted materials was very time consuming and a laborious task that resulted in very little economic harm to the copyright owner. Hand copying was tolerated because of its limitation and production capabilities. However, in the mid 1960's this attitude of toleration by copyright owners dissipated as the photocopier made its debut onto the campuses of universities. Other technologies were emerging such as video recorders and sound devices; however, for the sake of brevity, we will discuss copyright problems in the context of the xerographic process and, later in the paper, concerns over recent computer copyright court rulings and legislation.

Copying machines have been actively marketed in the US since the late 1940's. The earlier copiers were not a threat as far as copyrights were concerned, because the per copy cost were expensive and the copier platens were incapable of copying from books. Basically anything that was copied

had to be on a single sheet of paper that could be fed through the copier with an intermediate sheet intact. In the 1950's Xerox Corporation patented the first true plain paper xerographic copier. Still, there was no great threat to the publishing industry as far as copyrights were concerned because of the copiers limitations and expensive per copy cost. If a book were to be copied in the 1950's, every page that was to be copied would have to be physically extracted from the book and hand fed through the copy machine. At the end of the copying process, the copies would have to be hand collated. It was much simpler and cheaper to simply buy the book or copyrighted article.

In the late 1960's, Xerox and Savin introduced flat-top platen copiers that were capable of copying directly from books and publications without the disassembly of the literary work. Around the same time, automated sorters were becoming available. Now it was possible to copy directly from a book and collate at the same time. On top of that, competition in the copier marketplace had caused the per copy cost to decrease dramatically, 50% or more. Public schools and universities were buying these new fangled contraptions, copiers, and actually locating them in libraries where teachers, professors, and students could copy any information that they needed in a fast and convenient manner.

By the late 1970's, copiers were simply a tool to conveniently copy the information that the instructor needed in the form of an anthology. No one, other than copyright owners, gave copyrights a second thought. Copiers were now giving publishers a pain in the "tusch" and in the pocketbook. And then, in the late 1970's, more headaches for the copyright

owners, the computer was making in-roads into small businesses as well as universities. No one, other than a few futurist, knew what to do with it or how it might fit into education, but the publishers spotted it as "future trouble" for their industry.

In the 1980's and 1990's, personal computers, micro-computers, mini-computers, and laptop computers along with peripherals such as scanners and printers have truly ushered schools and universities into the "Information Age". New publishing concepts, such as the Xerox Docutech, the Kodak Lionheart, and the "E" digital offset systems have made publishers and copyright infringers out of almost every school and university in the US as well as in other advanced countries. We literally became a "nation of crooks" as depicted by our stringent and uncompromising Copyright Laws. Not because we intended to become law breakers but because of the ease of non-compliance and the lack of education in copyright legislation. Think of this, we all know that if we take candy from a grocery store without paying for it, we may be caught by the police and prosecuted for the crime of theft; however, do we realize that if we take a page from a book and copy it in multiples, we may be committing a felony that comes under the jurisdiction of the FBI?

Educational institutions have been involved in an evolution of technology so vast that it has placed a burden upon the staff's ability to teach and complete research. This burden has been caused by the advancement from mechanical technology to electronic digital technology. With this advancement, teaching and research has become complicated both from a legal and technological viewpoint (Helm, 1986).

The rapid acceleration of educators moving from relatively low-technology equipment such as typewriters, overhead projectors, and film projectors to high-tech systems such as computers, digital copiers, color copiers, cable television, satellite transmissions, closed circuit TV, and publish-on-demand systems has caused both ethical and legal considerations to be examined by teachers and administrators. Ethically, educators know it is wrong to steal copyrighted material, but limited funding, time restraints, and teaching demands force them to simply "borrow" on occasion. Legally, borrowing copyrighted materials for educational purposes, without permission, can be a crime punishable by a fine and/or a jail term (Helm, 1986).

Teachers often believe that their responsibilities as educators absolve them from adherence to copyright laws. They claim that copyright violations are justified by their noble goals of providing the best educational experiences for their students (Rezabek, 1993). Teachers and educators usually violate copyright legislation for five primary reasons: 1) the ease of duplication, 2) ignorance of the law, 3) the absence of school policy regarding copyrights, 4) the low risk of being caught, and 5) financial savings from illegal copying (Helm, 1984). However, teachers should be educated to understand that they are accountable by law for their illegal use of material held under copyright. Copyright legislation should be of particular concern to schools through teachers and administrators. Schools are one of the most powerful and pervasive influences on ethics and morals of young people, and this institution must prepare students to "realize, comprehend, and evaluate the general impact of computers, as well as

specific issues involving the use of computers" (Bear, 1986, p. 115). Universities, therefore, have an obligation to familiarize the student with the legal responsibilities of technology use, including copyright laws and guidelines. In addition to teaching students about the implications of copyright laws, teachers must realize that they are role models who should demonstrate ethical and appropriate uses of modern technology and who are aware of and adhere to copyright guidelines (see Appendixes B, C, and D) in their profession (Niemeyer, 1986).

"Awareness of copyright laws may not necessarily lead to the adherence of the legislation, but awareness is a first step" (Rezabek, 1993, p. 234). Educators must reach for ways to filter their enterprise in order that it may reflect the values and ethics that the public and the court expects from education in the information age. The software police, SPA, and the copyright police, AAP, do not make it easy for users of intellectual properties. Both agencies are non-profit trade associations that have as their chartered purpose, the protection of the intellectual property claims for their memberships. These organizations have been very effective in their pursuit of copyright and patent infringers and have become known as the dreaded Software/Copyright Police. "The prosecution of errant copyright users has risen sharply in the last few years. On average, two or three violators are prosecuted each week, usually after being tipped off by current or former employees " (Moore, 1994, p. 103).

The AAP & SPA believe that at least 50 percent of all reproductions of copyrighted materials are not being reported for royalty considerations, costing their membership billions of dollars. Because of this belief, AAP

has stepped up its enforcement policy of tracking down and litigating copyright infringers. In the past, educational institutions have not been the primary targets of AAP's and SPA's enforcement tactics. In the future AAP and SPA have indicated that educational institutions will be probed for copyright infringement on an equal basis with business. "AAP has pronounced a war on any type of copyright infringement and their pronouncement makes it clear that educational users should comply or face the consequences" (Stapleton, 1993, p. 81).

AAP and SPA want educators to realize that "ignorance" of copyright laws is not a viable defense. If documents, computer software, videotapes, films, CD's, TV broadcast, or any other copyright protected media is duplicated without permission or authorization, then those educators engaged in the copyright legislation endanger both themselves and their institution in the following ways: 1) they render themselves liable for litigation and prosecution, 2) They render their institution liable for litigation and prosecution, and 3) they may inadvertently jeopardize the creation of future educational materials by depriving the creators of works-for-profit capital which is needed to foster the creation of new works. Copyright is defined by the US Constitution as a way "to promote the progress of science and useful arts". Most educators interpret this as a statement that allows them to get around copyright law since they are promoting a useful art and science through education.

What can copyright users do in order to insure at least respectable compliance:

1. Educate yourself and management about copyright infringement and the consequences of violating the law.
2. Determine what software your company is using. The SPA can provide you with a free software package called SP Audit. This software will gather the information and print an index telling you what is registered, serial numbers, etc.
3. File any purchase documentation you have in one place.
4. Review and verify registration records. Cases have been litigated because the software or approval statement has been filed in an employees name rather than in the companies name. If the employee leaves the company, ownership documentation is almost impossible.
5. Standardize your systems and software when possible.
6. Determine compliance standards and take action to document ownership or approval status.
7. Destroy any illegal copies or software disks.
8. Delegate one person or department to install all new software or to apply for copyright approval.
9. Get legal and stay that way. (Moore, 1994, pp. 102-104)

Our founding fathers could not have imagined the gray areas that technology and education have imposed upon the copyright law over the last two hundred years. Certainly they made a concerted effort to advance both the cause of learning and to ensure that creativity got it's just rewards. Unfortunately, the wording chosen by the drafters of the constitution created a dichotomy between educators and publishers which will probably

remain unresolved for many decades to come. Educators argue for exemption from the statute because their educational cause is for the public good. Copyright owners counter that their needs to be financially rewarded as an incentive for creativity outweighs those non-creative arguments of educators. Educators thought they had received a "break" when the 1976 Copyright Act recognized fair use for the first time. This doctrine grants educators and others certain exemptions and privileges concerning the scholarly use of copyrighted material (see Appendix E). Unfortunately, several cases such as Basic Books v. Kinko's (1989) have left the interpretation of fair use up to the courts. In effect, the courts are at liberty to change the interpretation of the "Copyright Act" in every court proceeding, if they so choose. "Technology is not going to stop and it will be a fun ride for those who can hang on" (Karstensen, 1994, p. 42).

What can we do to solve this copyright dilemma? Mark Twain was said to have written that "Only one thing is impossible for God; and that is to find any sense in any copyright law on this planet." As this paper is being written, this researcher feels the sentiments in Twain's quest for understanding the copyright legislation in the US. The gray area remains. The only solution to the copyright fiasco is a mutual understanding between copyright holders and those who wish to reproduce their work. In 1990's terminology, between the litigators and those who don't wish to be litigated.

In February of 1994, NAQP convened its annual meeting in Hilton Head, SC. At the meeting a number of concerns came to light in the Electronic Imaging Exchange seminar which included a number of distinguished panelists from original equipment manufacturers (OEM's) as

well as digital applications specialist. Some of those concerns included copyright:

A number of new copyright considerations came to light, and while many questions were asked, few were answered. For example: If several different organizations develop a single finished product, who owns the copyright? If a product is changed to suit the requirements of different media, what gets copyrighted? Should a legal category of electronic rights be established? (Clinkunbroomer, 1994, p.41)

A possible solution is to create a computerized master database which utilizes interaction between every publisher's database. The user/educator creates his/her anthology and keys in the request. Upon entry, permission is either provided or denied. If permission is provided, the literary works are produced over a publish-on-demand program and the customer is charged for the service. The copyright has been granted and the service has been rendered. The customer has permission and the copyright owner has his royalties. This utopian idea is easy to put into print, but will be very hard to implement, because of the extreme differences in the ideologies of the current Stationers Company, the AAP, and the end users in both education and business. The copyright law is so vague that only the courts can decide the gray area and the consumer of intellectual properties may only hope that he does not become a casualty of the copyright dilemma.

By the year 1996 it may be possible to transmit the entire contents of 20 volumes of an encyclopedia from New York to Japan in less than five seconds. "Because of new super computers, networking technologies, and super-speed transmissions; users will be able to edit images and text,

browse on-line digital libraries, and selectively retrieve documents even when these data bases are on very distant computers" (Weber, 1991, pp. 52-53). As a matter of fact, some of these technologies are available now.

Some publishing houses are ignoring intellectual property rights because they are confronted with a greater problem, very fast advancements in communications and computers. They don't see how they can keep up with the rapid advancement and can't seem to find a niche in the new market place. They are also unable to contribute, account for, and collect royalties at the same time. Other publishers and copyright owners seem to base their existence on protecting their copyrights and ideas by simply refusing to become a part of the technology rat race until they can devise a plan of attack on a reasonable five year plan. They do this by refusing to allow their literary works to be available in any electronic format while awaiting their electronic niche in the market place.

Another group of publishers, those who have already entered the myriad of on-line databases believe that copyright issues are fairly insignificant because the users of their databases normally only extract a minute portion of text at any given time. Because the value of the database is in its comprehensive format, the publisher feels that the worth of the text is preserved and the small portion extracted is an investment in possible future literary or other intellectual works that may become the next platinum record or best selling novel.

Another group of publishing companies is working with computer scientist and engineers to find technological solutions to copyright

concerns. This futuristic group is looking ahead to the future needs of the information age and they are coming up with some very promising ideas:

1) Groups of professionals that include computer scientist, lawyers, librarians, educators, authors, and other professionals are pooling ideas on how to make access and compliance as painless as possible.

2) Authors would have full access in order that they might create derivative works for profit.

3) Ordinary patrons could browse, copy, and print anything in the database as long as they paid a royalty which would be monitored by the database. These patrons would not be able to modify any of the data.

4) The Association of American Publishers, AAP, and Copyright Clearance Center (CCC) would be the originators of the database and police its usage and collect royalties.

5) Through AAP and CCC, access rules would speed up the copyright request time problem, bulk copying problems, and the royalty collection problems.

The long-term goal of this project is to make information easily available for proper use with appropriate compensation for those who create and own the information (Weber, 1991). It must be pointed out that CCC has catalogued a listing of pre-approved copyrights in the past and it has speeded up the copyright approval process for those titles that are listed (see Appendixes B and C). The success of this venture lies in the approval of the AAP membership and in maverick publishers cooperation.

At this very moment a "Bill of Rights for Electronic Citizens" is being drafted by several entities; American University, the EDUCOM

consortium, the University of Southern California, and others. In this draft the premise is that "the application and enforcement of copyright law in the electronic age is too important to be left solely to the publishers and other rights holders" (Weber, 1991, p. 53). This group advocates that future decisions concerning intellectual property rights in the information age must take into account future trends and also address the user's rights. In addition to Congress, courts, publishers, and copyright owners; others must be included in the decision making process. The creators, users , and potential users should have a part in the decision making process as well. The drafters of this new document believe that copyright holders have a right for compensation, but they question the old model and believe that the models for compensation are outdated and should be changed. It simply states that the old model, based on the amount of copies produced, does not serve the public interest in education or in our society as a whole.

The fear looms that people with a legitimate need for electronic information may be denied that access because of monetary reasons. Under the current method of paying royalties on a per copy basis, the real fear is that researchers, educators and students will not be able to pay the price for the information that they need in order to succeed. Because of this, new methods of compensation and pricing must be developed for the good of a society trapped in an electronic age of information.

Before a true electronic publishing industry can emerge where books, magazines, journals and other publications can truly prosper, this compensation issue along with the fair use issue must be addressed and

solved. Otherwise, society will continue to advance toward an age of litigation rather than advance in an age of information.

Two great express trains, called copyright and fair use, are speeding to take advantage of a single piece of track that is digital information. Unless there is substantial rethinking of the definitions and assumptions of fair use and of copyright law, a mighty collision lies ahead, featuring scholarly writers and publishers especially. Indeed, the disruption could be so severe that it might not be reparable short of completely rewriting our copyright law . (Hilts, 1992, p. 36)

The coming and certain digital revolution of information has had a blurring effect upon the differences between the author, publisher, copyist, and researcher. In the past, mechanical print has been centralized, requiring expensive machines and special skills, and infringements were easily identified. By contrast, in digital electronic technology, intellectual works are simultaneously available to many people at low reproduction cost. Near perfect copies can be made from other reproductions and almost anyone can create an intellectual work by putting together a puzzle of information from a multitude of books, journals, and articles without the detection of a copyright problem. Software for computers creates another copyright gray area in itself, because even though the language of the program differs drastically, copyright infringement may occur because the end results are basically the same in concept, (i.e., a layering effect such as in MicroSoft Windows applications).

It all boils down to the fact that publishers are afraid that they are not going to be compensated for their copyrights. Their lobbying efforts are

changing the copyright laws into a fiasco of litigation's that are in effect changing the laws to protect the interest of the publishers and not the interest of society at large. The copyright law as it exist today is too restrictive for our digital information society.

Because of this restrictive attitude by the AAP, Jim Smith, owner of Michigan Copy Center in Ann Arbor is risking his company in a fight with AAP over high prices for educational course materials. Smith has been sued by several publishing houses for selling college course materials without obtaining copyright permission for the articles. A brief article concerning the case appeared in the May, 1994 edition of U. The National College Magazine.

Mr. Smith contends that he is acting in accordance with the fair user statute of copyright law that excludes multiple copies made for classroom purposes. The AAP is coordinating the lawsuit on behalf of MacMillan, Inc., St. Martin's Press, and Princeton University Press. Smith says that he is a student of copyright law and believes that the Basic Books v. Kinko's (1989) case was based on inaccurate statements and incomplete evidence.

Smith declares that publishers' demands on professors and copy shops to seek permission and pay whatever royalties the publishers deem appropriate for reproduced material are detrimental to the educational process. Some publishers take to long to respond and royalties may range as high as \$50 per page. In general, royalties raise the price of course packs by 300% to 400%. Mr. Smith, a member of NAQP, is taking a lead in the fight against what he views as copyright suppression. He believes in the need for copyright laws to be changed in order for our society to advance in

the effort against suppression of intellectual property through AAP and SPA's control of the written, digital, word.

Chapter IX

A Copyright Policy of Compliance and Model of Rights

Policy of Compliance

The information age, technological innovations, and the impending information superhighway have all increased the need for copyright policy guidelines in both schools and businesses. The need for copyright compliance policies have increased with the use of POD's and the internet systems which have become a variable beehive of individual shareware data bases. These hi-tech tools/toys have become magnets for sharing information, some copyrighted, and computer software reproduction that is not sanctioned by the SPA nor by most software owners.

It has been contended that policy should be viewed as an expression of overall intentions, a formal authorization to accomplish a certain task, or even as a specific, ongoing program (Bowers, 1988). Many educational institutions, school districts, colleges, and universities are protecting their executive governing bodies, administrators, teachers, and staff by developing and implementing an institutional copyright policy (Vicek, 1988).

It is a well known fact that legal council may draft appropriate copyright policies; however, better policies will be devised if written by educators who know the problems in teaching and research or by business leaders who know the policy needs of their particular establishment. Vicek stresses the importance of these local professionals working together with legal counsel in order to achieve the desired results. A subsequent step to

achieve the implementation of a copyright policy is the appointment of an individual to specifically write, implement, and monitor the policy (Vicek, 1987).

Vicek actually researched copyright development of policy concerns through concentrated contacts with the lead educational media director of every state or commonwealth board or department of education in order to secure the identities of those institutions in each district that may have developed a copyright policy for their particular institution. In addition, he wrote to every president of each state library media association seeking nominations for those libraries that had developed solid copyright policies that involved either school districts, colleges, universities or other state agencies.

He received forty-five nominations, all of which were from university and school districts. Vlcek then requested copies of each participants copyright policies manual. He received 28 of the requested documentation from which exemplary copyright school policies were selected and later used as compliance guides for copyright arbitration within educational cases. After reviewing the 28 policies of varying content and size, the following concrete and constant features were identified in better quality policy documents:

1. A short, concise policy statement.
2. A lengthy copyright manual.

Seven additional elements identified by Vlcek during the review of policies were as follows:

1. A statement of intent to abide by the copyright law.

2. A statement disallowing copying not allowed by the copyright law, fair use guidelines, and license agreements, without requesting and granting permission.
3. A statement to place the liability for willful infringement upon the person requesting the copying.
4. A statement to name a copyright officer of the institution or (large) department.
5. A statement to mandate the development of a copyright manual detailing what copying can and cannot be completed by employees.
6. A statement to emphasize the importance of placing the required notices by reproduction equipment.
7. A statement to mandate record keeping of permission request and responses, licensing agreements, and other documents of release.

After defining the legitimate need for a copyright policy, Vlcek recommends the following steps in accomplishing policy formulation and distribution:

1. Develop a copyright policy.
2. Develop a copyright manual.
3. Name a copyright officer.
4. Post required copyright warnings and notices near all reproduction equipment.

School and university copyright policy requires the posting of copyright warning notices on school reproduction equipment. Business facilities, although not required, should also post warning posters concerning copyright infringement (Tilson, 1990). "Many educational institutions,

school districts, colleges, and universities are protecting their executive governing bodies, administrators, teachers, and staff by developing and implementing an institutional copyright policy" (Vicek, 1987, pp. 28-29). It is also advisable that business and industry follow these recommendations and compliance factors.

MODEL POLICY CONCERNING COLLEGE AND UNIVERSITY PHOTOCOPYING FOR CLASSROOM, RESEARCH, AND LIBRARY RESERVE USE

(Note: This model policy was prepared by Mary Hutchings, American Library Association's (ALA) legal counsel, in March, 1982.)

1. THE COPYRIGHT ACT AND PHOTOCOPYING

From time to time, the faculty and staff of this University [College] may use photocopied materials to supplement research and teaching. In many cases, photocopying can facilitate the University's [College's] mission; that is, the development and transmission of information. However, the photocopying of copyrighted materials is a right granted under the copyright law's doctrine of "fair use" which must not be abused. This report will explain the University's [College's] policy concerning the photocopying of copyrighted materials by faculty and library staff. Please note that this policy does not address other library photocopying which may be permitted under other sections of the copyright law, e.g., 17 U.S.C. Sec. 108.

Copyright is a constitutionally conceived property right which is designed to promote the progress of science and the useful arts by securing for an author the benefits of his or her original work of

authorship for a limited time. U.S. Constitution. Art. 1, Sec. 8. The Copyright statute, 17 U.S.C. Sec. 101 et seq., implements this policy by balancing the author's interest against the public interest in the dissemination of information affecting areas of universal concern, such as art, science, history and business. The grand design of this delicate balance is to foster the creation and dissemination of intellectual works for the general public.

The Copyright Act defines the rights of a copyright holder and how they may be enforced against an infringer. Included within the Copyright Act is the "fair use" doctrine which allows, under certain conditions, the copying of copyrighted material. While the Act lists general factors under the heading of "fair use" it provides little in the way of specific directions for what constitutes fair use. The law states:

17 U.S.C. Sec. 107. Limitations on exclusive rights: Fair use.

Notwithstanding the provisions of section 106, the fair use of a copy righted 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. (Emphasis added.)

The purpose of this report is to provide you, the faculty and staff of this University [College], with an explanation of when the photocopying of copyrighted material in our opinion is permitted under the fair use doctrine. Where possible, common examples of research, classroom, and library reserve photocopying have been included to illustrate what we believe to be the reach and limits of fair use.

Please note that the copyright law applies to all forms of photocopying, whether it is undertaken at a commercial copying center, at the University's [College's] central or departmental copying facilities or at a self-service machine. While you are free to use the services of a commercial establishment, you should be prepared to provide documentation of permission from the publisher (if such permission is necessary under this policy), since many commercial copiers will require such proof.

We hope this report will give you an appreciation of the factors which weigh in favor of fair use and those factors which weigh

against fair use, but faculty members must determine for themselves which works will be photocopied. This University [College] does not condone a policy of photocopying instead of purchasing copyrighted works where such photocopying would constitute an infringement under the Copyright law, but it does encourage faculty members to exercise good judgment in serving the best interests of students in an efficient manner. This University [College] and its faculty and staff will make a conscientious effort to comply with these guidelines.

Instructions for securing permission to photocopy copyrighted works when such copying is beyond the limits of fair use appear at the end of this report. It is the policy of this University that the user (faculty, staff or librarian) secure such permission whenever it is legally necessary.

11. UNRESTRICTED PHOTOCOPYING

A. Uncopyrighted Published Works

Writings published before January 1, 1978 which have never been copyrighted may be photocopied without restriction. Copies of works protected by copyright must bear a copyright notice which consists of the letter "c" in a circle, or the word "Copyright" or the abbreviation "Copr." plus the year of first publication plus the name of the copyright owner (17 U.S.C. Sec. 401). As to works published before January 1 1978 in the case of a book the notice must be placed on the title page or the reverse side of the title page. In the case of a periodical the notice must be placed either on the title page the first page of text or in the masthead. A pre-1978 failure to comply with the

notice requirements resulted in the work being injected into the public domain, i.e., unprotected. Copyright notice requirements have been relaxed since 1978 so that the absence of notice on copies of a work published after January 1 1978 does not necessarily mean the work is in the public domain. 17 U.S.C. Sec. 405 (a) and (c). However you will not be liable for damages for copyright infringement of works published after that date if after normal inspection you photocopy a work on which you cannot find a copyright symbol and you have not received actual notice of the fact the work is copyrighted. 17 U.S.C. Sec. 405(b). However a copyright owner who found out about your photocopying would have the right to prevent further distribution of the copies if in fact the work were copyrighted and the copies are infringing. 17 U.S.C. Sec.405(b).

B. Published Works With Expired Copyrights

Writings with expired copyrights may be photocopied without restriction. All copyrights prior to 1906 have expired. 17 U.S.C. Sec. 304(b). Copyrights granted after 1906 may have been renewed; however the writing will probably not contain notice of the renewal. Therefore it should be assumed all writings dated 1906 or later are covered by a valid copyright unless information to the contrary is obtained from the owner or the U.S. Copyright Office (see Copyright Office Circular 15t).

Copyright Office Circular R22 explains how to investigate the copyright status of a work. One way is to use the Catalog of Copyright Entries published by the Copyright Office and available in

[the University Library] many libraries. Alternatively you may request the Copyright Office to conduct a search of its registration and/or assignment records. The Office charges an hourly fee for this service. You will need to submit as much information as you have concerning the work in which you are interested such as the title, author, approximate date of publication, the type of work or any available copyright data. The Copyright Office does caution that its searches are not conclusive; for instance if a work obtained copyright less than 28 years ago it may be fully protected although there has been no registration or deposit.

C. Unpublished Works

Unpublished works such as theses and dissertations may be protected by copyright. If such a work was created before January 1, 1978 and has not been copyrighted or published without copyright notice the work is protected under the new Act for the life of the author plus fifty years 17 U.S.C. Sec. 303 but in no case earlier than December 31 2002. If such a work is published on or before that date the copyright will not expire before December 31, 2027. Works created after January 1 1978 and not published enjoy copyright protection for the life of the author plus fifty years. 17 U.S.C. Sec. 302.

D. U.S. Government Publications

All U.S. Government publications with the possible exception of some National Technical Information Service Publications less than 5 years old may be photocopied without restrictions except to the extent

they contain copyrighted materials from other sources. 17 U.S.C. Sec. 105, U.S. Government publications are documents prepared by an official or employee of the government in an official capacity. 17 U.S.C. 101. Government publications include the opinions of courts in legal cases, Congressional Reports on proposed bills testimony offered at Congressional hearings and the works of government employees in their official capacities. Works prepared by outside authors on contract to the government may or may not be protected by copyright depending on the specifics of the contract. In the absence of copyright notice on such works it would be reasonable to assume they are government works in the public domain. It should be noted that state government works may be protected by copyright. See, 17 U.S.C. Sec. 105. However the opinions of state courts are not protected.

111. PERMISSIBLE PHOTOCOPYING OF COPYRIGHTED WORKS

The Copyright Act allows anyone to photocopy copyrighted works without securing permission from the copyright owner when the photocopying amounts to a "fair use" of the material. 17 U.S. C. Sec. 107. The guidelines in this report discuss the boundaries for fair use of photocopied material used in research or the classroom or in a library reserve operation. Fair use cannot always be expressed in numbers - either the number of pages copied or the number of copies distributed. Therefore you should weigh the various factors listed in the Act and judge whether the intended use of photocopied

copyrighted material is within the spirit of the fair use doctrine. Any serious questions concerning whether a particular photocopying constitutes fair use should be directed to University [College] counsel.

A. Research Uses

At the very least instructors may make a single copy of any of the following for scholarly research or use in teaching or preparing to teach a class:

1. a chapter from a book
2. an article from a periodical or newspaper.
3. a short story, short essay, or short poem, whether or not from a collective work;
4. a chart, diagram, graph, drawing, cartoon, or picture from a book, periodical or newspaper.

These examples reflect the most conservative guidelines for fair use. They do not represent inviolate ceilings for the amount of copyrighted material which can be photocopied within the boundaries of fair use. When exceeding these minimum levels however, you again should consider the four factors listed in Section 107 of the Copyright Act to make sure that any additional photocopying is justified. The following demonstrate situations where increased levels of photocopying would continue to remain within the ambit of fair use:

1. the inability to obtain another copy of the work because it is not available from another library or source or cannot be obtained within your time constraints;
2. the intention to photocopy the material only once and not to distribute the material to others;
3. the ability to keep the amount of material photocopied within a reasonable proportion to the entire work (the larger the work the greater amount of material which may be photocopied).

Most single-copy photocopying for your personal use in research, even when it involves a substantial portion of a work, may well constitute fair use.

B. Classroom Uses

Primary and secondary school educators have, with publishers, developed the following guidelines which allow a teacher to distribute photocopied material to students in a class without the publisher's prior permission under the following conditions:

1. the distribution of the same photocopied material does not occur every semester
2. only one copy is distributed for each student which copy must become the student's property;
3. the material includes a copyright notice on the first page of the portion of material photocopied;
4. the students are not assessed any fee beyond the actual cost of the photocopying.

In addition the educators agreed that the amount of material distributed should not exceed certain brevity standards. Under those guidelines, a prose work may be reproduced in its entirety if it is less than 2500 words in length. If the work exceeds such length the excerpt reproduced may not exceed 1000 words or 10% of the work, whichever is less. In the case of poetry, 250 words is the maximum permitted.

These minimum standards normally would not be realistic in the University setting. Faculty members needing to exceed these limits for college education should not feel hampered by these guidelines although they should attempt a "selective and sparing" use of photocopied copyrighted material.

The photocopying practices of an instructor should not have a significant detrimental impact on the market for the copyrighted work. 17 U.S.C. Sec. 107 (4). To guard against this effect you usually should restrict use of an item of photocopied material to one course and you should not repeatedly photocopy excerpts from one periodical or author without the permission of the copyright owner.

C. Library Reserve Uses

At the request of a faculty member a library may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with guidelines similar to those governing formal classroom distribution for face to face teaching discussed above. This University [College] believes that these guidelines apply to the library reserve shelf to the extent it functions as an extension of

classroom readings or reflects an individual student's right to photocopy for his personal scholastic use under the doctrine of fair use. In general librarians may photocopy materials for reserve room use for the convenience of students both in preparing class assignments and in pursuing informal educational activities which higher education require such as advanced independent study and research .

If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article or an entire chapter from a book or an entire poem. Requests for multiple copies on reserve should meet the following guidelines:

1. the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level, 17 U.S.C. Sec. 107(1) and (3)
2. the number of copies should be reasonable in light of the number of students enrolled the difficulty and timing of assignments and the number of other courses which may assign the same material. 17 U.S.C. Sec. 107(1) and (3)
3. the material should contain a notice of copyright see, 17 U.S.C. Sec. 401;
4. the effect of photocopying the material should not be detrimental to the market for the work. (In general, the library should own at least one copy of the work.) 17 U.S.C. Sec. 107(4).

For example, a professor may place on reserve as a supplement to the course textbook a reasonable number of copies of articles from academic journals or chapters from trade books. A reasonable number of copies will in most instances be less than six but factors such as the length or difficulty of the assignment, the number of enrolled students and the length of time allowed for completion of the assignment may permit more in unusual circumstances.

In addition, a faculty member may also request that multiple copies of photocopied, copyrighted material be placed on the reserve shelf if there is insufficient time to obtain permission from the copyright owner. For example, a professor may place on reserve several photocopies of an entire article from a recent issue of Time magazine or the New York Times in lieu of distributing a copy to each member of the class. If you are in doubt as to whether a particular instance of photocopying is fair use in the reserve reading room, you should seek the publisher's permission. Most publishers will be cooperative and will waive any fee for such a use.

D. Uses of Photocopied Material Requiring Permission

1. Repetitive copying: The classroom or reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright, 17 U.S.C. Sec. 107(3).
2. Copying for profit: Faculty should not charge students more than the actual cost of photocopying the material, 17 U.S.C. Sec. 107(1).

3. Consumable works: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner, 17 U.S.C. Sec. 107 (4).

4. Creation of anthologies as basic text material for a course: Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyright owners. Such photocopying is more likely to be considered as a substitute for purchase of a book and thus less likely to be deemed fair use, 17 U.S.C. Sec. 107(4).

E. How to Obtain Permission

When a use of photocopied material requires that you request permission, you should communicate complete and accurate information to the copyright owner. The American Association of Publishers suggests that the following information be included in a permission request letter in order to expedite the process:

1. Title, author and/or editor, and edition of materials to be duplicated.
2. Exact material to be used, giving amount page numbers, chapters and, if possible, a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.).
6. Whether or not the material is to be sold.

7. Type of reprint (ditto, photography, offset, typeset) .

The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled The Literary Marketplace, published by the R. R. Bowker Company and available in all libraries.

The process of granting permission requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed. In some instances, the publisher may assess a fee for the permission. It is not inappropriate to pass this fee on to the students who receive copies of the photocopied material.

The Copyright Clearance Center also has the right to grant permission and collect fees for photocopying rights for certain publications. Libraries may copy from any journal which is registered with the CCC and report the copying beyond fair use to CCC and pay the set fee. A list of publications for which the CCC handles fees and permissions is available from the CCC, 310 Madison Avenue, New York, N.Y. 10017.

Sample Letter To Copyright Owner (Publisher)

Requesting Permission To Copy

March 1, 1994

Material Permissions Department
Hypothetical Book Company
500 East Avenue
Chicago, Illinois 60601

Dear Sir or Madam:

I would like permission to copy the following for continued use in my classes in future semesters:

Title: Learning is Good, Second Edition

Copyright: Hypothetical Book Co., 1965, 1971

Author: Frank Jones

Material to be duplicated: Chapters 10, 11 and 14 (photocopy enclosed).

Number of copies: 500

Distribution: The material will be distributed to students in my classes and they will pay only the cost of the photocopying.

Type of reprint: Photocopy

Use: The chapter will be used as supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Sincerely,
Faculty Member

F. Infringement

Courts and legal scholars alike have commented that the fair use provisions in the Copyright Act are among the most vague and difficult that can be found anywhere in the law. In amending the Copyright Act in 1976, Congress anticipated the problem this would pose for users of copyrighted materials who wished to stay under the umbrella of protection offered by fair use. For this reason, the Copyright Act contains specific provisions which grant additional

rights to libraries and insulate employees of a non-profit educational institution, library, or archives from statutory damages for infringement where the infringer believed or had reasonable grounds to believe the photocopying was a fair use of the material. 17 U.S.C. Sec. 504(c)(2).

Normally, an infringer is liable to the copyright owner for the actual losses sustained because of the photocopying and any additional profits of the infringer. 17 U.S.C. Sec. 504(a)(1) and (b). Where the monetary losses are nominal, the copyright owner usually will claim statutory damages instead of the actual losses. 17 U.S.C. Sec. 504(a)(2) and (c). The statutory damages may reach as high as \$10,000 (or up to \$50,000 if the infringement is willful). In addition to suing for money damages, a copyright owner can usually prevent future infringement through a court injunction. 17 U.S.C. 502.

The Copyright Act specifically exempts from statutory damages any employee of a non-profit educational institution, library, or archives, who "believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under Section 107." 17 U.S.C. Sec. 504(c)(2). While the fair use provisions are admittedly ambiguous, any employee who attempts to stay within the guidelines contained in this report should have an adequate good faith defense in the case of an innocently committed infringement . If the criteria contained in this report are followed, it is our view that no copyright infringement will occur and that there will be no adverse affect on the market for copyrighted works.

Many educational institutions will provide their employees legal counsel without charge if an infringement suit is brought against the employee for photocopying performed in the course of employment. If so, this should be noted here. (Hutchings, 1982)

A Model of Rights for the Copyright Owner and User

"The Bill of Rights, which consists of the first 10 amendments to the Constitution of the United States, is a summary of those rights and liberties considered essential to the citizens of this country" (McElroy, 1994, p. 1). This copyright owner/users "Model of Rights" was developed by this researcher after many hours of research and roundtable discussions with others (members of PIA, NAQP, NTDR, and PICA) interested in solving the copyright dilemma between users and owners.

The copyright user's/owner's "Model of Rights" is presented to clearly identify certain rights that POD users should have and to express an expectation of cooperation from the publishing industry and copyright owners as well as the AAP and SPA. In the interest of preserving, improving, and perfecting the relationship between POD users, both in education and business, and the international copyright proprietors, the following copyright user's/owner's "Model of Rights" is presented for all interested parties to scrutinize.

This copyright user's/owners "Model of Rights" could be the instrument that attracts and unites both the interest of copyright owners and copyright users. The contents and principles are drawn from ideas and articles that have been researched for the preparation of this dissertation. This instrument is only presented to gain the attention of organizations such

as PIA, NAQP, AAP, SPA, and other educational and business entities. It is only a starting point that duly recognizes a universal need that should be addressed by the users and owners of information and POD technology, a catalyst to better communication in the "age of information".

The Copyright User's and Owner's "Model of Rights"

In the interest of preserving, improving, and perfecting the relationship between POD users, in both education and business, and the international copyright proprietors, including members of AAP and SPA, this copyright user's/owner's "Model of Rights" is presented as follows:

Provision I

POD users as independent entities in both business and education have earned the right to the respect of all facets of the electronic publishing, printing, and duplicating sectors of the international information industries since it has long been established that they fulfill a role as one of the most important channel of both public and private information and education (McElroy, 1994, p. 2).

Provision II

POD user's expect to give royalties to, and receive royalties from, their intellectual property owners; to be treated with respect as a valued customer; and to be encouraged to use and to sell copyrighted materials to end-users in the name of educational and business prosperity for all. POD users have a right to expand their end-user base with the cooperation of all copyright owners (McElroy, 1994, p. 1; Seelingson & Jordan, 1991, p. 8).

Provision III

In all cases where the copyright owners allow immediate or at least fast pre-approved lists or databases of intellectual works, POD users acting as legal representatives of the copyright owners, have the right to use, sell, and distribute protected information for pre-established royalty considerations and have the right to adequate compensation for said services (Smith, 1989, pp. 23-27).

Provision IV

POD users have the right to expect reasonable and timely communications from and, where applicable, consultation with the copyright owner based on actions that directly effect the business and livelihood of both parties and a right of expedient decisions regarding copyright approvals (Seelingson & Jordan, 1991, p. 7).

Provision V

POD users have a right to communicate with intellectual property owners, individually or through organized copyright user groups or councils. Users have a right to appeal decisions rendered concerning fair use and royalty levies without the fear of retribution, and they have the right to expect that permission response will be made in a timely manner (under 48 hours). Publishing houses and other intellectual property owners should retain within their organizations an ombudsman for addressing and resolving copyright problems (Wilson, 1990).

Provision VI

POD users have a right to expect that publishers maintain proper channels of communication regarding timely, accurate, and affordable copyright fees which will allow the POD user the ability to serve their customer and client in a proper and timely fashion (Editors, 1991, June, a, p. 4).

Provision VII

Copyright POD users have a right to the availability of copyrighted titles, fees, terms, and non-proprietary programs equal to those offered any other customer, corporation, university, or business entity (Editors, 1994, March, p. 20).

Provision VIII

Copyright owners and publishers must recognize the need for profit, monetary or otherwise, not only for themselves, but also for the POD copyright users and distributors (McElroy, 1994, pp.1-2).

Provision IX

Copyright POD users have a right to the timely, proper, and uniform issuance of copyright approvals and charges (Seelingson & Jordan, 1991, p. 8).

Provision X

Copyright owners have a right to the timely proper issuance of payment and "rights" recognition to the title of the work (McElroy, 1994, p. 2).

Provision XI

Copyright POD users have a right to expect copyright owners to provide some form of "value added" enticement for those POD users who increase

sales significantly for out of print copyright works (Editors, 1991, June, a, pp. 1-6).

Provision XII

Copyright POD users - being the primary source for providing distribution, value, expertise, and service to clients - have a right to expect that the intellectual property rights holder will use them as a first step for expansion into other information retrieval opportunities (Smith, 1989, pp. 21-49).

Provision XIII

Copyright POD users have a right to expect the publishers and other copyright owners to assume their fair share of responsibility as concerned citizens acting in the public interest. This includes, but is not limited to, matters of fair use, educational promotions, and areas of public concern (Editors, 1991, June, a, p. 5).

Provision XIV

Copyright POD users have a right to expect substantial degrees of continuity from intellectual property owners in distribution rights, royalty consideration, marketing policies, management style and philosophy, which will improve the relationship between them and result in benefits for both entities and the public at large (Seelingson & Jordan, 1991).

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Appendix A

Definition of Terms

Definition of Terms

For the purpose of this paper, the following definitions apply:

- AAP - Association of American Publishers
- ALA - American Library Association
- Analog - A physical variable which remains similar to another variable.
- Access Time - The amount of time it takes to locate a particular piece of information on a hard drive or other storage device.
- Berne Convention - A very old and widespread international copyright treaty; however the USA only became a signatory in 1988 because of the informalities associated with the treaty.
- Bit - The smallest unit of data recognizable by a computer. "0" represents "off" - "1" represents "on".
- Byte - (Binary term) is comprised of eight bits of information, the amount necessary to produce a single character.
- CD - Compact Disc. A hard, round, flat portable storage unit that stores information digitally.
- CONTU - (National) Commission on Technological Uses of Copyright.
- Computer Program Copyright - Copyright protection extends to all of the copyrightable expression embodied in a computer program, but is not available for ideas, program logic, algorithms, systems, methods, concepts, or layouts (Circular 61, 1991).

- Copyright - A form of protection provided by the laws of the United States (title 17, US Code) to the authors of "original works of authorship" including literary , dramatic, musical, artistic, and certain other intellectual works. Available to both published and unpublished works (Circular 1, 1992).
- Copyright Symbols - 1) ©, 2) "Copr.", or 3) Copyright.
- Database - A set of highly organized files that makes it easy for you to find a particular piece of information.
- Derivative Works - A work that is derived or based on one or more already existing works and is copyrightable if it includes what the copyright law calls an "original work of authorship" (Circular 14, 1992).
- Digitization - Atomic theory of communications; data is broken down into tiny particles (bits) during input (as in binary system).
- EDI - Electronic Data Interchange
- EMM - Electronic Mail and Messaging
- E-Mail - Electronic Mail - The electronic version of the postal service. The difference is that the recipient will receive the message almost immediately.
- Fax / Modem - A communication device that allows a PC to fax documents and send data to other modems.
- GATF - Graphic Arts Technical Foundation
- Gigabyte - One billion bytes.
- Icon - A visual symbol used to represent programs or documents in a software application or graphical user interface.

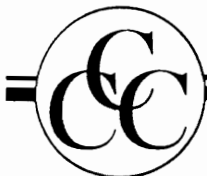
- Image Manipulation - Any altered representation of a concept or an object characterized on paper, plate, or computer monitor.
- Information Superhighway - A giant interconnected group of computer networks and on-line services delivering information from coast to coast in "real time". (A term coined by Vice President Al Gore).
- Kilobyte - Roughly 1000 bytes (1024 bytes exactly).
- LAN - Local Area Network
- Lithography - The process of printing from a plane surface (metal plate) on which the image to be printed is ink receptive and the blank area is ink repellent.
- Modem - A device that allows computers to exchange information across telephone lines.
- Multimedia - The combination of sound, graphics, animation, text, and video in use with a computer.
- NAQP - National Association of Quick Printers
- Network - A group of computers and associated devices that are connected by a communication facilities and can share information and peripherals.
- NOMDA - National Office Machine Dealers Association
- OEM - Original Equipment Manufacturer
- Offset Duplicator - Small printing machine that uses the lithographic application of imaging.
- Online Service - A dial up service that provides modem equipped computer users access to informational databases. Users may

research any topic and can usually communicate with other members through E-mail and chat sessions.

- PIA - Printing Industries of America
- POD - Print-on-Demand
- POD's - Print-on-Demand Systems
- Scanner - A computer input device that converts an image on paper into an electronic representation that can be stored in a computer file. This device is used for image manipulation by graphic artists.
- Shareware - A computer program that the user can try for no charge prior to a decision to purchase.
- SPA - Software Publisher's Association
- Supplemental Copyright Registration -A special type of registration provided for in section 408(d) of the copyright law. A right to amend an incorrect copyright filing.
- Trademark - A representation of the commercial reputation of a product or service as embodied in a design (logo), word, or name (Wilson, 1990).
- WAN - Wide Area Network
- Works-Made-For-Hire - A work-made-for-hire is when the employer, not the author, is considered the owner of the copyright and/or the work.
- Xerography - A copying process that utilizes dry electrostatic forces, processes, to form an image.

Appendix B

CCC & Academic Permissions Services



Copyright Clearance Center Offers Academic Permissions Service

By mid-June, the Copyright Clearance Center (CCC) will offer a service that allows the creation of custom course packets, or "anthologies" for the academic community. The program was approved at CCC's Annual Board meeting on May 14, 1991.

Since March 29, 1991, when the decision in the Kinko's case was announced, CCC has received a stream of calls from both publishers and users concerned about its impact on their daily business activities. "Centralized systems for rights and permissions can be highly effective", said CCC President Eamon Fennessy. "They require cooperation on the part of both rightsholders and users." CCC has worked with corporate users and rightsholders in its licensing service and has the mechanisms in place to do the same for educators and rightsholders in the university setting.

The Academic Permissions Service has been designed with input from both rightsholders and those copy shops, bookstores, and others who produce these materials for the academic community.

Many publishers will enter into "blanket" licensing agreements with CCC; others will stipulate that they be contacted for each permission. In either case, CCC's role as a clearinghouse for many users will expedite permissions. CCC will work to achieve turn-around of permissions within one to four days on average.

Once registered, users will be required to provide basic bibliographic data for each item in the anthology. CCC will then indicate whether the publisher has granted permission (or not) and what royalty fee has been set by the publisher for that work. All royalty fees, as well as CCC's processing charges, will be expressed on a per copy-page basis to coincide with industry practice.

CCC has established itself over twelve years as a central mechanism for granting permissions, collecting royalties, and making payments to publishers. Now this simple, efficient system will be made available for a particular kind of photocopying that is key to the academic community.



Academic Permissions Service

Details for Users

**What is the
Academic
Permission Service?**

The Academic Permissions Service (APS) serves as a centralized means for providing copyright permissions, royalty fee collections and publisher payments for the academic use. The authorizations and fees of this service apply to the making of photocopies and photocopy anthologies for sale and/or distribution to the academic community.

**What is a
Photocopy
Anthology?**

A collection of photocopies of portions of works, i.e., articles or chapters, copied from more than one original published or unpublished work. Such anthologies are also called "course-packets" or "course-readers."

**Who Can
Participate?**

CCC offers this program to copy centers, bookstores and others producing anthology materials for educational use. The program is also offered to individual faculty members and academic departments.

**What are the
Costs?**

Participating publishers set per copy-page royalty fees. In addition, there will be a standard CCC processing charge of \$.0075 per copy-page.

How to Register?

There is a one time registration fee of \$35 and an annual service fee of \$75. This fee will be waived if you are currently registered with CCC. Complete the registration form and return it to CCC with your payment. We will assign you an account number and send you the necessary participation information. Members of certain organizations may be eligible for volume discounts on the CCC fees (not the publisher-set royalty fee).

If you have questions or would like to discuss the service in more detail, please call Jeanne Brewster or Christie Powell.

COPY RIGHT!



COPYRIGHT CLEARANCE CENTER, INC.

27 Congress Street, Salem, Massachusetts 01970

Telephone: (508) 744-3350 FAX: (508) 741-2318

September 18, 1991

Acct. #3040513
Mr. Ron Creech
CEO
Copy 2 Corp
411 Tate St., P.O. Box 5186
Greensboro, NC 27486

Dear Mr. Creech:

Thank you for registering in our Academic Permissions Service (APS) program. Your account number appears above. Please use this number on all your request forms and future correspondence.

To use the APS, please follow these simple steps:

- Step 1** Use the enclosed "APS Request Form" as your master, and make as many copies as you need. Please note that **directions are on the back** of the form, and need to be included on your photocopies.
- Step 2** Submit **all** requests for which you are seeking permission through CCC. We will make every effort to obtain permissions from **every** publisher.
- Step 3** Do not send requests to copy over 25% of any given work; CCC cannot accept them.
- Step 4** Send us your completed APS Request Form via FAX, express mail, or standard mail.

We will then notify you of permission(s) to copy and the per copy-page charge. We will also notify you of publisher refusals. We will also include further instructions on how and when to report the number of sets you sell, and our procedure for invoicing.

Permission to photocopy is dependent upon CCC's receiving payment from you for those works you do photocopy and distribute. (See statement located on the bottom of the APS request form which states, "permission is not complete until payment is received.")

Page 2

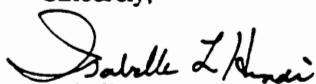
Please use a credit line on the material you clear through CCC. We suggest:
"Reprinted with permission via the Copyright Clearance Center: Copyright (year),
(publisher), (copyright owner's name, if other than publisher).

CCC is currently developing an agreement for the users of this program. This agreement will state the obligations and conditions for both you and CCC. We are working with counsel to produce a clear, succinct document that meets the needs of all parties. We will forward this agreement to you for your signature as soon as possible.

Enclosed is a sample **faculty letter** for your use (optional) when contacting professors regarding the APS.

If you have any questions, please call Jeanne Brewster or Christie Powell at (508) 744-3350. Thank you.

Sincerely,



Isabella L. Hinds
Manager, Professional Relations

Enclosures: APS Request Form Master (including instructions on reverse)
Sample Faculty Letter
Descriptive information on ISBNs and ISSNs

SAMPLE LETTER FOR FACULTY

YOUR LETTERHEAD

Dear Professor:

[Your Organization Name] has been in close contact with the Copyright Clearance Center (CCC) on issues relating to the educational use of copyright protected materials. CCC is a not-for-profit service which provides authorization to photocopy material from a large repertoire of registered publications. They have designed a specific program, Academic Permissions Service (APS), to meet the needs of the academic community. The purpose of APS is to facilitate academic permission requests to photocopy copyrighted publications primarily for course materials (i.e., anthologies, course packets, course readers and class handouts).

Your participation in APS is important. From this point on, whenever you request an anthology we require that you complete the enclosed APS request form. CCC is able to offer prompt turnaround for permission requests provided the information they receive is accurate and timely. Ideally, you should submit your permission request form at the same time you place your book orders for the coming term.

Our goal is the same as yours, to provide your students with the educational materials they need, when they need them.

Thank you in advance for your cooperation. Please call us with any questions.

Sincerely,

Name
Title

APS Request Form

▶ 1 Your Request	
Date of Request:	
Start of Term:	Mo: Year:
University:	
Course Name:	
Course No.:	
Instructor:	
Your Doc Ref.:	
Your Acct'g Ref.:	
Est. No. of Sets:	

▶ 2 Your CCC Account Information	
CCC Acct #:	
Organization:	
Contact:	
Address 1:	
Address 2:	
City / ST / Zip:	/ /
Tel:	() -
Fax:	() -

I am requesting permission to copy the following works for educational use:

Shaded Areas Below for CCC Use Only

▶ 3 Book/Journal Title:	
Chapter/Article Name:	
Publisher:	Author:
ISBN/ISSN:	
Publication Year (2 digits):	Vol/Ed:
Number of Pages:	From: To:
Permission to Copy?: Y / N	
Per Copy-Page Chg: \$	

Book/Journal Title:	
Chapter/Article Name:	
Publisher:	Author:
ISBN/ISSN:	
Publication Year (2 digits):	Vol/Ed:
Number of Pages:	From: To:
Permission to Copy?: Y / N	
Per Copy-Page Chg: \$	

Book/Journal Title:	
Chapter/Article Name:	
Publisher:	Author:
ISBN/ISSN:	
Publication Year (2 digits):	Vol/Ed:
Number of Pages:	From: To:
Permission to Copy?: Y / N	
Per Copy-Page Chg: \$	

Book/Journal Title:	
Chapter/Article Name:	
Publisher:	Author:
ISBN/ISSN:	
Publication Year (2 digits):	Vol/Ed:
Number of Pages:	From: To:
Permission to Copy?: Y / N	
Per Copy-Page Chg: \$	

Book/Journal Title:	
Chapter/Article Name:	
Publisher:	Author:
ISBN/ISSN:	
Publication Year (2 digits):	Vol/Ed:
Number of Pages:	From: To:
Permission to Copy?: Y / N	
Per Copy-Page Chg: \$	

Date Rec'd 1:
Date Sent 4:

Date Sent 2:
Date Rec'd 5:

Date Rec'd 3:
Request ID No.:

Permission is not complete until payment is received

Appendix C

CCC & NAQP



NAQP AND COPYRIGHT CLEARANCE CENTER ANNOUNCE AGREEMENT

The National Association of Quick Printers (NAQP) and the Copyright Clearance Center (CCC) are pleased to announce the establishment of a joint working relationship intended to provide NAQP members with access to the Academic Permissions Service (APS) developed by the CCC.

The CCC is a not-for-profit organization that provides permission to photocopy copyrighted materials for the creation of coursepackets for students, and facilitates the royalty collection/distribution process for registered publishers, authors, and copyshops.

Participation in the APS will provide NAQP members with immediate access to over 1200 participating U.S. publishers and another 1000 foreign publishers that have authorized the CCC to grant photocopy permissions.

APS Customer Service Representatives possess the knowledge and experience to help you obtain permissions from the publishing industry, and the resources of the CCC's 14 years as the leader in the area of copyright permissions.

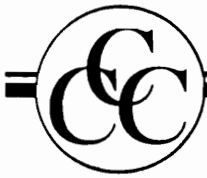
For information on how to take advantage of this opportunity and learn more about the discounts on CCC service charges available to NAQP members contact the APS Customer Service Department at: (508) 744-3350.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tracy R. Poyser", is written over the typed name.

Tracy R. Poyser
NAQP Executive Director

A handwritten signature in dark ink, appearing to read "Joseph S. Alen", is written over the typed name.
Joseph S. Alen
CCC Acting President



**An Open Letter to Members of the
National Association of Quick Printers
About Permissions**

Dear NAQP Member:

Since we began our Academic Permissions Service (APS) last spring, you have taught us that the course packet permissions business requires:

- rapid turnaround,
- cost efficiency,
- one stop shopping, and
- credibility with the customers.

Our APS did not meet these needs in August - and it did not meet our expectations. In the upcoming semester, we must offer a service which:

- meets its commitments for on-time service,
- advocates with publishers for your needs and,
- gives you the most accurate and complete information available.

What we will do

In order to work with you for the winter term we have made the necessary changes to ensure that we can honor the following commitments:

1. **Two business days after we receive your request, we will send you confirmation of that request.** This confirmation:
 - informs you that CCC has received the request,
 - allows you to check the items for accuracy,
 - grants or denies permission for every title that has been pre-authorized by a publisher, notifies you immediately if you need to contact the publisher directly and verifies that other requests have gone to the appropriate publishers.
2. **After this confirmation, you will receive additional permission responses work by work, not anthology by anthology.**
3. **We will contact the publishers with outstanding items on a regular schedule to secure timely permissions for your faculty.**

Phone: 508 744-3350

The Copyright Clearance Center, Inc.
27 Congress Street
Salem, MA 01970

Fax: 508 741-2318

Open Letter to NAQP
2 December 1991
Page 2

3. We will contact the publishers with outstanding items on a regular schedule to secure timely permissions for your faculty.
4. You will have a personal customer service representative so your account can be tracked carefully and so we can help you more effectively with your "high priority packs".

What else can CCC offer?

A large body of publishers under one roof

- Over 650 contracted publishers
- 350 additional publishers providing permissions through CCC

Our research facilities

- The largest interactive database of publisher & title information supporting permission processing in the U.S.
- A staff of researchers to get your request to the correct publisher -- the first time

Cost Effectiveness and Ease

- CCC does the processing, billing, & publisher payments
- CCC provides you with royalty fees on a per copy-page basis
- You pay for copies you sell

As you know, there are no easy solutions to large-volume permission processing. But as CCC, copyshop owners, faculty, students and publishers learn about each others' needs, CCC is committed to providing you with the best service available. We welcome your questions, comments and complaints, because we listen to you and intend to improve our service daily.

We look forward to working with you, whether for the first course packet or the five hundredth. Please contact APS Customer Service at

(508) 744-3350 FAX(508) 745-9379

Appendix D

ICCE Policy Statement on Software Copyright



1987 Statement on Software Copyright An ICCE Policy Statement

Permission to reprint all or part of this document is granted. Please acknowledge the ICCE Software Copyright Committee.

Background

During 1982-83, educators, software developers, and hardware and software vendors cooperated to develop the ICCE Policy Statement on Network and Multiple Machine Software. This Policy Statement was adopted by the Board of Directors of the International Council for Computers in Education (ICCE) in 1983, and was published and distributed. It has received support from hardware and software vendors, industry associations and other education associations. One component of the Policy Statement, the "Model District Policy on Software Copyright," has been adopted by school districts throughout the world.

Now, three years later, as the educational computer market has changed and the software market has matured, ICCE has responded to suggestions that the policy statement be reviewed by a new committee and revisions be made to reflect the changes that have taken place both in the marketplace and in the schools.

The 1986-87 ICCE Software Copyright Committee is composed of educators, industry associations, hardware vendors, software developers and vendors, and lawyers. All the participants of this new Committee agree that the educational market should be served by developers and preserved by educators. To do so requires that the ICCE Policy Statement be revisited every few years while the industry and the use of computers in education are still developing.

Responsibilities

In the previous Policy Statement, lists of responsibilities were assigned to appropriate groups: educators; hardware vendors; and software developers and vendors. The suggestion that school boards show their responsibility by approving a district copyright policy was met with enthusiasm, and many districts approved a policy based on the ICCE Model Policy. The suggestion that software vendors adopt multiple-copy discounts and offer lab packs to schools was likewise well received; many educational software publishers now offer such pricing. It is therefore the opinion of this committee that, for the most part, the 1983 list of recommendations has become a *fait accompli* within the industry, and to repeat it here would be an unnecessary redundancy.

Nevertheless, the Committee does suggest that all parties involved in the educational computing market be aware of what the other parties are doing to preserve this market, and that the following three recommendations be considered for adoption by the appropriate agencies.

School District Copyright Policy

The Committee recommends that school districts approve a District Copyright Policy that includes both computer software and other media. A Model District Policy on Software Copyright is enclosed.

Particular attention should be directed to item five, recommending that *only one* person in the district be given the authority to sign software licensing agreements. This implies that such a person should become familiar with licensing and purchasing rights of all copyrighted materials.

Suggested Software Use Guidelines

In the absence of clear legislation, legal opinion or case law, it is suggested that school districts adopt the enclosed Suggested Software Use Guidelines as guidelines for software use within the district. The recommendation of Guidelines is similar to the situation currently used by many education agencies for off-air video recording. While these Guidelines do not carry the force of law, they do represent the collected opinion on fair software use for nonprofit education agencies from a variety of experts in the software copyright field.

Copyright Page Recommendations

The Committee recommends that educators look to the copyright page of software documentation to find their rights, obligations and license restrictions regarding an individual piece of software.

The Committee also suggests that software publishers use the documentation copyright page to *clearly* delineate the users' (owners' or licensees') rights in at least these five areas:

1. How is a back-up copy made or obtained, how many are allowed, and how are the back-ups to be used (e.g., *not* to be used on a second machine at the same time)?
2. Is it permissible to load the disk(s) into multiple computers for use at the same time?
3. Is it permissible to use the software on a local area network, and will the company support such use? Or is a network version available from the publisher?
4. Are lab packs or quantity discounts available from the publisher?
5. Is it permissible for the owner or licensee to make copies of the printed documentation? Or are additional copies available, and how?

ICCE—Suggested Software Use Guidelines

The 1976 U.S. Copyright Act and its 1980 Amendments remain vague in some areas of software use and its application to education. Where the law itself is vague, software licenses tend to be much more specific. It is therefore imperative that educators read the software's copyright page and understand the licensing restrictions printed there. If these uses are not addressed, the following Guidelines are recommended.

These Guidelines do not have the force of law, but they do represent the collected opinion on fair software use by nonprofit educational agencies from a variety of experts in the software copyright field.

Back-up Copy: The Copyright Act is clear in permitting the owner of software a back-up copy of the software to be held for use as an archival copy in the event the original disk fails to function. Such back-up copies are not to be used on a second computer at the same time the original is in use.

Multiple-loading: The Copyright Act is most unclear as it applies to loading the contents of one disk into multiple computers for use at the same time. In the absence of a license expressly permitting the user to load the contents of one disk into many computers for use at the same time, it is suggested that you *not* allow this activity to take place. The fact that you physically can do so is irrelevant. In an effort to make it easier for schools to buy software for each computer station, many software publishers offer lab packs and other quantity buying incentives. Contact individual publishers for details.

Local Area Network Software Use: It is suggested that before placing a software program on a local area network or disk-sharing system for use by multiple users at the same time, you obtain a written license agreement from the copyright holder giving you permission to do so. The fact that you are able to physically load the program on the network is, again, irrelevant. You should obtain a license permitting you to do so before you act.

Model District Policy on Software Copyright

It is the intent of [district] to adhere to the provisions of copyright laws in the area of microcomputer software. It is also the intent of the district to comply with the license agreements and/or policy statements contained in the software packages used in the district. In circumstances where the interpretation of the copyright law is ambiguous, the district shall look to the applicable license agreement to determine appropriate use of the software [or the district will abide by the approved Software Use Guidelines].

We recognize that computer software piracy is a major problem for the industry and that violations of copyright laws contribute to higher costs and greater efforts to prevent copying and/or lessen incentives for the development of effective educational uses of microcomputers. Therefore, in an effort to discourage violation of copyright laws and to prevent such illegal activities:

1. The ethical and practical implications of software piracy will be taught to educators and school children in all schools in the district (e.g., covered in fifth grade social studies classes).
2. District employees will be informed that they are expected to adhere to section 117 of the 1976 Copyright Act as amended in 1980, governing the use of software (e.g., each building principal will devote one faculty meeting to the subject each year).
3. When permission is obtained from the copyright holder to use software on a disk-sharing system, efforts will be made to secure this software from copying.
4. Under no circumstances shall illegal copies of copyrighted software be made or used on school equipment.
5. [Name or job title] of this school district is designated as the only individual who may sign license agreements for software for schools in the district. Each school using licensed software should have a signed copy of the software agreement.
6. The principal at each school site is responsible for establishing practices which will enforce this district copyright policy at the school level.

The Board of Directors of the International Council for Computers in Education approved this policy statement January, 1987. The members of the 1986 ICCE Software Copyright Committee are:

Sueann Ambron, American Association of Publishers
 Gary Becker, Seminole Co. Public Schools, Florida
 Daniel T. Brooks, Cadwalader, Wickersham & Taft
 LeRoy Finkel, International Council for Computers in Education
 Virginia Helm, Western Illinois University
 Kent Kehrberg, Minnesota Educational Computing Corporation
 Dan Kunz, Commodore Business Machines
 Bodie Marx, Mindscape, Inc.
 Kenton Pattie, International Communications Industries Association
 Carol Risher, American Association of Publishers
 Linda Roberts, US Congress—OTA
 Donald A. Ross, Microcomputer Workshops Courseware
 Larry Smith, Wayne County Int. Schl. Dist., Michigan
 Ken Wasch, Software Publishers Association

For more information write to the ICCE Software Copyright Committee, ICCE, University of Oregon, 1787 Agate St., Eugene, OR 97403. ☎

Appendix E

Copyright Laws & Fair Use

COPYRIGHT LAW

OF THE

UNITED STATES OF AMERICA

contained in
Title 17
of the
United States Code

(Revised to March 1, 1991)

PREFACE

The Copyright Law of the United States of America printed herein is the Act for the General Revision of the Copyright Law, Chapters 1 through 8 of Title 17 of the United States Code, together with Transitional and Supplementary Provisions, enacted as Pub. L. 94-553, 90 Stat. 2541, on October 19, 1976. Incorporated therein are the amendments thereto cited below in chronological order of enactment:

- Act of August 5, 1977, Pub. L. 95-94, 91 Stat. 653, 682.
- Act of November 6, 1978, Pub. L. 95-598, 92 Stat. 2549, 2676.
- Act of December 12, 1980, Pub. L. 96-517, 94 Stat. 3015, 3028.
- Act of May 24, 1982, Pub. L. 97-180, 96 Stat. 91, 93.
- Act of July 13, 1982, Pub. L. 97-215, 96 Stat. 178.
- Act of October 25, 1982, Pub. L. 97-366, 96 Stat. 1759.
- Act of October 4, 1984, Pub. L. 98-450, 98 Stat. 1727.
- Act of August 27, 1986, Pub. L. 99-397, 100 Stat. 848.
- Act of October 31, 1988, Pub. L. 100-568, 102 Stat. 2853.
[See Appendix, *infra*, for the text of certain non-amendatory provisions of the Berne Convention Implementation Act of 1988.]
- Act of November 5, 1988, Pub. L. 100-617, 102 Stat. 3194.
- Act of November 16, 1988, Pub. L. 100-667, 102 Stat. 3949.
- Act of July 3, 1990, Pub. L. 101-318, 104 Stat. 287.
- Act of July 3, 1990, Pub. L. 101-319, 104 Stat. 290.
- Act of November 15, 1990, Pub. L. 101-553, 104 Stat. 2749.
- Act of December 1, 1990, Pub. L. 101-650, 104 Stat. 5089, 5128.
- Act of December 1, 1990, Pub. L. 101-650, 104 Stat. 5089, 5133.
- Act of December 1, 1990, Pub. L. 101-650, 104 Stat. 5089, 5134.

Footnotes to the text refer to the amendments where they occur.

WHAT CONSTITUTES "FAIR USE" OF COPYRIGHTED MATERIAL?

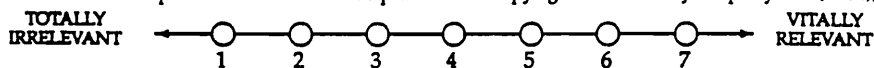
Katrina MAXTONE-GRAHAM, Plaintiff-Appellant, v. James Tunstead BURTCHAELL, Andrews & McMeel, Inc., and Harper & Row Publishers, Inc., Defendants-Appellees.
803 F2d 1253 (C.A.2 (N.Y.),1986.)

IRVING R. KAUFMAN, Circuit Judge:

(1) Nearly half a century ago, a distinguished panel of this Court including Learned Hand called the question of fair use "the most troublesome in the whole law of copyright," *Dellar v. Samuel Goldwyn, Inc.*, 104 F.2d 661, 662 (2d Cir.1939) (per curiam). That description remains accurate today. Since Judge Hand's time, the common law doctrine has been inscribed into the Copyright Act, but the fair use inquiry continues to require a difficult case-by-case balancing of complex factors. The purpose of fair use is to create a limited exception to the individual's private

property rights in his expression—rights conferred to encourage creativity—to promote certain productive uses of existing copyrighted material. Fair use has been defined as "a privilege in others than the owner of the copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner (by the copyright)." n1

1. *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F.2d 303, 306 (2d Cir.1966), cert. denied, 385 U.S. 1009, 87 S.Ct. 714, 17 L.Ed.2d 546 (1967), (quoting Ball, *The Law of Copyright and Literary Property* 260 (1944))...



Education and Fair Use

The Federal Copyright Law

107: Limitations on exclusive rights: Fair use

Notwithstanding the provisions of Section 106, 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, newsreporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use 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 non-profit 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.

Appendix F

Copyright Application Form TX

Filling Out Application Form TX

Detach and read these instructions before completing this form. Make sure all applicable spaces have been filled in before you return this form.

BASIC INFORMATION

When to Use This Form: Use Form TX for registration of published or unpublished non-dramatic literary works, excluding periodicals or serial issues. This class includes a wide variety of works: fiction, non-fiction, poetry, textbooks, reference works, directories, catalogs, advertising copy, compilations of information, and computer programs. For periodicals and serials, use Form SE.

Deposit to Accompany Application: An application for copyright registration must be accompanied by a deposit consisting of copies of phonorecords representing the entire work for which registration is to be made. The following are the general deposit requirements as set forth in the statute.

Unpublished Work: Deposit one complete copy (or phonorecord).

Published Work: Deposit two complete copies or one phonorecord of the best edition.

Work First Published Outside the United States: Deposit one complete copy (or phonorecord) of the first foreign edition.

Contribution to a Collective Work: Deposit one complete copy (or phonorecord) of the best edition of the collective work.

The Copyright Notice: For works first published on or after March 1, 1989, the law provides that a copyright notice in a specified form "may be placed on all publicly distributed copies from which the work can be visually

perceived." Use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from the Copyright Office. The required form of the notice for copies generally consists of three elements: (1) the symbol "©", or the word "Copyright," or the abbreviation "Copr."; (2) the year of first publication; and (3) the name of the owner of copyright. For example: "© 1989 Jane Cole." The notice is to be affixed to the copies "in such manner and location as to give reasonable notice of the claim of copyright." Works first published prior to March 1, 1989, must carry the notice or risk loss of copyright protection.

For information about notice requirements for works published before March 1, 1989, or other copyright information, write: Information Section, LM-401, Copyright Office, Library of Congress, Washington, D.C. 20559.

PRIVACY ACT ADVISORY STATEMENT Required by the Privacy Act of 1974 (Public Law 93-579)

AUTHORITY FOR REQUESTING THIS INFORMATION

- Title 17 U.S.C. Secs. 409 and 410

FURNISHING THE REQUESTED INFORMATION IS

- Voluntary

BUT IF THE INFORMATION IS NOT FURNISHED

- It may be necessary to delay or refuse registration.
- You may not be entitled to certain relief, remedies, and benefits provided in chapters 4 and 5 of title 17, U.S.C.

PRINCIPAL USES OF REQUESTED INFORMATION

- Establishment and maintenance of a public record
- Examination of the application for compliance with legal requirements

OTHER ROUTINE USES

- Public inspection and copying
- Preparation of public indexes
- Preparation of public catalogs of copyright registrations
- Preparation of search reports upon request

NOTE

- No other advisory statement will be given you in connection with this application
- Please keep this statement and refer to it if we communicate with you regarding this application

LINE-BY-LINE INSTRUCTIONS

SPACE 1: Title

Title of This Work: Every work submitted for copyright registration must be given a title to identify that particular work. If the copies or phonorecords of the work bear a title (or an identifying phrase that could serve as a title), transcribe that wording *completely and exactly* on the application. Indexing of the registration and future identification of the work will depend on the information you give here.

Previous or Alternative Titles: Complete this space if there are any additional titles for the work under which someone searching for the registration might be likely to look, or under which a document pertaining to the work might be recorded.

Publication as a Contribution: If the work being registered is a contribution to a periodical, serial, or collection, give the title of the contribution in the "Title of This Work" space. Then, in the line headed "Publication as a Contribution," give information about the collective work in which the contribution appeared.

2 SPACE 2: Author(s)

General Instructions: After reading these instructions, decide who are the authors of this work for copyright purposes. Then, unless the work is a collective work, give the requested information about every "author" who contributed any appreciable amount of copyrightable matter to this version of the work. If you need further space, request Continuation sheets. In the case of a collective work, such as an anthology, collection of essays, or encyclopedia, give information about the author of the collective work as a whole.

Name of Author: The fullest form of the author's name should be given. Unless the work was "made for hire," the individual who actually created the work is its "author." In the case of a work made for hire, the statute provides that "the employer or other person for whom the work was prepared is considered the author."

What is a "Work Made for Hire"? A "work made for hire" is defined as: (1) "a work prepared by an employee within the scope of his or her employment"; or (2) "a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." If you have checked "Yes" to indicate that the work was "made for hire," you must give the full legal name of the employer (or other person for whom the work was prepared). You may also include the name of the employee along with the name of the employer (for example: "Elster Publishing Co., employer for hire of John Ferguson").

"Anonymous" or "Pseudonymous" Work: An author's contribution to a work is "anonymous" if that author is not identified on the copies or phonorecords of the work. An author's contribution to a work is "pseudonymous" if that author is identified on the copies or phonorecords under a fictitious name. If the work is "anonymous" you may: (1) leave the line blank; or (2) state "anonymous" on the line; or (3) reveal the author's identity. If the work is "pseudonymous" you may: (1) leave the line blank; or (2) give the pseudonym and identify it as such (for example: "Huntley Haverstock, pseudonym"); or (3) reveal the author's name, making clear which is the real name and which is the pseudonym (for example: "Judith Barton, whose pseudonym is Madeline Elster"). However, the citizenship or domicile of the author must be given in all cases.

Dates of Birth and Death: If the author is dead, the statute requires that the year of death be included in the application unless the work is anonymous or pseudonymous. The author's birth date is optional, but is useful as a form of identification. Leave this space blank if the author's contribution was a "work

Author's Nationality or Domicile: Give the country of which the author is a citizen, or the country in which the author is domiciled. Nationality or domicile must be given in all cases.

Nature of Authorship: After the words "Nature of Authorship" give a brief general statement of the nature of this particular author's contribution to the work. Examples: "Entire text"; "Coauthor of entire text"; "Chapters 11-14"; "Editorial revisions"; "Compilation and English translation"; "New text."

3 SPACE 3: Creation and Publication

General Instructions: Do not confuse "creation" with "publication." Every application for copyright registration must state "the year in which creation of the work was completed." Give the date and nation of first publication only if the work has been published.

Creation: Under the statute, a work is "created" when it is fixed in a copy or phonorecord for the first time. Where a work has been prepared over a period of time, the part of the work existing in fixed form on a particular date constitutes the created work on that date. The date you give here should be the year in which the author completed the particular version for which registration is now being sought, even if other versions exist or if further changes or additions are planned.

Publication: The statute defines "publication" as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending"; a work is also "published" if there has been an "offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display." Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state "U.S.A."

4 SPACE 4: Claimant(s)

Name(s) and Address(es) of Copyright Claimant(s): Give the name(s) and address(es) of the copyright claimant(s) in this work even if the claimant is the same as the author. Copyright in a work belongs initially to the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared). The copyright claimant is either the author of the work or a person or organization to whom the copyright initially belonging to the author has been transferred.

Transfer: The statute provides that, if the copyright claimant is not the author, the application for registration must contain "a brief statement of how the claimant obtained ownership of the copyright." If any copyright claimant named in space 4 is not an author named in space 2, give a brief statement explaining how the claimant(s) obtained ownership of the copyright. Examples: "By written contract"; "Transfer of all rights by author"; "Assignment"; "By will." Do not attach transfer documents or other attachments or riders.

5 SPACE 5: Previous Registration

General Instructions: The questions in space 5 are intended to find out whether an earlier registration has been made for this work and, if so, whether there is any basis for a new registration. As a general rule, only one basic copyright registration can be made for the same version of a particular work.

Same Version: If this version is substantially the same as the work covered by a previous registration, a second registration is not generally possible unless: (1) the work has been registered in unpublished form and a second registration is now being sought to cover this first published edition; or (2) someone other than the author is identified as copyright claimant in the earlier registration, and the author is now seeking registration in his or her own name. If either of these two exceptions apply, check the appropriate box and give the earlier registration number and date. Otherwise, do not submit Form TX; instead, write the Copyright Office for information about supplementary registration or recordation of transfers of copyright ownership.

Changed Version: If the work has been changed, and you are now seeking registration to cover the additions or revisions, check the last box in space 5, give the earlier registration number and date, and complete both parts of space 6 in accordance with the instructions below.

Previous Registration Number and Date: If more than one previous registration has been made for the work, give the number and date of the latest registration.

6 SPACE 6: Derivative Work or Compilation

General Instructions: Complete space 6 if this work is a "changed version," "compilation," or "derivative work," and if it incorporates one or more earlier works that have already been published or registered for copyright, or that have fallen into the public domain. A "compilation" is defined as "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." A "derivative work" is "a work based on one or more preexisting works." Examples of derivative works include translations, fictionalizations, abridgments, condensations, or "any other form in which a work may be recast, transformed, or adapted." Derivative works also include works "consisting of editorial revisions, annotations, or other modifications" if these changes, as a whole, represent an original work of authorship.

Preexisting Material (space 6a): For derivative works, complete this space and space 6b. In space 6a identify the preexisting work that has been recast, transformed, or adapted. An example of preexisting material might be: "Russian version of Goncharov's 'Oblomov'." Do not complete space 6a for compilations.

Material Added to This Work (space 6b): Give a brief, general statement of the new material covered by the copyright claim for which registration is sought. Derivative work examples include: "Foreword, editing, critical annotations"; "Translation"; "Chapters 11-17." If the work is a compilation, describe both the compilation itself and the material that has been compiled. Example: "Compilation of certain 1917 Speeches by Woodrow Wilson." A work may be both a derivative work and compilation, in which case a sample statement might be: "Compilation and additional new material."

7 SPACE 7: Manufacturing Provisions

Due to the expiration of the Manufacturing Clause of the copyright law on June 30, 1986, this space has been deleted.

8 SPACE 8: Reproduction for Use of Blind or Physically Handicapped Individuals

General Instructions: One of the major programs of the Library of Congress is to provide Braille editions and special recordings of works for the exclusive use of the blind and physically handicapped. In an effort to simplify and speed up the copyright licensing procedures that are a necessary part of this program, section 710 of the copyright statute provides for the establishment of a voluntary licensing system to be tied in with copyright registration. Copyright Office regulations provide that you may grant a license for such reproduction and distribution solely for the use of persons who are certified by competent authority as unable to read normal printed material as a result of physical limitations. The license is entirely voluntary, nonexclusive, and may be terminated upon 90 days notice.

How to Grant the License: If you wish to grant it, check one of the three boxes in space 8. Your check in one of these boxes, together with your signature in space 10, will mean that the Library of Congress can proceed to reproduce and distribute under the license without further paperwork. For further information, write for Circular R63.

9,10,11 SPACE 9, 10, 11: Fee, Correspondence, Certification, Return Address

Deposit Account: If you maintain a Deposit Account in the Copyright Office, identify it in space 9. Otherwise leave the space blank and send the fee of \$20 with your application and deposit.

Correspondence (space 9): This space should contain the name, address, area code, and telephone number of the person to be consulted if correspondence about this application becomes necessary.

Certification (space 10): The application can not be accepted unless it bears the date and the handwritten signature of the author or other copyright claimant, or of the owner of exclusive right(s), or of the duly authorized agent of author, claimant, or owner of exclusive right(s).

Address for Return of Certificate (space 11): The address box must be completed legibly since the certificate will be returned in a window envelope.

FORM TX

UNITED STATES COPYRIGHT OFFICE



REGISTRATION NUMBER

TX TXU
EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ►
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NOTE

Under the law the "author" of a work made for hire" is generally the employer not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ►
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ►
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
Year

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published.
Month Day Year Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

MORE ON BACK ► • Complete all applicable spaces (numbers 5-11) on the reverse side of this page.
• See instructions on back of this form.

DO NOT WRITE HERE

EXAMINED BY _____

FORM TX

CHECKED BY _____

☐ CORRESPONDENCE
 Yes
FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

- a. This is the first published edition of a work previously registered in unpublished form.
- b. This is the first application submitted by this author as copyright claimant.
- c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

See instructions
before completing
this space

—space deleted—

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS A signature on this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

a ☐ Copies and Phonorecordsb ☐ Copies Onlyc ☐ Phonorecords Only

See instructions

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/Zip ▼

Area Code & Telephone Number ▶

Be sure to
give your
daytime phone
number

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check one ▶

- ☐
- author
-
- ☐
- other copyright claimant
-
- ☐
- owner of exclusive right(s)
-
- ☐
- authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

date ▶



Handwritten signature (X) ▼

MAIL
CERTIFI-
CATE TOCertificate
will be
mailed in
window
envelope

Name ▼
Number Street/Apartment Number ▼
City/State/ZIP ▼

YOU MUST

- Complete all necessary spaces
- Sign your application in space 10

SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE

1. Application form
2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO

Register of Copyrights
Library of Congress
Washington, D.C. 20559

* 17 U.S.C. § 506(e). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Appendix G

Investigating Copyright Status

Circular R22

How to Investigate the Copyright Status of a Work

IN GENERAL

Methods of Approaching a Copyright Investigation

There are several ways to investigate whether a work is under copyright protection and, if so, the facts of the copyright. These are the main ones:

1. Examine a copy of the work (or, if the work is a sound recording, examine the disk, tape cartridge, or cassette in which the recorded sound is fixed, or the album cover, sleeve, or container in which the recording is sold) for such elements as a copyright notice, place and date of publication, author and publisher (for additional information, see p. 6, "Copyright Notice").
2. Make a search of the Copyright Office catalogs and other records; or
3. Have the Copyright Office make a search for you.

A Few Words of Caution About Copyright Investigations

Copyright investigations often involve more than one of these methods. Even if you follow all three approaches, the results may not be completely conclusive. Moreover, as explained in this circular, the changes brought about under the Copyright Act of 1976 must be considered when investigating the copyright status of a work.

This circular offers some practical guidance on what to look for if you are making a copyright investigation. It is important to realize, however, that this circular contains only general information, and that there are a number of exceptions to the principles outlined here. In many cases it is important to consult a copyright attorney before reaching any conclusions regarding the copyright status of a work.

HOW TO GO ABOUT SEARCHING COPYRIGHT OFFICE CATALOGS AND RECORDS

Catalog of Copyright Entries

The Copyright Office publishes the *Catalog of Copyright Entries (CCE)*, which is divided into parts according to the classes of works registered. The present categories include: "Nondramatic Literary Works," "Performing Arts," "Motion Pictures and Filmstrips," "Sound Recordings," "Serials and Periodicals," "Visual Arts," "Maps," and "Renewals." Effective with the Fourth Series, Volume 2, 1979 Catalogs, the CCE has been issued in microfiche form only; previously, each part of the *Catalog* was issued at regular intervals in book form. Each CCE segment covers all registrations made during a particular period of time. Renewals made for any class during a particular period can be found in Part 8, "Renewals."

Before 1978, the catalog parts reflected the classes that existed at that time. Renewals for a particular class are found in the back section of the catalog for the class of work renewed (for example, renewal registrations for music made in 1976 appear in the last section of the music catalog for 1976).

A number of libraries throughout the United States maintain copies of the *Catalog*, and this may provide a good starting point if you wish to make a search yourself. There are some cases, however, in which a search of the *Catalog* alone will not be sufficient to provide the needed information. For example:

- Since the *Catalog* does not include entries for assignments or other recorded documents, it cannot be used for searches involving the ownership of rights.
- There is usually a time lag of a year or more before the part of the *Catalog* covering a particular registration is published.
- The *Catalog* entry contains the essential facts concerning a registration, but it is not a verbatim transcript of the registration record.

Individual Searches of Copyright Records

The Copyright Office is located in the Library of Congress James Madison Memorial Building, 101 Independence Ave., S.E., Washington, D.C.

Most records of the Copyright Office are open to public inspection and searching from 8:30 a.m. to 5 p.m. Monday through Friday (except legal holidays). The various records freely available to the public include an extensive card catalog, an automated catalog containing records from 1978 forward, record books, and microfilm records of assignments and related documents. Other records, including correspondence files and deposit copies, are not open to the public for searching. However, they may be inspected upon request and payment of a \$10-per hour search fee.

If you wish to do your own searching in the Copyright Office files open to the public, you will be given assistance in locating the records you need and in learning searching procedures. If the Copyright Office staff actually makes the search for you, a search fee must be charged.

SEARCHING BY THE COPYRIGHT OFFICE

In General

Upon request, the Copyright Office staff will search its records at the statutory rate of \$10 for each hour or fraction of an hour consumed. Based on the information you furnish, we will provide an estimate of the total search fee. If you decide to have the Office staff conduct the search, you should send the estimated amount with your request. The Office will then proceed with the search and send you a typewritten report or, if you prefer, an oral report by telephone. If you request an oral report, please provide a telephone number where you can be reached during normal business hours (8:30-5:00).

Search reports can be certified on request, for an extra fee of \$4. Certified searches are most frequently requested to meet the evidentiary requirements of litigation.

Your request, and any other correspondence, should be addressed to:

Reference and Bibliography Section, LM-451
Copyright Office
Library of Congress
Washington, D.C. 20559
(202) 287-6850

What the Fee Does Not Cover

Note that the search fee does *not* include the cost of additional certificates, photocopies of deposits, or copies of other office records. For information concerning these services, request Circular 6 from the Copyright Office.

Information Needed

The more detailed information you can furnish with your request, the less time-consuming and expensive the search will be. Please provide as much of the following information as possible:

- The title of the work, with any possible variants;
- The names of the authors, including possible pseudonyms;
- The name of the probable copyright owner, which may be the publisher or producer;
- The approximate year when the work was published or registered;
- The type of work involved (book, play, musical composition, sound recording, photograph, etc.);
- For a work originally published as a part of a periodical or collection, the title of that publication and any other information, such as the volume or issue number, to help identify it;
- Motion pictures are often based on other works such as books or serialized contributions to periodicals or other composite works. If you desire a search for an underlying work or for music from a motion picture, you must specifically request such a search. You must also identify the underlying works and music and furnish the specific titles, authors, and approximate dates of these works, and
- The registration number of any other copyright data

Searches Involving Assignments and Other Documents Affecting Copyright Ownership

The Copyright Office staff will also, for the standard hourly search fee, search its indexes covering the records of assignments and other recorded documents concerning ownership of copyrights. The reports of searches in these cases will state the facts shown in the Office's indexes of the recorded documents, but will offer no interpretation of the content of the documents or their legal effect.

NOTE: Unless your request specifies otherwise, Copyright Office searches include records pertaining to registrations, renewals, assignments and other recorded documents concerning copyright ownership. If you want the office to search any other special records such as notices of use, or if you want to exclude specific records from your search, please make this clear in your request.

LIMITATIONS ON SEARCHES

In determining whether or not to have a search made, you should keep the following points in mind:

No Special Lists

The Copyright Office does not maintain any listings of works by subject, or any lists of works that are in the public domain.

Contributions

Individual works, such as stories, poems, articles, or musical compositions that were published as contributions to a copyrighted periodical or collection, are usually not listed separately by title in our records.

No Comparisons

The Copyright Office does not search or compare copies of works to determine questions of possible infringement or to determine how much two or more versions of a work have in common.

Titles and Names Not Copyrightable

Copyright does not protect names and titles, and our records list many different works identified by the same or similar titles. Some brand names, trade names, slogans, and phrases may be entitled to protection under the general rules of law relating to unfair competition, or to registration under the provisions of the trademark laws. Questions about the trademark laws should be addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. Possible protection of names and titles under common law principles of unfair competition is a question of state law.

No Legal Advice

The Copyright Office cannot express any opinion as to the legal significance or effect of the facts included in a search report.

SOME WORDS OF CAUTION

Searches Not Always Conclusive

Searches of the Copyright Office catalogs and records are useful in helping to determine the copyright status of a work, but they cannot be regarded as conclusive in all cases. The complete absence of any information about a work in the office records does not mean that the work is unprotected. The following are examples of cases in which information about a particular work may be incomplete or lacking entirely in the Copyright Office.

- Before 1978, unpublished works were entitled to protection at common law without the need of registration
- Works published with notice prior to 1978 may be registered at any time within the first 28-year term; to obtain renewal protection, however, the claimant must register and renew such work by the end of the 28th year.
- For works that came under copyright protection after 1978, registration may be made at any time during the term of protection; it is not generally required as a condition of copyright protection (there are, however, certain definite advantages to registration; please call or write for Circular 1, "Copyright Basics").
- Since searches are ordinarily limited to registrations that have already been cataloged, a search report may not cover recent registrations for which catalog records are not yet available.
- The information in the search request may not have been complete or specific enough to identify the work.
- The work may have been registered under a different title or as part of a larger work.

Protection in Foreign Countries

Even if you conclude that a work is in the public domain in the United States, this does not necessarily mean that you are free to use it in other countries. Every nation has its own

laws governing the length and scope of copyright protection, and these are applicable to uses of the work within that nation's borders. Thus, the expiration or loss of copyright protection in the United States may still leave the work fully protected against unauthorized use in other countries.

OTHER CIRCULARS

For further information, request Circulars 15, "Renewal of Copyright," 15a, "Duration of Copyright," 15t, "Extension of Copyright Terms," and 6, "Obtaining Copies of Copyright Office Records and Deposits," from:

Publications Section, LM-455
Copyright Office
Library of Congress
Washington, D.C. 20559
OR

You may call 202-287-9100 at any time, day or night, to leave a request for forms or circulars as a recorded message on the Forms HOTLINE. Requests made on the HOTLINE number are filled and mailed promptly.

IMPACT OF COPYRIGHT ACT ON COPYRIGHT INVESTIGATIONS

On October 19, 1976, the President signed into law a complete revision of the copyright law of the United States (Title 17 of the United States Code). Most provisions of the new copyright statute came into force on **January 1, 1978**, superseding the previous copyright act of 1909, and made significant changes in the copyright law. If you need more information about the provisions of the 1976 Act, or if you want a copy of the revised statute, write or call the Copyright Office and request Circular 92.

For copyright investigations, the following are some of the main points to consider about the impact of the Copyright Act of 1976:

A Changed System of Copyright Formalities

Some of the most sweeping changes under the 1976 Act involve copyright formalities; that is, the procedural requirements for securing and maintaining full copyright protection.

The old system of formalities involved copyright notice, deposit and registration, recordation of transfers and licenses of copyright ownership, and United States manufacture, among other things. In general, while retaining formalities the present law reduces the chances of mistakes, softens the consequences of errors and omissions, and allows for the correction of errors.

Automatic Copyright

Under the present copyright law, copyright exists in original works of authorship created and 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 indirectly with the aid of a machine or device. In other words, copyright is an incident of creative authorship not dependent on statutory formalities. Thus, registration with the Copyright Office generally is not required, but there are certain advantages that arise from a timely registration. For further information on the advantages of registration, write or call the Copyright Office and request Circular 1, "Copyright Basics."

Copyright Notice

Both the 1909 and 1976 copyright acts require a notice of copyright on published works. For most works, a copyright notice consists of the symbol ©, the word "Copyright," or the abbreviation "Copr.," together with the name of the owner of copyright and the year of first publication, for example: "© Marion Crane 1987" or "Copyright 1987 by Milton Arbogast." For sound recordings published on or after February 15, 1972, a copyright notice might read "© 1987 XYZ Records, Inc." (See page 8 for more about sound recordings.) The present law prescribes that all visually perceptible published copies of a work, or published phonorecords of a sound recording, shall bear a proper copyright notice. This requirement applies equally whether the work is published in the United States or elsewhere by authority of the copyright owner. Compliance with the statutory notice requirements is the responsibility of the copyright owner. Unauthorized publication without the copyright notice, or with a defective notice, does not affect the validity of the copyright in the work. Advance permission from, or registration with, the Copyright Office is not required before placing a copyright notice on copies of a work, or on phonorecords of a sound recording. Moreover, for works first published on or after January 1, 1978, omission of the required notice, or

use of a defective notice, does not result in forfeiture or outright loss of copyright protection. Certain omissions of, or defects in the notice of copyright, however, may lead to loss of copyright protection if certain steps are not taken to correct or cure the omissions or defects. The Copyright Office has issued a final regulation (37 CFR 201.20) which suggests various acceptable positions for the notice of copyright. For further information, write to the Copyright Office and request Circular 3.

Works Already in the Public Domain

The 1976 Act does not restore protection to works that fell into the public domain before January 1, 1978. If copyright in a particular work has been lost, the work is permanently in the public domain in this country, and the 1976 Act will not revive protection. Under the copyright law in effect prior to January 1, 1978, copyright could be lost in several situations: the most common were publication without the required copyright notice, expiration of the first 28-year copyright term without renewal, or final expiration of the second copyright term.

Scope of Exclusive Rights Under Copyright

The present law has changed and enlarged in some cases, the scope of the copyright owner's rights as against users of a work. The new rights apply to all uses of a work subject to protection by copyright after January 1, 1978, regardless of when the work was created.

DURATION OF COPYRIGHT PROTECTION

Works Originally Copyrighted On or After January 1, 1978

A work that is created and fixed in tangible form for the first time on or after January 1, 1978, is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author's life, plus an additional 50 years after the author's death. In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 50 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copy-

right will be 75 years from publication or 100 years from creation, whichever is less.

Works created before the 1976 law came into effect, but neither published nor registered for copyright before January 1, 1978, have been automatically brought under the statute and are now given Federal copyright protection. The duration of copyright in these works will generally be computed in the same way as for new works: the life-plus-50 or 75/100-year terms will apply. However, all works in this category are guaranteed at least 25 years of statutory protection.

Works Copyrighted Before January 1, 1978

Under the law in effect before 1978, copyright was secured either on the date a work was published with notice of copyright, or on the date of registration if the work was registered in unpublished form. In either case, copyright endured for a first term of 28 years from the date on which it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. The new copyright law has extended the renewal term from 28 to 47 years for copyrights in existence on January 1, 1978. However, the copyright still must be renewed in the 28th calendar year to receive the 47-year period of added protection. For more detailed information on the copyright term, write or call the Copyright Office and request Circulars 15a and 15t.

WORKS FIRST PUBLISHED BEFORE 1978: THE COPYRIGHT NOTICE

General Information About the Copyright Notice

In investigating the copyright status of works first published before January 1, 1978, the most important thing to look for is the notice of copyright. As a general rule under the previous law, copyright protection was lost permanently if the notice was omitted from the first authorized published edition of a work, or if it appeared in the wrong form or position. The form and position of the copyright notice for various types of works were specified in the copyright statute. Some courts were liberal in overlooking relatively minor departures from the statutory requirements, but a basic failure to comply with the notice provisions forfeited copyright protection and put the work into the public domain in this country.

Absence of Copyright Notice

For works first published before 1978, the complete absence of a copyright notice from a published copy generally indicates that the work is not protected by copyright. However, there are a number of exceptions and qualifications to this general rule. The following are some of them:

Unpublished Works. No notice of copyright was required on the copies of any unpublished work. The concept of "publication" is very technical, and it was possible for a number of copies lacking a copyright notice to be reproduced and distributed without affecting copyright protection.

Foreign Editions. Under certain circumstances, the law exempted copies of a copyrighted work from the notice requirements if they were first published outside the United States. Some copies of these foreign editions could find their way into the United States without impairing the copyright.

Accidental Omission. The 1909 statute preserved copyright protection if the notice was omitted by accident or mistake from a "particular copy or copies."

Unauthorized Publication. A valid copyright was not secured if someone deleted the notice and/or published the work without authorization from the copyright owner.

Sound Recordings. Reproductions of sound recordings usually contain two different types of creative works: the underlying musical, dramatic, or literary work that is being performed or read, and the fixation of the actual sounds embodying the performance or reading. For protection of the underlying musical or literary work embodied in a recording, it is not necessary that a copyright notice covering this material appear on the phonograph records or tapes in which the recording is reproduced. As noted above, a special notice is required for protection of the recording of a series of musical, spoken, or other sounds which were fixed on or after February 15, 1972. Sound recordings fixed before February 15, 1972, are not eligible for Federal copyright protection. Neither the Sound Recording Act of 1971 nor the present copyright law can be applied or be construed to provide any retroactive protection for sound recordings fixed before that date. Such works, however, may be protected by various state laws or doctrines of common law.

The Date in the Copyright Notice

If you find a copyright notice, the date it contains may be important in determining the copyright status of the work. In general, the notice on works published before 1978 must include the year in which copyright was secured by publication (or, if the work was first registered for copyright in unpublished form, the year in which registration was made). There are two main exceptions to this rule.

- For pictorial, graphic, or sculptural works (Classes F through K under the 1909 law) the law permitted omission of the year date in the notice.
- For "new versions" of previously published or copyrighted works, the notice was not usually required to include more than the year of first publication of the new version itself. This is explained further under "Derivative Works" below.

The year in the notice usually (though not always) indicated when the copyright began. It is therefore significant in determining whether a copyright is still in effect; or, if the copyright has not yet run its course, the year date will help in deciding when the copyright is scheduled to expire. For further information about the duration of copyright, request Circular 15a.

In evaluating the meaning of the date in a notice, you should keep the following points in mind:

WORKS PUBLISHED AND COPYRIGHTED BEFORE JANUARY 1, 1978: A work published before January 1, 1978, and copyrighted within the past 75 years may still be protected by copyright in the United States if a valid renewal registration was made during the 28th year of the first term of the copyright. If renewed, and if still valid under the other provisions of the law, the copyright will expire 75 years from the end of the year in which it was first secured.

Therefore, with one exception, the United States copyright in any work published or copyrighted more than 75 years ago (75 years from January 1st in the present year) has expired by operation of law, and the work has permanently fallen into the public domain in the United States. For example, on January 1, 1986, copyright in works first published or copyrighted before January 1, 1911, will have expired; on January 1, 1987, copyright in works first published or copyrighted before January 1, 1912, will have expired.

WORKS FIRST PUBLISHED OR COPYRIGHTED BETWEEN JANUARY 1, 1910, AND DECEMBER 31, 1949,

BUT NOT RENEWED: If a work was first published or copyrighted between January 1, 1910, and December 31, 1949, it is important to determine whether the copyright was renewed during the last (28th) year of the first term of the copyright. This can be done by searching the Copyright Office records or catalogs, as explained above. If no renewal registration was made, copyright protection expired permanently on the 28th anniversary of the date it was first secured.

WORKS FIRST PUBLISHED OR COPYRIGHTED BETWEEN JANUARY 1, 1910 AND DECEMBER 31, 1949, AND REGISTERED FOR RENEWAL: When a valid renewal registration was made and copyright in the work was in its second term on December 31, 1977, the renewal copyright term was extended under the present act to 47 years. In these cases, copyright will last for a total of 75 years from the end of the year in which copyright was originally secured. Example: Copyright in a work first published in 1917, and renewed in 1945, will expire on December 31, 1992.

WORKS FIRST PUBLISHED OR COPYRIGHTED BETWEEN JANUARY 1, 1950, AND DECEMBER 31, 1977: If a work was in its first 28-year term of copyright protection on January 1, 1978; it must be renewed in a timely fashion to secure the maximum term of copyright protection provided by the present copyright law. If renewal registration is made during the 28th calendar year of its first term, copyright will endure for 75 years from the end of the year copyright was originally secured. If not renewed, the copyright expires at the end of its 28th calendar year.

UNPUBLISHED, UNREGISTERED WORKS: Before 1978, if a work had neither been "published" in the legal sense nor registered in the Copyright Office, it was subject to perpetual protection under the common law. On January 1, 1978, all works of this kind, subject to protection by copyright, were automatically brought under the new Federal copyright statute. The duration of these new Federal copyrights will vary, but none of them will expire before December 31, 2002.

Derivative Works

In examining a copy (or a record or tape) for copyright information, it is important to determine whether that particular version of the work is an original edition of the work or a "new version." New versions include musical arrange-

ments, adaptations, revised or newly edited editions, translations, dramatizations, abridgments, compilations, and works republished with new matter added. The law provides that derivative works are independently copyrightable and that the copyright in such a work does not affect or extend the protection, if any, in the underlying work. Under the 1909 law, courts have also held that the notice of copyright on a derivative work ordinarily need not include the dates or other information pertaining to the earlier works incorporated in it. This principle is specifically preserved in the present copyright law.

Thus, if the copy (or the record or tape) constitutes a derivative version of the work, these points should be kept in mind:

- The date in the copyright notice is not necessarily an indication of when copyright in all of the material in the work will expire. Some of the material may already be in the public domain, and some parts of the work may expire sooner than others.
- Even if some of the material in the derivative work is in the public domain and free for use, this does not mean that the "new" material added to it can be used without permission from the owner of copyright in the derivative work. It may be necessary to compare editions to determine what is free to use and what is not.
- Ownership of rights in the material included in a derivative work and in the preexisting work upon which it may be based may differ, and permission obtained from the owners of certain parts of the work may not authorize the use of other parts.

The Name in the Copyright Notice

Under the copyright statute in effect before 1978, the notice was required to include "the name of the copyright proprietor." The present act requires that the notice include "the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner." The name in the notice (sometimes in combination with other statements on the copy, record, tape, container, or label) often gives persons wishing to use the work the information needed to identify the owner from whom licenses or permission can be sought. In other cases, the name provides a starting point for a search in the Copyright Office records or catalogs, as explained at the beginning in this circular.

In the case of works published before 1978, copyright registration is made in the name of the individual person or the entity identified as the copyright owner in the notice. For works published after 1978, registration is made in the name of the person or entity owning all the rights on the date the registration is made. This may or may not be the name appearing in the notice. In addition to its records of copyright registration, the Copyright Office maintains extensive records of assignments, exclusive licenses, and other documents dealing with copyright ownership.

Ad Interim

Ad interim copyright was a special short-term copyright that applied to certain books and periodicals in the English language, first manufactured and published outside the United States. It was a partial exception to the manufacturing requirements of the previous United States copyright law. Its purpose was to secure temporary United States protection for a work, pending the manufacture of an edition in the United States. The ad interim requirements changed

several times over the years, and were subject to a number of exceptions and qualifications.

The manufacturing provisions of the copyright act expired on July 1, 1986, and are no longer a part of the copyright law. The transitional and supplementary provisions of the act provide that for any work in which ad interim copyright was subsisting or capable of being secured on December 31, 1977, copyright protection would be extended for a term compatible with other works in which copyright was subsisting on the effective date of the new act. Consequently, if the work was first published on or after July 1, 1977, and was eligible for ad interim copyright protection, the provisions of the present copyright act will be applicable to the protection of these works. Anyone investigating the copyright status of an English-language book or periodical first published outside the United States before July 1, 1977, should check carefully to determine:

- Whether the manufacturing requirements were applicable to the work; and
- If so, whether the ad interim requirements were met.



search request form

Copyright Office
Library of Congress
Washington, D.C. 20559

Reference & Bibliography
Section
(202) 287-6850
8:30-5:00 Monday-Friday

Type of work:

☐ Book ☐ Music ☐ Motion Picture ☐ Drama ☐ Sound Recording
☐ Photograph/Artwork ☐ Map ☐ Periodical ☐ Contribution

Search information you require:

☐ Registration ☐ Renewal ☐ Assignment ☐ Address

Specifics of work to be searched:

TITLE: _____

AUTHOR: _____

COPYRIGHT CLAIMANT (if known): _____
(name in c. notice)

APPROXIMATE YEAR DATE OF PUBLICATION / CREATION: _____

REGISTRATION NUMBER (if known): _____

OTHER IDENTIFYING INFORMATION: _____

If you need more space please attach additional pages.

Estimates are based on the Copyright Office fee of \$10.00 an hour or fraction of an hour consumed. The more information you furnish as a basis for the search the better service we can provide.

Names, titles, and short phrases are not copyrightable.

Please read Circular 22 for more information on copyright searches.

YOUR NAME: _____

ADDRESS: _____

DAYTIME TELEPHONE NO () _____

Convey results of estimate search by telephone

☐ yes ☐ no

C 75a

Appendix H

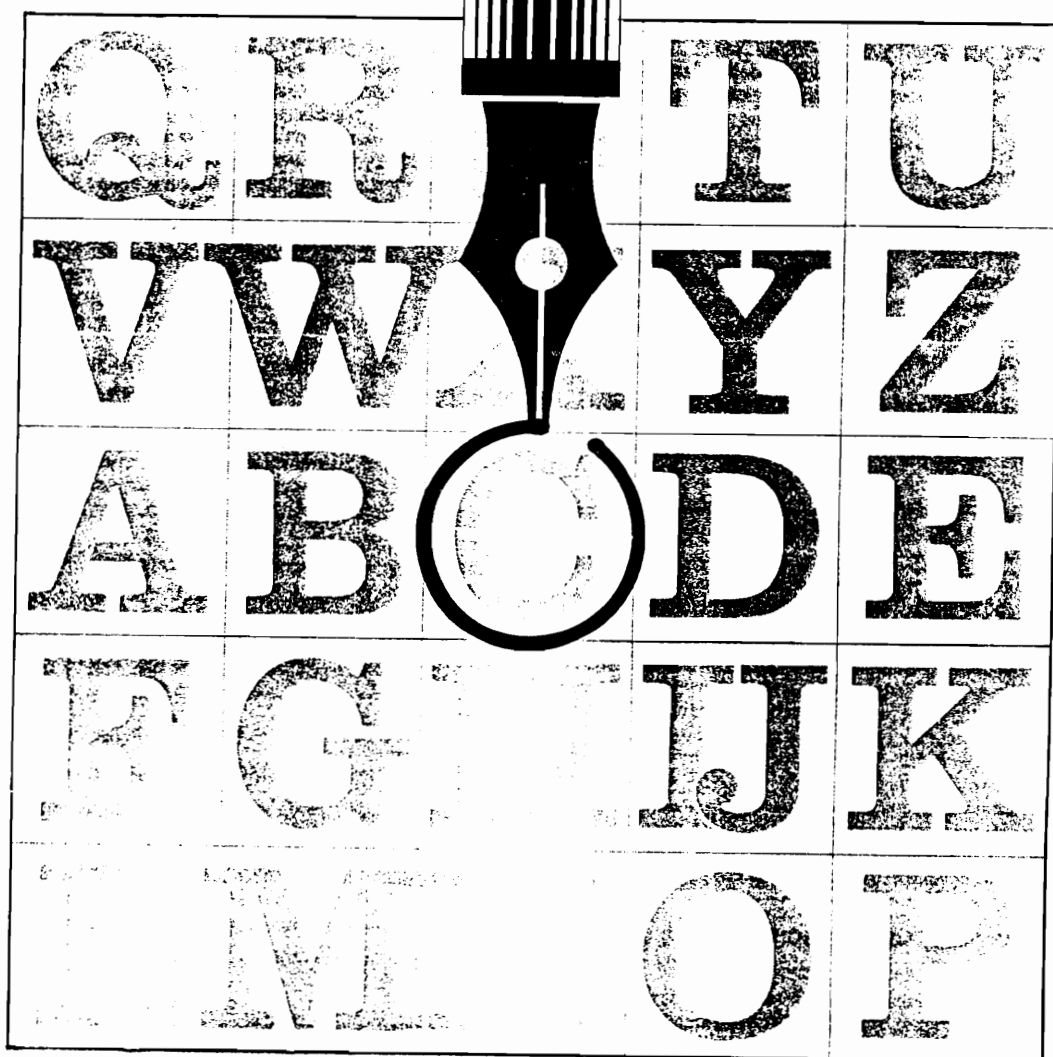
Circular 1: Copyright Basics



Circular

1

Copyright
Basics



Copyright Basics

WHAT COPYRIGHT IS

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- **To reproduce** the copyrighted work in copies or phonorecords;
- To prepare **derivative works** based upon the copyrighted work;
- **To distribute copies or phonorecords** of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- **To perform the copyrighted work publicly**, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; and
- **To display the copyrighted work publicly**, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 119 of the Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the Copyright Act or write to the Copyright Office.

WHO CAN CLAIM COPYRIGHT

Copyright protection subsists from the time the work is created in fixed form; that is, it is an incident of the process

of authorship. The copyright in the work of authorship **immediately** becomes the property of the author who created it. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is presumptively considered the author. Section 101 of the copyright statute defines a "work made for hire" as:

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire....

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

Two General Principles

- Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
- Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

COPYRIGHT AND NATIONAL ORIGIN OF THE WORK

Copyright protection is available for all unpublished works, regardless of the nationality or domicile of the author.

Published works are eligible for copyright protection in the United States if **any** one of the following conditions is met:

- On the date of first publication, one or more of the authors is a national or domiciliary of the United States or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United

States is also a party, or is a stateless person wherever that person may be domiciled; or

- The work is first published in the United States or in a foreign nation that, on the date of first publication, is a party to the Berne Convention; or the work comes within the scope of a Presidential proclamation; or
- The work is first published on or after March 1, 1989, in a foreign nation that on the date of first publication, is a party to the Berne Convention; or, if the work is *not* first published in a country party to the Berne Convention, it is published (on or after March 1, 1989) within 30 days of first publication in a country that is party to the Berne Convention; or the work, first published on or after March 1, 1989, is a pictorial, graphic, or sculptural work that is incorporated in a permanent structure located in the United States; or, if the work, first published on or after March 1, 1989, is a published audiovisual work, all the authors are legal entities with headquarters in the United States.

WHAT WORKS ARE PROTECTED

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible, so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

These categories should be viewed quite broadly: for example, computer programs and most "compilations" are registrable as "literary works;" maps and architectural plans are registrable as "pictorial, graphic, and sculptural works."

WHAT IS NOT PROTECTED BY COPYRIGHT

Several categories of material are generally not eligible for statutory copyright protection. These include among others:

- Works that have *not* been fixed in a tangible form of ex-

pression. For example: choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded.

- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
- Works consisting *entirely* of information that is common property and containing no original authorship. For example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources.

HOW TO SECURE A COPYRIGHT

Copyright Secured Automatically Upon Creation

The way in which copyright protection is secured under the present law is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright (see following NOTE). There are, however, certain definite advantages to registration. (See page 7.)

Copyright is secured *automatically* when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CD's, or LP's. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both.

If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

PUBLICATION

Publication is no longer the key to obtaining statutory copyright as it was under the Copyright Act of 1909. How

ever, publication remains important to copyright owners. The Copyright Act defines publication as follows:

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

NOTE: Before 1978, statutory copyright was generally secured by the act of publication with notice of copyright, assuming compliance with all other relevant statutory conditions. Works in the public domain on January 1, 1978 (for example, works published without satisfying all conditions for securing statutory copyright under the Copyright Act of 1909) remain in the public domain under the current Act.

Statutory copyright could also be secured before 1978 by the act of registration in the case of certain unpublished works and works eligible for ad interim copyright. The current Act automatically extends to full term (section 304 sets the term) copyright for all works including those subject to ad interim copyright if ad interim registration has been made on or before June 30, 1978.

A further discussion of the definition of "publication" can be found in the legislative history of the Act. The legislative reports define "to the public" as distribution to persons under no explicit or implicit restrictions with respect to disclosure of the contents. The reports state that the definition makes it clear that the sale of phonorecords constitutes publication of the underlying work, for example, the musical, dramatic, or literary work embodied in a phonorecord. The reports also state that it is clear that any form of dissemination in which the material object does not change hands, for example, performances or displays on television, is *not* a publication no matter how many people are exposed to the work. However, when copies or phonorecords are offered for sale or lease to a group of wholesalers, broadcasters, or motion picture theaters, publication does take place if the purpose is further distribution, public performance, or public display.

Publication is an important concept in the copyright law for several reasons:

- When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Works published before March 1, 1989, **must** bear the notice or risk loss of copyright protection. (See discussion "notice of copyright" below.)
- Works that are published in the United States are subject to mandatory deposit with the Library of Congress. (See discussion on page 10 on "mandatory deposit.")
- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in sections 107 through 120 of the law.
- The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.
- Deposit requirements for registration of published works differ from those for registration of unpublished works. (See discussion on page 8 of "registration procedures.")

NOTICE OF COPYRIGHT

For works first published on and after March 1, 1989, use of the copyright notice is optional, though highly recommended. Before March 1, 1989, the use of the notice was mandatory on all published works, and any work first published before that date must bear a notice or risk loss of copyright protection.

(The Copyright Office does not take a position on whether works first published with notice before March 1, 1989, and reprinted and distributed on and after March 1, 1989, must bear the copyright notice.)

Use of the notice is recommended because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if the work carries a proper notice, the court will not allow a defendant to claim "innocent infringement"—that is, that he or she did not realize that the work is protected. (A successful innocent infringement claim may result in a reduction in damages that the copyright owner would otherwise receive.)

The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain all of the following three elements:

1. **The symbol** © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.," and
2. **The year of first publication** of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and
3. **The name of the owner of copyright** in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 1992 John Doe

The "C in a circle" notice is used only on "visually perceptible copies." Certain kinds of works—for example, musical, dramatic, and literary works—may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

Form of Notice for Phonorecords of Sound Recordings

The copyright notice for phonorecords of sound recordings* has somewhat different requirements. The notice appearing on phonorecords should contain the following three elements:

1. **The symbol** ℙ (the letter P in a circle); and
2. **The year of first publication** of the sound recording; and
3. **The name of the owner of copyright** in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation

* Sound recordings are defined as works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

of the owner. If the producer of the sound recording is named on the phonorecord labels or containers, and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

Example: ℙ 1992 A.B.C., Inc.

NOTE: Since questions may arise from the use of variant forms of the notice, any form of the notice other than those given here should not be used without first seeking legal advice.

Position of Notice

The notice should be affixed to copies or phonorecords of the work in such a manner and location as to "give reasonable notice of the claim of copyright." The notice on phonorecords may appear on the surface of the phonorecord or on the phonorecord label or container, provided the manner of placement and location give reasonable notice of the claim. The three elements of the notice should ordinarily appear together on the copies or phonorecords. The Copyright Office has issued regulations concerning the form and position of the copyright notice in the *Code of Federal Regulations* (37 CFR Part 201). For more information, request Circular 3.

Publications Incorporating United States Government Works

Works by the U.S. Government are not eligible for copyright protection. For works published on and after March 1, 1989, the previous notice requirement for works consisting primarily of one or more U.S. Government works has been eliminated. However, use of the copyright notice for these works is still strongly recommended. Use of a notice on such a work will defeat a claim of innocent infringement as previously described **provided** the notice also includes a statement that identifies one of the following: those portions of the work in which copyright is claimed or those portions that constitute U.S. Government material. An example is:

© 1992 Jane Brown. Copyright claimed in Chapters 7-10, exclusive of U.S. Government maps.

Works published before March 1, 1989, that consist primarily of one or more works of the U.S. Government **must** bear a notice and the identifying statement.

Unpublished Works

To avoid an inadvertent publication without notice, the author or other owner of copyright may wish to place a copyright notice on any copies or phonorecords that leave his or her control. An appropriate notice for an unpublished work is: Unpublished work © 1992 Jane Doe.

Effect of Omission of the Notice or of Error in the Name or Date

The Copyright Act, in sections 405 and 406, provides procedures for correcting errors and omissions of the copyright notice on works published on or after January 1, 1978, and before March 1, 1989.

In general, if a notice was omitted or an error was made on copies distributed between January 1, 1978, and March 1, 1989, the copyright was not automatically lost. Copyright protection may be maintained if registration for the work has been made before or is made within 5 years after the publication without notice, and a reasonable effort is made to add the notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered. For more information request Circular 3.

HOW LONG COPYRIGHT PROTECTION ENDURES

Works Originally Created On or After January 1, 1978

A work that is created (fixed in tangible form for the first time) on or after January 1, 1978, is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author's life, plus an additional 50 years after the author's death. In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 50 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 75 years from publication or 100 years from creation, whichever is shorter.

Works Originally Created Before January 1, 1978, But Not Published or Registered by That Date

Works that were created but not published or registered for copyright before January 1, 1978, have been automatically brought under the statute and are now given Federal copyright protection. The duration of copyright in these works

will generally be computed in the same way as for works created on or after January 1, 1978: the life-plus-50 or 75/100-year terms will apply to them as well. The law provides that in no case will the term of copyright for works in this category expire before December 31, 2002, and for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2027.

Works Originally Created and Published or Registered Before January 1, 1978

Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a first term of 28 years from the date it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. The current copyright law has extended the renewal term from 28 to 47 years for copyrights that were subsisting on January 1, 1978, making these works eligible for a total term of protection of 75 years.

Public Law 102-307, enacted on June 26, 1992, amended the Copyright Act of 1976 to extend automatically the term of copyrights secured between January 1, 1964, and December 31, 1977 to the further term of 47 years and increased the filing fee from \$12 to \$20. This fee increase applies to all renewal applications filed on or after June 29, 1992.

P.L. 102-307 makes renewal registration optional. There is no need to make the renewal filing in order to extend the original 28-year copyright term to the full 75 years. **However, some benefits accrue to making a renewal registration during the 28th year of the original term.**

For more detailed information on the copyright term, write to the Copyright Office and request Circulars 15, 15a, and 15t. For information on how to search the Copyright Office records concerning the copyright status of a work, request Circular 22.

TRANSFER OF COPYRIGHT

Any or all of the exclusive rights, or any subdivision of those rights, of the copyright owner may be transferred, but the transfer of **exclusive** rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed (or such owner's duly authorized agent). Transfer of a right on a nonexclusive basis does not require a written agreement.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

Transfers of copyright are normally made by contract. The Copyright Office does not have or supply any forms for such transfers. However, the law does provide for the recordation in the Copyright Office of transfers of copyright ownership. Although recordation is not required to make a valid transfer between the parties, it does provide certain legal advantages and may be required to validate the transfer as against third parties. For information on recordation of transfers and other documents related to copyright, request Circular 12.

Termination of Transfers

Under the previous law, the copyright in a work reverted to the author, if living, or if the author was not living, to other specified beneficiaries, provided a renewal claim was registered in the 28th year of the original term.* The present law drops the renewal feature except for works already in the first term of statutory protection when the present law took effect. Instead, the present law permits termination of a grant of rights after 35 years under certain conditions by serving written notice on the transferee within specified time limits.

For works already under statutory copyright protection before 1978, the present law provides a similar right of termination covering the newly added years that extended the former maximum term of the copyright from 56 to 75 years. For further information, request Circulars 15a and 15t.

INTERNATIONAL COPYRIGHT PROTECTION

There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that

country. However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions. For a list of countries which maintain copyright relations with the United States, request Circular 38a.

The United States belongs to both global, multilateral copyright treaties—the Universal Copyright Convention (UCC) and the Berne Convention for the Protection of Literary and Artistic Works. The United States was a founding member of the UCC, which came into force on September 16, 1955. Generally, a work by a national or domiciliary of a country that is a member of the UCC or a work first published in a UCC country may claim protection under the UCC. If the work bears the notice of copyright in the form and position specified by the UCC, this notice will satisfy and substitute for any other formalities a UCC member country would otherwise impose as a condition of copyright. A UCC notice should consist of the symbol © accompanied by the name of the copyright proprietor and the year of first publication of the work.

By joining the Berne Convention on March 1, 1989, the United States gained protection for its authors in all member nations of the Berne Union with which the United States formerly had either no copyright relations or had bilateral treaty arrangements. Members of the Berne Union agree to a certain minimum level of copyright protection and agree to treat nationals of other member countries like their own nationals for purposes of copyright. A work first published in the United States or another Berne Union country (or first published in a non-Berne country, followed by publication within 30 days in a Berne Union country) is eligible for protection in all Berne member countries. There are no special requirements. For information on the legislation implementing the Berne Convention, request Circular 93 from the Copyright Office.

An author who wishes protection for his or her work in a particular country should first find out the extent of protection of foreign works in that country. If possible, this should be done before the work is published anywhere, since protection may often depend on the facts existing at the time of *first* publication.

If the country in which protection is sought is a party to one of the international copyright conventions, the work may generally be protected by complying with the conditions of the convention. Even if the work cannot be brought under an international convention, protection under the specific provisions of the country's national laws may still be possible. Some countries, however, offer little or no copyright protection for foreign works.

*The copyright in works eligible for renewal on or after June 26, 1992, will vest in the name of the renewal claimant on the effective date of any renewal registration made during the 28th year of the original term. Otherwise, the renewal copyright will vest in the party entitled to claim renewal as of December 31st of the 28th year.

COPYRIGHT REGISTRATION

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, except in one specific situation,* registration is not a condition of copyright protection. Even though registration is not generally a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim;
- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin and for foreign works not originating in a Berne Union country. (For more information on when a work is of U.S. origin, request Circular 93.);
- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate; and
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- Copyright registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies. For additional information, request Publication No. 563 from:
Commissioner of Customs
ATTN: IPR Branch,
Room 2104
U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229.

Registration may be made at any time within the life of the copyright. Unlike the law before 1978, when a work has been

registered in unpublished form, it is not necessary to make another registration when the work becomes published (although the copyright owner may register the published edition, if desired).

REGISTRATION PROCEDURES

In General

A. To register a work, send the following three elements *in the same envelope or package* to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559: (see page 11 for what happens if the elements are sent separately).

1. A properly completed application form;
 2. A nonrefundable filing fee of \$20 for each application;*
 3. A nonreturnable deposit of the work being registered. The deposit requirements vary in particular situations. The **general** requirements follow. Also note the information under "Special Deposit Requirements" immediately following this section.
- If the work is unpublished, one complete copy or phonorecord.
 - If the work was first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.
 - If the work was first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.
 - If the work was first published outside the United States, one complete copy or phonorecord of the work as first published.

B. To register a renewal, send:

1. A properly completed RE application form; and
2. A nonrefundable filing fee of \$20 for each work.

*Under sections 405 and 406 of the Copyright Act, copyright registration may be required to preserve a copyright on a work first published before March 1, 1989, that would otherwise be invalidated because the copyright notice was omitted from the published copies or phonorecords, or the name or year date was omitted, or certain errors were made in the year date.

*The Copyright Office has the authority to adjust fees at 5-year intervals, based on the changes in the Consumer Price Index. The next adjustment is due in 1995. Please contact the Copyright Office after July 1995 to determine the actual fee schedule.

For the fee structure for application Form SE, GROUP and Form G, DN, see the instructions on these forms.

NOTE: COMPLETE THE APPLICATION FORM USING BLACK INK PEN OR TYPEWRITER. You may photocopy blank application forms: **however**, photocopied forms submitted to the Copyright Office must be clear, legible, on a good grade of 8 1/2 inch by 11 inch white paper suitable for automatic feeding through a photocopier. The forms should be printed preferably in black ink, head-to-head (so that when you turn the sheet over, the top of page 2 is directly behind the top of page 1). **Forms not meeting these requirements will be returned.**

Special Deposit Requirements

Special deposit requirements exist for many types of work. In some instances, only one copy is required for published works, in other instances only identifying material is required, and in still other instances, the deposit requirement may be unique. The following are prominent examples of exceptions to the general deposit requirements:

- If the work is a motion picture, the deposit requirement is one complete copy of the unpublished or published motion picture **and** a separate written description of its contents, such as a continuity, press book, or synopsis.
- If the work is a literary, dramatic or musical work **published only on phonorecord**, the deposit requirement is one complete copy of the phonorecord.
- If the work is an unpublished or published computer program, the deposit requirement is one visually perceptible copy in source code of the **first and last 25 pages** of the program. For a program of fewer than 50 pages, the deposit is a copy of the entire program. (For more information on computer program registration, including deposits for revised programs and provisions for trade secrets, request Circular 61.)
- If the work is in a CD-ROM format the deposit requirement is one complete copy of the material, that is, the CD-ROM, the operating software, and any manual(s) accompanying it. If the identical work is also available in print or hard copy form, send one complete copy of the print version **and** one complete copy of the CD-ROM version.
- For information about group registration of serials, request Circular 62.

In the case of works reproduced in three-dimensional copies

identifying material such as photographs or drawings is ordinarily required. Other examples of special deposit requirements (but by no means an exhaustive list) include many works of the visual arts, such as greeting cards, toys, fabric, oversized material (request Circular 40a); video games and other machine-readable audiovisual works (request Circular 61 and ML-387); automated databases (request Circular 65); and contributions to collective works.

If you are unsure of the deposit requirement for your work, write or call the Copyright Office and describe the work you wish to register.

Unpublished Collections

A work may be registered in unpublished form as a "collection," with one application and one fee, under the following conditions:

- The elements of the collection are assembled in an orderly form;
- The combined elements bear a single title identifying the collection as a whole;
- The copyright claimant in all the elements and in the collection as a whole is the same; and
- All of the elements are by the same author, or, if they are

NOTE: LIBRARY OF CONGRESS CATALOG CARD NUMBERS.

A Library of Congress Catalog Card Number is different from a copyright registration number. The Cataloging in Publication (CIP) Division of the Library of Congress is responsible for assigning LC Catalog Card Numbers and is operationally separate from the Copyright Office. A book may be registered in or deposited with the Copyright Office but not necessarily cataloged and added to the Library's collections. For information about obtaining an LC Catalog Card Number, contact the CIP Division, Library of Congress, Washington, D.C. 20540. For information on International Standard Book Numbering (ISBN), write to: ISBN, R.R. Bowker/Martindale-Hubbell, 121 Charlton Road, New Providence, N.J. 07974. Call (908) 665-6770. For information on International Standard Serial Numbering (ISSN), write to: Library of Congress, National Serials Data Program, Washington, D.C. 20540.

by different authors, at least one of the authors has contributed copyrightable authorship to each element.

An unpublished collection is indexed in the *Catalog of Copyright Entries* only under the collection title.

CORRECTIONS AND AMPLIFICATIONS OF EXISTING REGISTRATIONS

To correct an error in a copyright registration or to amplify the information given in a registration, file a supplementary registration form—Form CA—with the Copyright Office. The information in a supplementary registration augments but does not supersede that contained in the earlier registration. Note also that a supplementary registration is not a substitute for an original registration, for a renewal registration, or for recording a transfer of ownership. For further information about supplementary registration, request Circular 8.

MANDATORY DEPOSIT FOR WORKS PUBLISHED IN THE UNITED STATES

Although a copyright registration is not required, the Copyright Act establishes a mandatory deposit requirement for works published in the United States (see definition of "publication" on page 4). In general, the owner of copyright, or the owner of the exclusive right of publication in the work, has a legal obligation to deposit in the Copyright Office, within 3 months of publication in the United States, 2 copies (or, in the case of sound recordings, 2 phonorecords) for the use of the Library of Congress. Failure to make the deposit can result in fines and other penalties, but does not affect copyright protection.

Certain categories of works are *exempt entirely* from the mandatory deposit requirements, and the obligation is reduced for certain other categories. For further information about mandatory deposit, request Circular 7d.

USE OF MANDATORY DEPOSIT TO SATISFY REGISTRATION REQUIREMENTS

For works published in the United States the Copyright Act contains a provision under which a single deposit can be made to satisfy both the deposit requirements for the Library and the registration requirements. In order to have this dual effect, the copies or phonorecords must be accompanied by the prescribed application and filing fee.

WHO MAY FILE AN APPLICATION FORM

The following persons are legally entitled to submit an application form:

- The author. This is either the person who actually created the work, or, if the work was made for hire, the employer or other person for whom the work was prepared.
- The copyright claimant. The copyright claimant is defined in Copyright Office regulations as either the author of the work or a person or organization that has obtained ownership of all the rights under the copyright initially belonging to the author. This category includes a person or organization who has obtained by contract the right to claim legal title to the copyright in an application for copyright registration.
- The owner of exclusive right(s). Under the law, any of the exclusive rights that go to make up a copyright and any subdivision of them can be transferred and owned separately, even though the transfer may be limited in time or place of effect. The term "copyright owner" with respect to any one of the exclusive rights contained in a copyright refers to the owner of that particular right. Any owner of an exclusive right may apply for registration of a claim in the work.
- The duly authorized agent of such author, other copyright claimant, or owner of exclusive right(s). Any person authorized to act on behalf of the author, other copyright claimant, or owner of exclusive rights may apply for registration.

There is no requirement that applications be prepared or filed by an attorney.

APPLICATION FORMS

For Original Registration

Form TX: for published and unpublished nondramatic literary works

Form SE: for serials, works issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued

indefinitely (periodicals, newspapers, magazines, newsletters, annuals, journals, etc.)

Short Form/SE and Form SE/GROUP: specialized SE forms for use when certain requirements are met

Form G/DN: a specialized form to register a complete month's issues of a daily newspaper when certain conditions are met.

Form PA: for published and unpublished works of the performing arts (musical and dramatic works, pantomimes and choreographic works, motion pictures and other audiovisual works)

Form VA: for published and unpublished works of the visual arts (pictorial, graphic, and sculptural works, including architectural works)

Form SR: for published and unpublished sound recordings

For Renewal Registration

Form RE: for claims to renewal copyright in works copyrighted under the law in effect through December 31, 1977 (1909 Copyright Act)

For Corrections and Amplifications

Form CA: for supplementary registration to correct or amplify information given in the Copyright Office record of an earlier registration

For a Group of Contributions to Periodicals

Form GR/CP: an adjunct application to be used for registration of a group of contributions to periodicals in addition to an application Form TX, PA, or VA

Free application forms are supplied by the Copyright Office.

COPYRIGHT OFFICE FORMS HOTLINE

NOTE: Requestors may order application forms and circulars at any time by telephoning (202) 707-9100. Orders will be recorded automatically and filled as quickly as possible. Please specify the kind and number of forms you are requesting.

MAILING INSTRUCTIONS

All applications and materials related to copyright registration should be addressed to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

The application, nonreturnable deposit (copies, phonorecords, or identifying material), and nonrefundable filing fee should be mailed in the same package.

We suggest that you contact your local post office for information about mailing these materials at lower-cost fourth class postage rates.

WHAT HAPPENS IF THE THREE ELEMENTS ARE NOT RECEIVED TOGETHER

Applications and fees received without appropriate copies, phonorecords, or identifying material will **not** be processed and will ordinarily be returned. Unpublished deposits without applications or fees will ordinarily be returned, also. In most cases, published deposits received without applications and fees can be immediately transferred to the collections of the Library of Congress. This practice is in accordance with section 408 of the law, which provides that the published deposit required for the collections of the Library of Congress may be used for registration only if the deposit is "accompanied by the prescribed application and fee...."

After the deposit is received and transferred to another service unit of the Library for its collections or other disposition, it is no longer available to the Copyright Office. If you wish to register the work, you must deposit additional copies or phonorecords with your application and fee.

FEES

All remittances should be in the form of drafts (that is, checks, money orders, or bank drafts) payable to: **Register of Copyrights**. Do not send cash. Drafts must be redeemable without service or exchange fee through a U. S. institution, must be payable in U.S. dollars, and must be imprinted with American Banking Association routing numbers.

If a check received in payment of the filing fee is returned to the Copyright Office as uncollectible, the Copyright Office will cancel the registration and will notify the remitter.

The fee for processing an original, supplementary, or renewal claim is nonrefundable, whether or not copyright reg-

istration is ultimately made.

Do not send cash. The Copyright Office cannot assume any responsibility for the loss of currency sent in payment of copyright fees.

EFFECTIVE DATE OF REGISTRATION

A copyright registration is effective on the date the Copyright Office receives all of the required elements in acceptable form, regardless of how long it then takes to process the application and mail the certificate of registration. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving and the personnel available. Keep in mind that it may take a number of days for mailed material to reach the Copyright Office and for the certificate of registration to reach the recipient after being mailed by the Copyright Office.

If you are filing an application for copyright registration in the Copyright Office, you **will not** receive an acknowledgment that your application has been received, but you can expect:

- A letter or telephone call from a Copyright Office staff member if further information is needed;
- A certificate of registration to indicate the work has been registered; or
- If registration cannot be made, a letter explaining why it has been refused.

Please allow 120 days to receive a letter or certificate of registration.

If you want to know when the Copyright Office receives your material, you should send it by registered or certified mail and request a return receipt from the post office. Allow at least 3 weeks for the return of your receipt.

SEARCH OF COPYRIGHT OFFICE RECORDS

The records of the Copyright Office are open for inspection and searching by the public. Moreover, on request, the Copyright Office will search its records at the statutory rate of \$20 for each hour or fraction of an hour. For information on searching the Office records concerning the copyright status or ownership of a work, request Circulars 22 and 23.

AVAILABLE INFORMATION

This circular attempts to answer some of the questions that are frequently asked about copyright. For a list of other material published by the Copyright Office, request Circular 2, "Publications on Copyright." Any requests for Copyright Office publications or special questions relating to copyright problems not mentioned in this circular should be addressed to the Copyright Office, LM 455, Library of Congress, Washington, D.C. 20559. To speak to a Copyright Information Specialist, call (202) 707-3000.

The Copyright Office is not permitted to give legal advice. If you need information or guidance on matters such as disputes over the ownership of a copyright, suits against possible infringers, the procedure for getting a work published, or the method of obtaining royalty payments, it may be necessary to consult an attorney.



Copyright Office • Library of Congress • Washington, D.C. 20559

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VITA

Ron Creech has worked professionally in the information and print communications field for over 25 years. His experience includes reproduction equipment sales, service, and distribution as well as printing products manufacturing and distribution both in offset printing and high speed POD systems.

He has been presented numerous national sales and achievement awards both from printing equipment OEM's and communication associations. Creech has given many business presentations at national meetings concerning sales and servicing the print communications end-user both from the aspect of an OEM and a distributor.

Creech presently holds several positions within a small printing manufacturing group of which his family owns controlling interest:

- 1) COB - Creech/Camatt Industries - Greensboro, NC
- 2) President/CEO - First Copy Corporation - Parent organization for a group of POD Centers (Copy 1) located in NC
- 3) CFO - Quality Lithographers - A sheet fed offset manufacturer located in SC

Creech began his professional career as a distributor of A.B. Dick graphic products in North Carolina. He holds both a B.S. and M.S.B.E. in Business from the University of North Carolina at Greensboro. He has earned a C.A.G.S. from VPI&SU and will receive his Ph.D. in Instructional Technology with a cognate in Management from Virginia Polytechnic Institute and State University at Blacksburg, VA in December of 1994.

