

Copyright in Scholarship

<http://scholar.lib.vt.edu/copyright/>

Gail McMillan

gailmac@vt.edu

Digital Research & Scholarship Services

University Libraries, Virginia Tech

Nov. 6, 2013, BMVS-5714





U.S. Constitution

Article I Section 8 Clause 8

- [The Congress shall have power] "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."



Copyright Law: *U.S. Code, Title 17*

- **Section 102:** Original authorship stabilized
 - when fixed in a tangible medium of expression
- **Section 106:** Exclusive rights of creators

Limitations to exclusive rights

- **Section 107:** Fair use
- **Section 108:** Library services

<http://scholar.lib.vt.edu/copyright/>



Who owns the copyright?

- Creators of original works
- Creators' assignees
- Employers: works for hire
 - Explicit, e.g., job description
 - Virginia Tech Policy 13000

<http://www.research.vt.edu/intellectual-property-virginia-tech>



Copyright holders control

- Reproduction
- Modification
- Distribution
- Public performance
- Public display

EXCEPT...



Permission or license to use a copyrighted work is NOT required if

- Facts
- Public domain
 - Does not mean the Internet/worldwide web
 - Intellectual property not owned or controlled by anyone
 - US government documents
 - It's well aged: <http://www.unc.edu/~unc/ncg/public-d.ht>
 - 70 years after the creator passed on
 - 95 years after the work-for-hire was published, or
 - 120 years after the creation of the work-for-hire
- Fair Use



Fair Use Myth

It's OK--it's for educational purposes.

Before using someone else's work *without permission*, weigh **ALL 4 FACTORS**

Tools to help:

- VT Fair Use Analyzer

<http://etd.vt.edu/fairuse/analyzer/>

- Fair Use Evaluator (ALA)

<http://librarycopyright.net/resources/fairuse/>

1. Purpose and character of use
2. Nature of the work
3. Amount, substantiality
4. Effect



1. Purpose and character of use

- Commercial or educational use
- Profit or not
- Transformative, value added
- Criticism, commentary, news reporting, teaching, scholarship, research



Authors' Guild v. HathiTrust

- October 10, 2012, District Court Judge Baer
- Scanning, digitizing, full-text searching, digital libraries, preservation, access
 - Authors' Guild: shouldn't be allowed
 - Judge Baer: Fair use
 - Preservation, text search, and accessibility for the visually impaired
 - Transformative value
- Orphan works?



2. Nature of the copyrighted work

- Worthy of (extensive) protection?
 - Not a quality judgment.
 - Can it legally be protected by copyright?
- Character of the work?
 - Fact or fiction
 - Published facts weigh in favor of fair use
 - Unpublished original expressions weigh in favor of the copyright holder



3. Amount and Substantiality

- In relation to whole work
 - Quantity
 - Quality
- Use only what is necessary



4. Effect

- Will your use reduce the value of the original work?
 - Harm to the market
 - Real or potential



Fair use: weigh *each* factor

- Tools to help
 - [VT Fair Use Analyzer](#)
 - [Fair Use Evaluator](#)
- Did the scales tip in favor of fair use?
- If not
 - Modify your use
 - Ask for permission after ...



After you've checked

- Sherpa RoMEO

- Publishers' copyright policies
- <http://www.sherpa.ac.uk/romeo/>



Copyright Permission Services

- Copyright Clearance Center
 - <http://copyright.com>
- Association of American Publishers
 - [http:// www.publishers.org](http://www.publishers.org)

You asked but they never responded.
You don't have permission.



Orphan Works

- Good faith, diligent, unsuccessful search
- US Copyright Office report (2006-01)
<http://www.copyright.gov/orphan/orphanreport.pdf>
- The “Orphan Works” Problem (2008-03-13)
 - Statement of Marybeth Peters, Register of Copyrights, to House Subcommittee on Courts, the Internet, and Intellectual Property
<http://www.copyright.gov/docs/regstat031308.html>
- Legislation, amendments, no vote.
- Assume it's copyrighted



Copyright re Libraries: Sect. 108

- Ground Rules
 - No commercial purpose
 - Open to outsiders
 - Notice on copies
- Preservation copying
- Photocopy Services: Copies for private study
- ILL: copies for InterLibrary Loan
 - <http://www.ill.vt.edu/Copyrightinformation.htm>
- Reserve Services: copies for students in a course
 - <http://www.lib.vt.edu/services/circ-reserve/copyright.html>



Copyright Resources from VT DLA

- Copyright Homepage
<http://scholar.lib.vt.edu/copyright/>
- Library Copyright Policies
<http://scholar.lib.vt.edu/copyright/cpolicies.html>
- Fair Use
<http://scholar.lib.vt.edu/copyright/doesntsa.html#fairuse>
- Copyright and ETDs
<http://scholar.lib.vt.edu/copyright/cprtetd.html>
- Request Permission: Sample letter
<http://etd.vt.edu/howto/permission.html>
- Publishers copyright & self archiving policies
<http://www.sherpa.ac.uk/romeo/>



Copyright Resources

- Copyright Advisory Office, Columbia
<http://copyright.columbia.edu/copyright/>
- Crash Course in Copyright (UTAustin)
<http://copyright.lib.utexas.edu/copypol2.html>
Library of Congress, Copyright Office
<http://lcweb.loc.gov/copyright/>
- Legal Information Institute (Cornell)
<http://www4.law.cornell.edu/uscode/17/>
- Stanford University Libraries
<http://fairuse.stanford.edu>
- WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives (Crews, 2008-2-26)
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

Copyright in Scholarship

<http://scholar.lib.vt.edu/copyright/>

Gail McMillan

gailmac@vt.edu

Digital Research & Scholarship Services

University Libraries, Virginia Tech

Nov. 6, 2013, BMVS-5714

