Florida International University
FIU Digital Commons

Works of the FIU Libraries FIU Libraries

6-6-2007

CopyRights and CopyWrongs: Lessons from the Trenches

Gail P. Clement
Florida International University, gclement@tamu.edu

Follow this and additional works at: http://digitalcommons.fiu.edu/glworks

Part of the Intellectual Property Commons

Recommended Citation
Clement, Gail P., "CopyRights and CopyWrongs: Lessons from the Trenches" (2007). *Works of the FIU Libraries.* Paper 2.
http://digitalcommons.fiu.edu/glworks/2

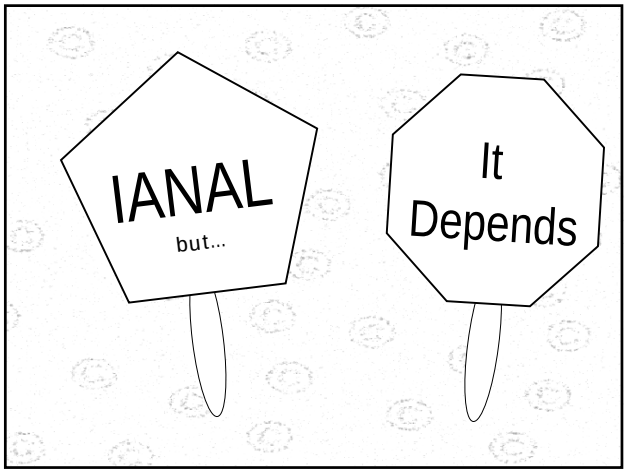
This work is brought to you for free and open access by the FIU Libraries at FIU Digital Commons. It has been accepted for inclusion in Works of the FIU Libraries by an authorized administrator of FIU Digital Commons. For more information, please contact dcc@fiu.edu.

Society of Florida Archivists Annual Meeting ,
Boca Raton, Florida, June 7, 2007

CopyRights and CopyWrongs :
Lessons from the Trenches

Gail Clement

ALA Copyright Scholar &
Head, Digital Collections Center
Florida International University Libraries
Miami, Florida
http://digitalcollections.fiu.edu/



CopyRights

- To **reproduce** the work in copies or phonorecords;
- To prepare **derivative works** based upon the work;
- To **distribute copies** or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To **perform the work publicly**, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To **display the 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; and
- In the case of sound recordings*, to **perform the work publicly** by means of a digital audio transmission.

-- Title 17, U. S. Code

This work is subject to the conditions of Creative Commons Attribution-NonCommercial-NoDerivs 3.0 License,
http://creativecommons.org/licenses/by-nd/3.0/

Using CopyRighted Material

- Public Domain works – it's a free-for-all (or is it?)
- Fair Use Privilege for limited use
- Exemptions for Libraries and Archives
- Securing permission of the copyright holder
  - *Orphan Works*

-- Title 17, U. S. Code

Public Domain

(§105 for U.S. Government Works)

Public Domain Works
(As applicable in 2007)

- Works never afforded copyright protection
  - Unregistered published works before 1976 Copyright Law
  - Works of the United States Federal Government
    - *Exceptions apply (NTIS, works for hire)*
  - Protectable works whose authors state "This work is dedicated to the public domain" on the work
  - Non-U.S. works not covered through an international treaty
- Published works whose term of copyright protection has expired
- Unpublished works by authors who died during 1936 or earlier
  - As long as the work was not made for hire
  - For unpublished works made for hire, author must have died before 1887

-- Title 17, U. S. Code

This work is subject to the conditions of Creative Commons Attribution-NonCommercial-NoDerivs 3.0 License,
http://creativecommons.org/licenses/by-nd/3.0/

Fair Use
§107.

Fair Use: Four Factors Checklist

- Purpose
  - Commentary, reporting
  - Transformative
- Nature
  - Published work
  - Non-fiction
- Amount
  - Nominal, appropriate for educational purpose
- Effect on market
  - No reasonable alternate mechanism to buy or license the material
    - Watch out for circular arguments!

- Purpose
  - Commercial, No attribution
  - Verbatim copying
- Nature
  - Unpublished
  - Fiction, imaginative
- Amount
  - Central to work
- Effect on market
  - "Just trying to save money"

-- Title 17, U. S. Code

Library/Archives Reproduction
§108.

This work is subject to the conditions of Creative Commons Attribution-NonCommercial-NoDerivs 3.0 License,
http://creativecommons.org/licenses/by-nd/3.0/

Section 108

- In a nutshell, Section 108 permits Libraries/Archives to make reproductions of some copyrighted materials in certain limited situations.
- Such reproductions are deemed so necessary and reasonable to the functioning of these Libraries/Archives that prior permission of the copyright holder is not required.
  - ILL
  - Copying whole or part of a work for a user
  - Preservation, safety and security
  - Format shifting (in the case of technology obsolescence)
- "Limited situations" are the key: copying should not profit or privilege the Library/Archive

Section 108

- Offers protection explicitly for the Library/Archive, and presumably the Library/Archive staff, but does not offer a safe harbor for the individual library user.

Digital copy made for individual researcher's use can't then be included in their published book – they still need to seek permission to republish the item elsewhere.

Section 108 (h): Is Mass Digitization Permissible?

(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if —

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

-- Title 17, U. S. Code

This work is subject to the conditions of Creative Commons Attribution-NonCommercial-NoDerivs 3.0 License, http://creativecommons.org/licenses/by-nd/3.0/

Orphan Works

Orphan Works

- Copyrighted works whose owners may be impossible to identify and locate
- Limited to those works that are no longer actively exploited.

It Depends….. The need for an Institutional Copyright Policy

This work is subject to the conditions of Creative Commons Attribution-NonCommercial-NoDerivs 3.0 License, http://creativecommons.org/licenses/by-nd/3.0/

Summary: Lessons Learned

- IANAL, but I can do an awful lot to keep the Library/Archive out of the lawyer's office and the Emerrgency Room
- "Can I/Should I…." usually depends on the specifics of the case in hand, in keeping with your Institution's Copyright Policy
- An Institutional Copyright Policy gives you the framework in which you can assess and evaluate your opportunities to use copyrighted material.

This work is subject to the conditions of Creative Commons Attribution-NonCommercial-NoDerivs 3.0 License,
http://creativecommons.org/licenses/by-nd/3.0/

Society of Florida Archivists Annual Meeting ,
Boca Raton, Florida, June 7, 2007

CopyRights and CopyWrongs: Lessons from the Trenches

Public resource memo re: Smithsonian
http://public.resource.org/memo.2007.05.19.html

LibraryLaw Blog
http://blog.librarylaw.com/

ALA Washington Office Copyright page
http://www.ala.org/ala/washoff/woissues/copyrightb/copyright.cfm

ALA Copyright Advisory Network
http://www.librarycopyright.net/wordpress/punbb/viewforum.php?id=1

How I Learned to Love FAIR USE… or how to bring a $300,000 lawsuit down to $0 if you're a library, archive, or nonprofit educational institution
http://fairuse.stanford.edu/commentary_and_analysis/2003_07_minow.html

Copyright Term and the Public Domain in the United States 1 January 2007
http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

FairUse Checklist from the IUPU Copyright Management Center,
http://www.copyright.iupui.edu/checklist.htm

Documentary Filmmakers' Statement of Best Practices in Fair Use, November 18, 2005,
http://www.centerforsocialmedia.org/resources/publications/statement_of_best_practices_in_fair_use/

Bromberg and Suunstein, *Flowchart For Determining When Copyrights In Fixed Works Expire*, 2002, http://www.bromsun.com/practices/copyright-portfolio-development/flowchart.htm

Harper, Georgia, *Copyright and the University Community: Implementing a Comprehensive Copyright Policy*, http://www.utsystem.edu/OGC/intellectualProperty/execsum3.htm

Prepared by Gail Clement (clementg@fiu.edu), and distributed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 License, http://creativecommons.org/licenses/by-nc-nd/3.0/