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May 29, 2011

What You Don't Know About Copyright, but Should

By Jennifer Howard

If Nancy Sims had to pick one word to describe how researchers, students, and librarians feel about copyright, it would probably be "confused."

A lawyer and a librarian, Ms. Sims is copyright-program librarian at the University of Minnesota Libraries. She's there to help people on campus and beyond—both users and owners of protected material—understand their rights.

"I'm not sure anybody has a very good knowledge" of copyright, she says.

For instance, in a recent informal survey she conducted at the university, only 30 percent or so of the faculty respondents knew the answers to basic questions such as how one gets a copyright and how long it lasts. (Librarians did somewhat better.)

For the multitudes out there who are copyright-confused, here are some pointers Ms. Sims shared with *The Chronicle*.

- If you think you don't own any copyrights, think again. "The one thing that I wish more people asked me questions about is their own copyright ownership." Ms. Sims says.

At the rights sessions she holds for small groups of faculty members, she asks them if they own any copyrights. "I often get more than half the group thinking they don't, which is a fundamental misconception about how copyright law works," she says. "A lot of people don't realize that they themselves are copyright owners."

Copyright automatically applies to book manuscripts, articles, blog posts, artwork—almost any copyrightable object that people create. That's been the law since the 1976 Copyright Act took effect. "If you draw a picture on a scrap of paper, you actually own a copyright in that picture"—no paperwork required, Ms. Sims says.

- Know your rights when you sign contracts with publishers or others to distribute your work. Who owns a copyright can affect how a work is presented. For instance, an author signs a contract with a scholarly publisher, expecting the book to be published in print; then the publisher decides to issue it as an e-book instead. "And the faculty member, having reasonably

expected it was going to be a print book, thinks that they can complain about this," Ms. Sims says.

Many publication contracts sign the copyright over to the publisher—which leaves an author with little or no say over how his or her book is published. So an author should know, before signing a publication contract, what rights are at stake. "Know your rights and know how your negotiations about your rights are actually affecting your goals as a scholar," she says.

- Fair use is complicated—but you can also call on the principle of "classroom use." Ask Ms. Sims for a quick working definition of fair use—when it's OK to use copyrighted material without permission—and she just chuckles. "There is no such thing as a quick working definition of fair use," she says. The shorthand she sometimes uses is that fair use "is the breathing space for freedom of expression within copyright law."

What many faculty members don't realize, she explains, is that "fair use is not the only kind of noninfringing use" available to them. "The really important exemption that I talk to people about is the one called the classroom-use exemption." An instructor teaching students face-to-face in a nonprofit educational setting has a good deal of leeway to show them a lot of copyrighted material. For instance, "you can play a whole movie in class if you fit in the exemption category," Ms. Sims says. "And none of this is fair use."

- Don't be ruled by fear. "Because lots of academic types of fair use are not very well settled in the law, there's room for lawsuits, unfortunately, or at least for complaints," Ms. Sims says. Nobody wants to get sued. She urges people—and the institutions they work for—to shift the focus from "Will I get sued if I use this?" to "What is it we want to do, and then how can we do that within copyright law?"

People need to comply with the law, she says, but they should focus first on their research and teaching missions. "A risk-oriented, compliance-oriented mind-set is one of the things that makes fair use smaller and helps us not innovate around copyright law in other ways," Ms. Sims says. She points to the open-courseware movement as an example of the kind of copyright innovation she'd like to see more of.

- Ask for help. And make a difference. "You don't actually have to do this all alone," Ms. Sims says. "Try to develop your own personal knowledge, but also try to make connections with people who have more." If the campus library doesn't have an in-house copyright specialist—although it's increasingly likely to—the general counsel's office may be able to answer questions and offer guidance. Many libraries and other groups have created online guides on copyright, sample contracts, and other useful resources. (See box, above.)

"If you feel like it's all on you and it's really scary and you just want to do the thing that will put you at least legal risk, you don't have much room to shape anything," Ms. Sims says. Instead, learn about copyright, ask questions, tap into other people's expertise, and help move copyright law and policies in a research-friendly direction. "We do have some room to really develop copyright," she says, "so that the copyright that affects our academic lives reflects our academic values."

Copyright and Fair-Use Guides on the Web

A selection of free online advice for academics

[Best Practices](#), from the American University Center for Social Media

[Copyright and Fair Use](#), from the Stanford University Libraries

[Copyrights and Wrongs](#), from the American Association of University Professors

[The Copyright Crash Course](#), from the University of Texas at Austin

[Copyright Term and the Public Domain in the United States](#), from Cornell University

[A Map of Use Issues](#), from the University of Minnesota

[Public Domain Slider](#), [Section 108 Spinner](#), and [Fair Use Evaluator](#), from the American Library Association

[Tales From the Public Domain: Bound By Law?](#) A comic book from public domain scholars at the Duke University Law School

Compiled Ben Wieder

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Ho Simon Wang 3 months ago

I guess a more complete story of copyright should also include the following points:

- 1) Yes, the author's works are automatically copyrighted. But they may also give up the rights by licensing their works through Creative Commons or simply putting them into the public domain. Doing so may actually benefit the authors by enhancing their reputation.
- 2) Copyright as an institution has been expanded by rent-seeking publishers in the expense of public interest. The terms of copyright used to be 28 years. But now is the author's lifetime plus 70 years - in order to protect Mickey Mouse.
- 3) Fair use as the user's right to use the works without authorization is also threatened by DRM.
- 4) A huge amount of scholarly papers and materials, which are often written with the funding of tax payers' money, are only accessible to people whose university libraries can afford the copyrighted database.
- 5) Copyright is essentially a western idea which has been imposed by force to other parts of the world including China. A world without copyright can also prosper culturally.

26 people liked this. [Like](#)



nacrandell 3 months ago in reply to Ho Simon Wang

"Copyright is essentially a western idea which has been imposed by force to other parts of the world including China..."

Would that be Red China? The slant of your post suggest "putting them into the public domain" and profit from ones work is ignored. True Mickey Mouse makes a lot of money for Disney, but generally

academic books are one hit wonders and the authors cannot afford for their works to be pirated, who truth be told, are themselves making a profit.

6 people liked this. [Like](#)



xmichaelx 3 months ago in reply to nacrandell

"generally academic books are one hit wonders and the authors cannot afford for their works to be pirated"

I work with many, many academic authors. I know very few who have made any profit at all aside from the initial publishing stipend. Piracy is not an issue for academics, who are generally paid in prestige and tenure, rather than cash.

7 people liked this. [Like](#)



music_librarian 3 months ago in reply to xmichaelx

Those who are eligible for tenure and promotion, anyway... Some of us academic authors are not.

[Like](#)



Ho Simon Wang 3 months ago in reply to nacrandell

The first Chinese Copyright Act was introduced by the government of Qing Dynasty under the pressure of foreign invaders in 1910, before the Chinese Communist Party was founded. <http://ipr.chinadaily.com.cn/2...> The government of "Red China" today is again under the foreign pressure to enforce copyright, an issue that is barely debated among the Chinese citizens. The spread of piracy in China is the plain and simple evidence that the majority of the people here do not buy the idea.

1 person liked this. [Like](#)



cb_10 3 months ago in reply to Ho Simon Wang

Actually, the biggest problem with piracy in China is that many pirated copies of works are created to be sold abroad. That's real piracy - or theft, as some people like to call it. I'm pretty sure theft is as frowned upon in China as anywhere else.

Obviously, copyright boils down to interests - the authors' and the audience. Those pushing for a relaxation of copyright law are trying to get more access for less (or no) money. What's needed is a clear set of academic exceptions (for study only). Currently, the exceptions are muddy and anxiety-inducing.

What's not needed is rolling back protections. Authors will certainly still create, but fewer of them will attempt to make careers of their work and we'll be the poorer for it in the long run.

[Like](#)



sand6432 3 months ago in reply to Ho Simon Wang

Well, if the Chinese people are not concerned about copyright, then how come there us such a ruckus going on now among Chinese authors whose works have been posted by the #1 search company Baidu? For some of the complexities of the situation in China, see my essay "China's Copyright Dilemma": <http://www.psupress.org/news/S...>

1 person liked this. [Like](#)



calluna 3 months ago in reply to Ho Simon Wang

Point 1 is a common misconception. You don't give up your rights to a work by licensing it. A license grants specific rights to the licensee (as outlined in the agreement) while you still retain your own original rights. For example, you might grant someone a license to distribute your work for a certain number of years in a particular form because they can better mass market and distribute it than you can, and you might choose to negotiate a one-time up-front fee for it, or you might choose to receive a percentage of every sale. There are different types of licenses too. Some can be very limited to a single purpose, some allow you to continue licensing your work to others as well, and some are more exclusive, which means for the duration of the license agreement, you guarantee the licensee is the only one you're licensing the work to. There is also no such thing as putting your work in the public domain. There's another article about public domain in today's edition that will help clarify that. Keep in mind that legal definitions of public domain differ between potentially patentable works and copyright protected works, and that often leads to this confusion.

The bottom line that I think any academic should get from this article is don't sign ANY agreement regarding copyright transfers/licensing, etc., until you've run it past your university general counsel. That's what they are there for, to help the faculty sort through the confusing landscape of copyright law (and any other type of law). It also ensures you're not running afoul of your employment contract that may grant partial ownership of works produced as part of your work product to the university.

2 people liked this. [Like](#)



Ho Simon Wang 3 months ago in reply to calluna

"Point 1 is a common misconception. You don't give up your rights to a work by licensing it. A license grants specific rights to the licensee (as outlined in the agreement) while you still retain your own original rights."

I was talking about Creative Commons license, which enables the copyright holders to authorize the public to freely use and distribute their works. There are a number of options for the authors to choose from. For example, one can allow the public to use the works for non-commercial purposes only. But Creative Commons also makes it possible for the authors to "dedicate their works to the worldwide public domain...", and facilitate the labeling and discovery of works that are already free of known copyright restrictions."

<http://creativecommons.org/pub...>

1 person liked this. [Like](#)



sand6432 3 months ago in reply to calluna

Why do you think it is impossible to dedicate one's work to the public domain? Nothing in copyright law prevents any author from waiving all rights. It may procedurally be difficult to do so, but the law does allow an author to try.

[Like](#)



Karl Fogel 3 months ago in reply to Ho Simon Wang

Thank you for saying it, Ho Simon Wang. The whole implication of "fair use" -- that some uses are "unfair" -- is insidious. And the copyright lobby loves to confuse unauthorized copying with plagiarism, even though the two are unrelated, because they know that plagiarism upsets people much more. See <http://questioncopyright.org/p...> for a classic (but sadly not isolated) example.

One thing I'd like to hear explained by copyright proponents is the justification for retroactive copyright term extensions, which we now have in the U.S. -- see point (2) above. That's when the legislature extends the length of copyright terms "even for works that have already been created". Now, even if one believes the somewhat mythological idea that copyright ownership is a significant motivating force for artists to create, there can be no motivational effect from a law that extends the copyright restrictions on existing works after they have been created, since whatever motivation the author had to create the work was had under the previous statutes anyway. It is purely a land grab by the publishing industries. The spread of these restrictions to other nations, through the threat of trade sanctions, is a great mistake. We should be rolling the restrictions back, not persuading other people to adopt them.

Ho Simon Wang, please feel free to join us over at <http://questioncopyright.org/>.

1 person liked this. **Ho Simon Wang** 3 months ago in reply to Karl Fogel

Hi, Karl. I've been to the site <http://questioncopyright.org/> which I found very interesting and informative. Copyright has become an issue that affects everyone who uses the Internet and the public cannot afford to let the special interest groups to formulate the copyright policy. So I think your cause is a worthy one. Keep up the good work!

**cb_10** 3 months ago in reply to Karl Fogel

"Now, even if one believes the somewhat mythological idea that copyright ownership is a significant motivating force for artists to create, there can be no motivational effect from a law that extends the copyright restrictions on existing works after they have been created, since whatever motivation the author had to create the work was had under the previous statutes anyway."

It's not a mythological idea at all. Yes, most artists will create whether there are copyright protections or not, but copyright protections give some artists the opportunity to create for a living. It's only in academia, where some artists rely on tenure and appointment (rather than, say, the marketplace) for the support to create, that you hear this sort of regular pooh-pooing of copyright. Most people trying to make a living (or supplement one) in the private sector generally support some sort of strong copyright protection, and I've rarely heard professionals outside the ivory towers complain about copyright protections.

As for the second part of Karl's argument, there's a faulty assumption in there - I'd chalk it up to a lack of perspective. Can Karl really think of no motivation for extending copyright that might influence a cartoonist, or a composer, or some other artist who has creates something others greatly value? One example: Stravinsky reissued many of his works with subtle alterations to keep them in copyright, to extend the life of the protection.

The current extensions are not just for the sake of Mickey Mouse (although the Disney company can hardly be said to be engaged in a land grab where Mickey is concerned) but in part the result of an international treaty on copyright.

Many people who question copyright seem more interested in getting access to materials for free than in fairly compensating artists and their estates. That should alarm most writers and artists, and outside the academy it does.

3 people liked this. **jimblandy** 3 months ago in reply to cb_10

Copyright is a bargain: we grant authors limited rights at the public's expense, to enable a certain class of business models. If an author wrote a book under certain terms (the copyright law of the time), it seems odd to go back decades after the fact and offer him better terms, at more expense to the public. It's certainly not in the public's interest.

"Many people who question copyright seem more interested in getting access to materials for free than in fairly compensating artists and their estates."

Since you've drawn attention to the person: Karl Fogel has authored two books, which sold quite well for their field. His books are now available for free on the net. So he speaks from the perspective of a creator, as well as a consumer.

**joestudent** 4 weeks ago in reply to Karl Fogel

We know that the extension idea was conceived by an entertainer and lobbied for by a large entertainment empire. The idea is to protect not only the author, but also the children of the author for the rest of their lives. Although life plus 50 years takes into account the extended life

span of the author, the plus 70 extension covers the extended lives of the children of the author.

<http://www.oyez.org/cases/2000...>

I'm not saying it's right. But that's sort of the logic behind it. The wikipedia entry explains it really well:

<http://en.wikipedia.org/wiki/C...>

I think the extension also matches the European law, which eliminates possible problems with the 20 year discrepancy.

Like



Tonja DuBois 3 months ago

Very informative

Like



ramanujam 3 months ago

Reading this article reminds me of an interesting thing that happened in the world of letters in October 2004. The Latin American literary giant Gabriel Garcia Marquez's latest book, 'Memories of My Melancholy Whores', was launched on October 20. Even before the launch, pirated versions of the book had come onto the market. However, when the book officially came out, the pirates realized that the wily Marquez had outwitted them all: he had changed the ending of the story in the official edition! Now, the Colombian police swung into action: they seized thousands of copies of the bootleg versions on sale on the streets of Colombia.

Book piracy has now assumed alarming proportions. According to an estimate by the Inter-American Publishers' Group, 50 billion book pages are illegally reprinted every year. In the forefront of book piracy are the Asian and Latin American countries. In India, where I live, I'm told that the Rs 7000-crore publishing industry incurs a loss of Rs 400 crore on account of book piracy. A few years ago, one of my friends, a professor of biochemistry, wrote a book on biochemistry which is quite popular in India and abroad. The book with illustrations in four colours was originally priced Rs 440, but pirated black-and-white editions of the book began to sell for Rs 250 in Bangladesh. Then the publisher did something very sensible: he reduced the price of the original to Rs 250. If you can't beat the pirates, join them!

Publishers of textbooks must learn a lesson from this. One reason why students buy cheaper pirated editions of books on specialized subjects such as medicine and engineering is because the original editions are prohibitively expensive. But it would be simplistic to think that by reducing prices alone, book piracy could be eliminated.

How is the situation in my own town, Vijayawada, in South India? On a Sunday, I visited about fifteen second-hand books shops, and was unimpressed by the small-scale bootlegging that was going on there. On offer were awful-looking Sidney Sheldons (Rs 50 a copy) and Jeffrey Archers (Rs 75) and plenty of stolen volumes from college/public libraries.

Why is book piracy not a roaring business in places like my city? The answer is quite simple: piracy can flourish only where the reading habit flourishes.

9 people liked this.

Like



pragnesh 3 months ago in reply to ramanujam

I agree with this. Piracy arise only when price of the publication goes beyond certain limit. If publishers keep it lower, than chances of piracy will reduce.

Like



mbelevadi 3 months ago

The fact that fair use was explicitly designed to be determined case by case is a huge problem for anyone trying to provide advice about it. Your library may have an "expert" but they aren't likely to be willing to be more specific than to just repeat the '4 factors' and offer the CONTU guidelines, because to do anything else

opens them up to criminal charges of "practicing law without a license". This has been a dangerous trap for anyone trying to advocate broader interpretation of fair use, because simply interpreting law can be deemed engaging in the practice of law.

5 people liked this. [Like](#)



iriselina 3 months ago

Shakespeare plagiarised and we dont complain !

[Like](#)



greeneyeshade 3 months ago

"An instructor teaching students face-to-face in a nonprofit educational setting has a good deal of leeway to show them a lot of copyrighted material"

Interesting. Is anyone holding the *for*-profit educational companies' feet to the fire on this? The impact could be analagous to going after Al Capone--since they couldn't get him on racketeering and bootlegging etc., they got him on tax fraud.

2 people liked this. [Like](#)



janyx ♥ 3 months ago

What You Don't Know About Copyright, but Should

[Like](#)



Nancy 3 months ago

I work for a tax funded, non profit educational institution and have been told for over 20 years that anything we create is automatically in the public domain. In essence, we cannot copy protect anything we write - whether it's an article or an instructional manual - since it was created using tax payer's money. So just for clarification from you who know much more than we do on copyright, is this correct? Thank you!

[Like](#)



sand6432 3 months ago

Ms. Sims seems to have a sophisticated understanding of copyright law, but I'm puzzled at the apparent link made between "classroom use" and "freedom of expression." Perhaps this is just something the writer of the article injected by quoting Ms. Sims in the way he did, rather than anything the librarian asserted herself.

[Like](#)

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