

Copyright in the US

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OBJECTIVES

- Quick overview of copyright
- New and pending legislation nationally and globally
- Impact on libraries

WHAT IS COPYRIGHT?

- Derived from English law
- Constitutional Right: "To promote the progress of science and the useful arts"
- Protects original works of authorship
- Applies to both published and unpublished works fixed in a tangible medium of expression

EXCLUSIVE RIGHTS

- To perform the work publicly
- To distribute copies by sale or other transfer of ownership

EXCLUSIVE RIGHTS TO OWNER

- To reproduce the work in copies or phonorecords
- To prepare derivative rights based upon the work

NON-EXCLUSIVE RIGHTS

- Rights are not entirely unlimited in scope
- Buyers and users of copyrighted works also have some rights
- Framers were careful to maintain balance between rights of owners and users

WHAT'S NOT PROTECTED

- Works consisting of information containing no original authorship
- Ideas, procedures, methods, systems, discoveries or devices as distinguished from a description, explanation, or illustration
- Works not fixed in a tangible form of expression
- Titles, names, slogans, familiar symbols
- Works produced by the government and its employees

RIGHT OF FAIR USE

- Basis for making single copies for scholarly use
- Not yet tested in the courts

FAIR USE

- 4-part test:
 1. Purpose of the use
 2. Nature of the work
 3. Amount of work used
 4. Economic impact on market value of work used

RIGHT OF FIRST SALE

- Can lend or resell
- Permits libraries to lend their collections
- Threatened by pending legislation

OTHER LIBRARY RIGHTS

- Negotiated through subsequent interpretations and agreements
- Interlibrary Loan
- Library Reserves
- New - archiving digital works

DOES COPYRIGHT APPLY TO THE WEB?

- YES!!!

NEW AND PENDING LEGISLATION

- Digital Millennium Copyright Act - DMCA
- Sonny Bono Copyright Term Extension Act
- Data Base Protection Legislation
- Uniform Computer Information Transaction Act -- UCITA

DMCA IMPACT

- Library exemption for digital archiving and preservation
- OSP Limitation of Liability -- should library assert status as "Service Provider?"
- Distance Ed challenges
- **Anti-circumvention rules:**

- 1. Illegal merely to access copyrighted material by circumventing copy-protection measures**
- 2. likely ensures more works come with licenses**
- 3. could lead to privacy issues**

DISTANCE EDUCATION

- DMCA directed study to see if exemption for distance education through interactive digital networks is needed

DISTANCE ED FINDINGS

- Problems with licensing (unreasonable costs, tardy responses, or hard to locate copyright owners)
- Current Copyright Law does not adequately or fully address the needs of distance ed or content owners

COPYRIGHT TERM EXTENSION

- Extends term twenty years
- Exception permits libraries to continue to freely use old works in the last twenty years of the extended term

DATABASE PROTECTION ACT

- Some WIPO pressures
- Creates copyright-like regime on non-copyrightable materials
- Compromises fair use and right of first sale
- Threatens to drive up prices and reduce access

UCITA

- New commercial law for the information economy - consistency at state levels (Passed in Virginia in February)
- Enforces broad use of shrink-wrap and click-on licenses
- Includes everything from copyrighted expression (stories, computer programs, images) to online databases and interactive games
- Shift in power between copyright law and contract/license law
- Undermines public policy of making information available to the public
- Scope too broad -- enables mass-market licensing of books
- Enables new constraints on public domain information and materials

WHY SHOULD WE CARE?

- Libraries use copyrighted materials and have legal rights through exceptions and limitations

- Protect balance - equalize bargaining leverage among creators, publishers, users
- Often only entities that provide access to vast majority of copyrighted works that lose market vitality
- Often only entities that preserve public domain materials
- Impact on Digital Libraries
- Seek to maintain for users, and libraries acting on their behalf, their rights to at least the same extent as they have enjoyed in the non-digital environment
- Expect law to continue maintaining the balance