
© Copyright Law: A Guide for The New Millennium

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Copyright law affects faculty members, researchers, librarians, administrators and anyone interested in higher education. Emerging new technology has created new legal issues in this respect. The age of information has given rise to greater concerns about copyright legalities.

Copyright law is not new. In fact James Madison and the framers of the United States Constitution addressed it in Article 1, Section 8, clause 8, in order to "promote the Progress of Science and the useful Arts" by securing an exclusive right to writings. The most important statutory guidance is The Copyright Act of 1976, 17 U.S.C. sec. 101 et seq. (1994

Several institutions across America have addressed copyright law by initiating a variety of policies either via the Internet or through more traditional means. In fact many have even gone so far as to take a stab at addressing those areas directly affecting cyberspace. A more detailed discussion is embodied in this work. Yet some schools have simply let the microchips fall where they may.

For the moment let us examine the ever-growing educational concerns in this respect beyond the procedural aspect. There are several colleges and universities with courses on such intellectual property subjects.

Among them are Internet Law at Seattle University School of Law, Cyberlaw at The University of California, (Berkeley), A Law of Cyberspace? at John Marshall Law School, Law and the Internet at Carleton University, Cyberspace Law at Lewis and Clark College, Law and Internet Seminar at The University of Miami School of Law and The Law in Cyberspace at American University. For a comprehensive list, see The John Marshall Law School site, at <http://www.jmls.edu/cyber/others.html>.

We at the College of West Virginia (CWV) have recently included new two courses, entitled Copyright Law and The Law of Cyberspace into our curricula. I was instrumental in convincing CWV officials to do so. I have encountered an interest in these types of courses at almost every seminar and conference that I have attended this past year. It would seem that with such a fervent

desire for knowledge in these areas it would behoove every institution across America to examine the possibilities. Apart from Y2K these are truly hot topics for the future. That is, as long as the technology works when we hit 2000. Also, CWV has instituted policies specifically covering Internet and e-mail. These serve as guidelines that were created after several requests were made at the college. They deal with a variety of issues, including but not limited to, software, media services, e-mail usage/transmissions, passwords and privacy.

There are several innovative ways to create a copyright policy. The best resource is the United States Copyright Office located at <http://lcweb.loc.gov.copyright.htm>. Also, The Copyright Clearance Center has a free handout entitled "Guidelines for Creating a Policy for Copyright Compliance." It can be obtained at the website, <http://www.copyright.com> or by writing the Center at 222 Rosewood Drive, Danvers, Massachusetts 01923. The format for the Guidelines is as follows:

- A. Statement of Corporate Values
- B. Sources of U.S. Copyright Law
- C. Statement of Corporate Obligations Regarding Copyright
- D. Outline of Compliance Procedures
- E. Instructions for Handling an Incident of Copyright Infringement

The following is a list of twelve (12) colleges and universities that have websites addressing copyright issues. Special emphasis has been placed upon the citation of web materials that contain institutional copyright policies:

- **The University of Texas**, "Guidelines for Classroom Copyrighting of Books and Periodicals", adapted from the Association of American Publishers and The Author's League of America, at http://www.utsystems.edu/OGC/Intellectual_Property/clasguid.htm. The University System also has wonderful copyright presentations via the web. The address is <http://www.utsystems.edu/ogc/intellectualproperty/present.htm>. Check out "Copyright Law in Cyberspace" at the above site with /nacua.htm finishing the web address after the intellectualproperty. Be sure to visit the copyright management information site at the preceding address, ending in copymgt.htm. Finally, for the beginner, UT has a great site called "Crash Course in Copyright", at <http://www.utsystem.edu/OGC/intellectualproperty/cprtindx.htm>.
- **The University of Minnesota** at <http://arl.cni.org/scomm/copyright/Minnesota.html> (Dated 1995).
- **Rensselaer Polytechnic Institute**, Library Policies, at <http://www.rpi.edu/dept/library/Policies/fairuse.html>.
- **Brigham Young University** at <http://www.byu.edu/~ttdata/intell.html> (Dated 1994; must be downloaded as an MS Word file in order to be read).
- **Massachusetts Institute of Technology** at <http://web.mit.edu/policies/13.1.html> MIT also has a good site regarding frequently asked questions on copyright at <http://web.mit/cwis/copyright/faq.html> (Dated 1995).
- **North Carolina State University** at

http://www.lib.ncsu.edu/issues/TRLN_mod_copyrt_pol.html

(Dated 1993).

- **Columbia University**, "The Educator's Copyright Survival Guide", at http://www.lib.ncsu.edu/issues/TRLN_mod_copyrt_pol.html.
This site is referred to as CREDO, "Copyright Resources for Education Online."
- **The University of California**, "Copyright Considerations for Faculty-Authored Multimedia Instructional Materials", at <http://mody.ucdavis.edu/Distance-ed/Copyright.htm> (Dated 1996).
- **Stanford University** at <http://www-portfolio.stanford.edu/101242>
Stanford also has guidelines for the educator at <http://www-sul.stanford.edu/copyright.html> as well as the librarian at <http://fairuse.stanford.edu/library>.
- **Yale University** at <http://www.library.yale.edu/~okerson/copyproj.html>. " Copyright Resources Online" is a fantastic summary for anyone interested in these and related issues.
- **The University of Tennessee**, at <http://toltec.lib.utk.edu/~gco/patcoc.html> (Dated 1984).
- **The University of Canada at Alberta**, "Copying Right", at http://libits.library.ualberta.ca/library_html/copyright/copy_right.html (Dated 1994).

Let us look at an overview of one copyright policy. The University of Georgia Libraries have materials located at <http://arl.cni.org/scomm/copyright/Georgia.html>. They consist of an introductory statement as well as the policy considerations. The breakdown is as follows:

Introduction

PURPOSE OF POLICY
INTENT OF COPYRIGHT
PUBLIC DOMAIN/DURATION OF COPYRIGHT
FAIR USE
LIABILITY OF LIBRARY EMPLOYEES
COPYRIGHT AND NEW TECHNOLOGY

Policies

COPY SERVICES
RESERVES
DOCUMENT DELIVERY
INTERLIBRARY LOAN
GOVERNMENT PUBLICATIONS
PRESERVATION
PHOTOGRAPHIC SERVICES
HARGRETT RARE BOOK & MANUSCRIPT LIBRARY
NONBOOK MATERIALS
VIDEO/FILM/SOUND RECORDINGS
COMPUTER SOFTWARE
MUSIC SCORES
RICHARD B RUSSELL MEMORIAL LIBRARY
UNIVERSITY ARCHIVES
LICENSE AGREEMENTS

Id.

By far the most complete resource I have found is "The Regents Guide to Understanding Copyright and Educational Fair Use" by **The University of Georgia**, State Copyright Regents Committee. It is located at <http://www.peachnut.edu/admin/legal/copyright/copy.html>. It covers such topical areas as research, writing, multimedia projects, video/sound recordings, and so on. It does so by as series of questions and answers dealing with everything from unpublished letters to out-of-print books. And, it gives a good general overview.

Speaking of overviews and general research, the best starting place is Cornell Law School. The Legal Information Institute maintains a site. It is compendium of links to many valuable assets and provides a wealth of research tools. It is located at <http://www.law.cornell.edu>.

Knowledge of the law is crucial these days. There are three ways a defendant may face potential liability. Direct liability results if the infringer directly violates copyright law. Or, the defendant could be held vicariously or contributorily liable. These were the issues in the case of *Religious Technology Center v. Netcom On-Line Communications Services, Inc.*, 907 F. Supp. 1361 (N.D. Calif.) (hereinafter referred to as NetCom). Netcom found itself ensnarled in a copyright infringement suit. The controversy centered upon a former Church of Scientology minister, Dennis Erlich. He copied some of the works of L. Ron Hubbard. Erlich then placed them on a Usenet of the copyright in the works of Hubbard. Erlich accessed Usenet via a BBS. Netcom provided linkage. Again, Netcom faced three potential liability fronts: direct, vicarious and contributory. The court held that direct liability was inapplicable in that Netcom did not engage in any action that caused a direct violation of copyright law. The company merely created a copy for a third party.

On the issue of vicarious liability the court also stated that plaintiff failed to prove defendant had the requisite control over the infringer's actions sufficient to show any gain. However, on the issue of contributory liability the court held there existed evidence that presented a question of fact as to whether Netcom had knowledge and failed to take appropriate action. The plaintiff informed Netcom of the infringement. The Court held that failure to take said action equates to substantial participation in these instances resulting in potential liability for the storage of data. The case regarding NetCom was ultimately settled out of court. 907 F. Supp. at 1375; see also <http://host1.jmls.edu/cyber/cases/netcom.txt> and, in general, Application of Copyright Rights to Specific Acts on the Internet, by David L. Hayes, 15 NO. 8 Computer Law 1, August, 1998.

It is important to note that it is virtually impossible to have a current policy in place. The law is always changing in this respect. The safest thing to do is to make a good faith effort. Following the most up to date practices while ensuring avoidance of liability is about all any organization can do. The more self-policing done will result in less problems in the future.

Concerns especially exist as to linking to a web site without permission. Such probably would be beneficial to business. As long as no one directly steals, this action, if tastefully taken, gives credibility and free advertising. Do we then necessarily retain counsel when sending e-mail? More importantly, there are other issues involving cyberspace that need to be examined. Most scholars feel that the clear-cut issues will remain the same. In other words, treatment of material on the Web is similar to that of literature. So, for purposes of, say CD's, copyright law is clear. But, in the same way a CD is protected, a web page may also be regarded as one unit of owned property and very well may garner favor with the courts in the same respect.

Notice that copyright protection does not extend to computer systems, processes and the like. Clearly browsing, e-mailing and related practices seem free of major problems in this regard as well. Congress has grappled over bills based on the infamous White Paper. See United States Department of Commerce, Information Infrastructure Task Force, Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property 10-11 (1995) as well as pp.64-65. One can obtain the final report by writing to the Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, D.C. 20231, or at <http://www.uspto.gov/web/offices/com/doc/ipnii>. For an analysis of the White Paper, see Kathi A. Cover, The Emperor's Magic Suit: Proposed Legislation Will Tailor the Copyright Law to Fit the Internet, at <http://www.smu.edu/~win96a2.htm>.

The main thrust of any guidelines should be to incorporate a policy right for each school or organization. That is, a good idea would be to tailor each according to the needs and desires of that particular organization. Solicit the advice of counsel as well as input from other sources such as companies, related industries, library organizations and the like. Outline the compliance procedures carefully in order to avoid potential problems down the road. State clearly the corporate obligations and those of anyone who may use copyrighted materials in inappropriate ways.

In the University of Georgia policy, it states. . .

COPYRIGHT AND NEW TECHNOLOGY

Copyright functioned best in an era when the means of reproduction lay in the hands of a limited number of agents with the requisite skills and equipment. In recent years, however, technological developments have made it possible for almost anyone to make reproductions in a variety of formats. Furthermore, the Copyright Law is proving to be increasingly inadequate to address the needs of emerging technologies. For example, it is no longer possible in some media to draw a distinction between an idea and its expression, and in an electronic environment it is often impossible simply to read an idea without first copying it. What is needed are not amendments to the Copyright Law, but a fundamental reconsideration of the concept of intellectual property. Until new standards are established, the Libraries will take full advantage of new technologies to further the educational mission of The University of Georgia. Id.

The law of copyright has entered the age of cyberspace. A few months ago President Clinton signed a bill providing new game rules for the treatment and respecting of online copyrighted material. **The Digital Millennium Copyright Act**, H.R. 2281 in the House of Representatives, and S. 2037 in the Senate, is a hot potato by many interested in copyright law. The complete text is found at <http://thomas.loc.gov/cgi-bin/query/z?c105:H.R.2281>; see, generally, <http://www.loc.gov/copyright>, <ftp://ftp.loc.gov/pub/thomas/cp105/hr796.txt>, and <ftp://ftp.aimnet.com/pub/users/carroll/law.copyright/h2881enr.txt>.

For a comprehensive analysis, see The Digital Millennium Copyright Act, by Mark Radcliffe at http://www.gwcf.com/articles/interest/interest_11.html.

The DMCA is a massive complexity of rules and regulations. It will probably serve as a challenge for copyright aficionados, service providers and all involved in the field for some time to come. If we are to advance in the digital age, we must have a compromise between right and rule, between freethinking and structured regulation. It will be a test of time as to whether or not the Clinton administration's efforts will be a cure or a curse for the new millenium in copyright. The only way to examine the DMCA's validity is by trial and error. Unfortunately all of us involved with copyright may be cursed with many of each.

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