



The Basics of Copyright

Steven Varela | CCEertificate for Educators | Unit 2--Copyright Law--Revised

The Purpose of Copyright

Many people do not have to know anything about copyright law, but it's pervasive in everyone's lives. Once people begin to look at the law seriously, however, especially at how it works in the digital environment, it can be quite complex, ever-changing and sometimes, just plain confusing.

But, if you go back to the beginning, copyright law certainly started out with the best of intentions. The U.S. Constitution gives Congress the power to create a copyright statute for one reason only: to improve our society by increasing knowledge. Copyright law achieves this purpose by balancing the interests of copyright owners with the interests of the public. It provides an incentive to authors to get them to create; the more things created the better.

But, in order for the public to derive its benefit, increased knowledge, the works have to be distributed and available for use. This interplay between the incentive to authors, a term of exclusive rights to control their works, and the public's access to and use of the works so created, is played out through the entire Copyright Act, with each section having an important role to play in the way copyright promotes the growth of knowledge.

"Copyright **does not protect facts or ideas** themselves, only the expression of those facts or ideas" (Unit 2, CC Certificate for Educators).

While it may seem that copyright protects everything these days, in truth, it only protects unique ways of expressing ideas once the expressions are fixed in a tangible medium. Protection only requires a minimum amount of creativity. It can be a literary work, an artistic expression, and even computer software. Just as important as what it does protect is what it does not protect. Copyright **does not** protect the facts included in a work or the ideas, processes or systems that may be described in a work. Anyone can use facts and ideas in a work at any time, if they have access to the work. It's easy to see how reserving protection for original expression only, and excluding ideas and facts from protection, promotes the growth of knowledge.

Copyright protection begins at the moment that a work is fixed in a tangible medium. For example, the information that you are reading now was protected the moment I hit the "save" key for the first time. This protection is automatic. I didn't need to do anything to secure it - there is no registration or notice requirement.

Once a work reaches the end of its term of protection (it lasts a long time, but it isn't indefinite), it becomes a part of the rich, shared resource available to everyone to use however they wish, in effect, a creative cornucopia: the public domain. Copyright's balance used to favor public access and use more than it does today. The changes in this area are strong evidence of a shift in the balance, away from public use and towards commercial interests (thank you, Disney!).

It is important to distinguish copyright protection from other methods of intellectual property as well. In our course, two in particular were discussed:

- **Trademark law** helps producers of goods and services protect their branding and all it represents, and protects the public by differentiating between similar products and services. Because of trademark law, we don't confuse Coke branding with Pepsi's for example.

- **Patent law** gives inventors a time-limited monopoly to their invention and the exclusive rights therein. Technology innovations, for example greatly benefit from patent law.

Take Apple iOS devices for example. They are protected by both-- patent law protects their design, functionality and innovation, while trademark law protects that lovely apple!

The Public Domain and Author's Rights

Once a work reaches the end of its term of protection, it becomes a part of the rich, shared resources available to everyone to use however they wish, in effect, a creative "repository" called **the public domain**. While, the rights of copyright owners are exclusive, meaning that only they may exercise them, they are not absolute. There are many provisions that place important limits on the owner's rights. The law has to do this to achieve its purpose **to maximize the growth of knowledge**.

The rights of copyright owners/authors include the right to make copies, create derivative works, distribute, display and perform works publicly, and give others permission to exercise the author's rights. This is important to protecting what has been created, and also to provide incentive to create more. There can be monetary gain for this intellectual property, and therefore copyright law protects this from infringement. Infringements are identified in terms of which exclusive right is violated, that is, exercised by someone without permission or legal authorization.

Here we can clearly see that **purpose matters**. If the purpose of copyright law were to maximize the profits of copyright owners, we wouldn't need any limits. We could let copyright owners control every single use of their works. But, because the purpose is to maximize the growth of knowledge, we need limits on the author's power to control all uses of a work, and also provide rights to a user. Eventually a work will enter public domain, usually in 4 ways:

1. The copyright expires (in most countries 50 years after the death of the creator).
2. The work was never entitled to copyright protection (facts and ideas are never eligible for example)
3. The creator can dedicate the work to the public domain (and choose not to extend copyright)
4. The creator fails to adhere to the formalities of copyright and/or maintain their copyright.

These provisions are of special importance to educators like me--permitting fair uses of works without the owner's permission; permitting libraries to archive works, to make copies for patrons and to participate in interlibrary loan operations, among other things. Together, author's rights and the public domain provisions provide a balanced approach.



1 - Image courtesy of Wikimedia Commons

Fair Use

Fair use also balances interests: it balances the interests of copyright owners to control the use of their works so that they can take full advantage of their incentive, and the interests of the public for access to the works and the ideas in them. One can imagine that copyrights could easily be used to interfere with speaking and listening, were the exclusive rights also absolute. Fair use gives us some "breathing room." One of the best examples of this is reliance on fair use to quote from a work in order to take issue with it or criticize or otherwise comment upon it--its what us English Lit. folks do all the time! No copyright owner can legitimately refuse to permit such use, because does not require the owner's permission.

In our digital age, fair use is especially important. It lets people use works, that is, make copies, modify a work, distribute, display and perform works publicly, when those uses further copyright's goals, just so long as those uses do not significantly affect the copyright owner's incentive: "...the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching [including multiple copies for classroom use, scholarship, or research], is not an infringement of copyright" (The Fair Use Statute: 17 U.S.C. 107). Balance. Always balance.



Conclusion

Copyright law uses a strict liability rule: if you infringe, you are liable. It is very simple actually. The mere exercise of any of the copyright owner's exclusive rights without permission, or without the action being authorized by the statute (for example, as a fair use) is an infringement. Ignorance of the law is no excuse. So, for me, working in higher education, it's important to know that individual faculty members, and even students, could be held liable for their infringements. There should be a centralized resource on each campus charged with this responsibility, and for UTEP we have developed a library guide to help our stakeholders with this: <http://libguides.utep.edu/copyright>.

Copyright law is far too complex for a simple policy that only allocates rights to an author or the public. It needs more nuanced treatment, which is what Creative Commons has recognized and facilitated, and provided agency to both creators and the public!



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