

# Copyright, Fair Use and Multimedia



## What is Copyright Protection?

Copyright was formulated as a means of protecting creators' rights to many uses of their original protected works, including reproduction, dissemination, display and – probably most important – receiving profit from that work. These rights have always been formalized in U.S. law, in the Copyright Code. With the advent of multimedia, especially the Internet and digital technology, there have been many changes in the laws governing this basic right. As educators or researchers, we must be aware of these changes and how they affect our freedom to use others' work without infringing the authors' rights to fair compensation, or without paying licensing fees.

## Recent Changes in Copyright Law

One common misconception about copyrights is that they must be registered by the creator / author to be valid. Under the provisions of the Copyright Act of 1976, the registration of copyright was required. When the United States signed the Berne Convention (effective

March 1, 1989), this provision of the old copyright code was eliminated. For works created after this effective date, the copyright protection is automatic upon creation. “Creation”, for copyright purposes, is defined as being “fixed in a copy or phonorecord for the first time” (See: <http://www.cetus.org/fairindex.html>). The phonorecord is the actual physical item on which the audio is recorded, not the actual arrangement of sound symbols. [An interesting question: Is this how NAPSTER did it?]

<i>Legislation / Agreement</i>	<i>Provisions</i>
Copyright Act of 1976	required copyright notice
Berne Convention, 1989	automatic copyright
Uruguay Round Agreements Act (URAA)	some international copyrights restored
Digital Millennium Copyright Act, 1998	Internet applications and technology

## **The Digital Millennium Copyright Act (DMCA)**

The Digital Millennium Copyright Act has added another layer of complexity to the question of copyright protections. Although the DMCA was originally formulated to address the changing shape of data, specifically digital and technological data, which do not fit the definition of “fixed” media, it has confused the issue of copyright protections even more. The DMCA is too long and complex to include in this paper, but the 153-page long document can be found on the web. However, a few of the provisions of the DMCA do need to be addressed:

1. World Intellectual Property Organization’s (WIPO) Internet Treaties – implemented protection for both copyright holder and user, whereby the digital product is protected and the user is assured of content validity when he purchases a digital product.

2. Technological protections – prevented the production and manufacture of all ‘circumvention devices’ for technology. [This provision was later changed by exception.]
3. On-line Service Provider (OSP) liability – limited the liability of OSPs when they have no control over the material contained in serviced sites.

## **Trends in Copyright Protection**

The recent changes in copyright law can be confusing and seem to have been decided on a case-by-case basis in the courts, but one trend seems to be emerging. The courts and the laws are increasingly being interpreted to protect the rights of the individual author. Even the date of creation of a work affects the duration of its copyright. For example, more recent works (which would include most of our digital creations and sources), the basic copyright protection is for the life of the author plus an additional seventy years! Even the duration of copyright renewals has grown from an original twenty-eight years, to forty-seven years, to sixty-seven years. Works which are entirely in the public domain are still available for incorporation into our projects without fear of copyright infringement. The one exception to this trend is the “fair use” provision of copyright law; but even this provision’s protections are in transition and are not as monolithic as once thought.

## **Fair Use and Multimedia Production in Education**

The concept of “fair use” applies to the un-recompensed use of copyrighted material for educational, research and scholarship purposes. The concept of fair use is not monolithic and the standards for its application are more complex than many believe. According to U.S. copyright

law, the above four factors must all be considered when deciding if the use of *un-transformed* original material is an infringement of copyright.

The amount of transformation required before a work is considered sufficiently changed to not fall under copyright protection is not included in the code. The courts are redefining these limits with each challenge. There are some considerations which seem to override all others – foremost of which is the nature of use of copyrighted material: if your project is commercial in nature, you can almost certainly assume that fair use will not apply.

The following is the full text of the fair-use statute from the U.S. Copyright Act.

**Section 107 of the Copyright Act of 1976. Limitations on exclusive rights: Fair use**

*Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified in 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.*

*In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include --*

- 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*
- 2. the nature of the copyrighted work;*
- 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*
- 4. the effect of the use upon the potential market for or value of the copyrighted work.*

*The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors. (Emphasis added)*

<http://stlr.stanford.edu/STLR/Articles/index.htm>

**What Must We Do?**

As educators we must first assure that we know if there is a copyright and who holds it. For a published document or phonorecord, the publisher is the first choice of information is the publisher. If that is unlisted, as, for example, with some older works, [The Copyright Clearance Center](#) (CCC) has information (including addresses and phone numbers) for thousands of copyright holders. Once the copyright status has been determined, the next step is to request permission for any substantial use of the material. As noted above, the determination of how much is too much, is almost always a case-by-case determination. Therefore, the safest approach for using someone's work is to ask before using – especially if the final product will have any commercial application.

## References Used

[http://www.lib.utexas.edu/usage\\_statement.html](http://www.lib.utexas.edu/usage_statement.html)

<http://stlr.stanford.edu/STLR/Articles/index.htm> -- Stanford University Law Review with case by case interpretations of changes in copyright law and its application.

<http://lcweb.loc.gov/copyright/> -- Library of Congress

<http://www.benedict.com/>

<http://www.loc.gov/copyright/circs/circ21.pdf> -- Library of Congress Circular 21, "Reproduction of Copyrighted Works by Educators and Librarians"

<http://www.loc.gov/copyright/circs/index.html#f1100> -- index of circulars and publications available on-line

<http://www.cetus.org/fairindex.html> -- Consortium for Educational Technology in University Systems – an alliance of New York and California University Systems which advocates for fair use in copyright protections.

## **Additional Links for Copyright References**

<http://www.loc.gov/copyright/resces.html> -- copyright Internet resources

<http://fedlaw.gsa.gov/legal8.htm>

<http://www.priweb.com/internetlawlib/95.htm>

<http://www.asap.net/>

<http://www4.law.cornell.edu/uscode/17/501.html> -- copyright codes, Title 17 (Copyright Codes), Chapter 5 (Copyright Infringement and Remedies)

<http://www.eff.org/CAF/law/multimedia-handbook> - "An Intellectual Property Law Primer for Multimedia and Web Developers" (1996)

This paper is written by Ruby J. Jones for the course EDC 385G Multimedia Authoring at the University of Texas - Austin