

May 17, 2018



Copyright Triage, Part 2

Nancy Sims

<http://ntl.bts.gov/networking/roundtable.html>

Audio call-in number: 877-336-1274; Access code: 5759713

Bob Cullen:

This TLR is the second installment of a two-part series entitled "Copyright Triage."

Nancy Sims, the Copyright Program Librarian at the University of Minnesota, will discuss the challenges involving copyright that we each face as librarians. As both a librarian and a lawyer, Nancy has a broad-based and unique perspective on the prevalence of copyright concerns in our everyday lives. Nancy did a first-rate job discussing these issues during the first installment of the series, and this portion of her presentation promises to be likewise informative and interesting.

Copyright Triage



Nancy Sims
University of Minnesota Libraries

Copyright Triage:
Three key concepts

Copyright is EVERYWHERE.

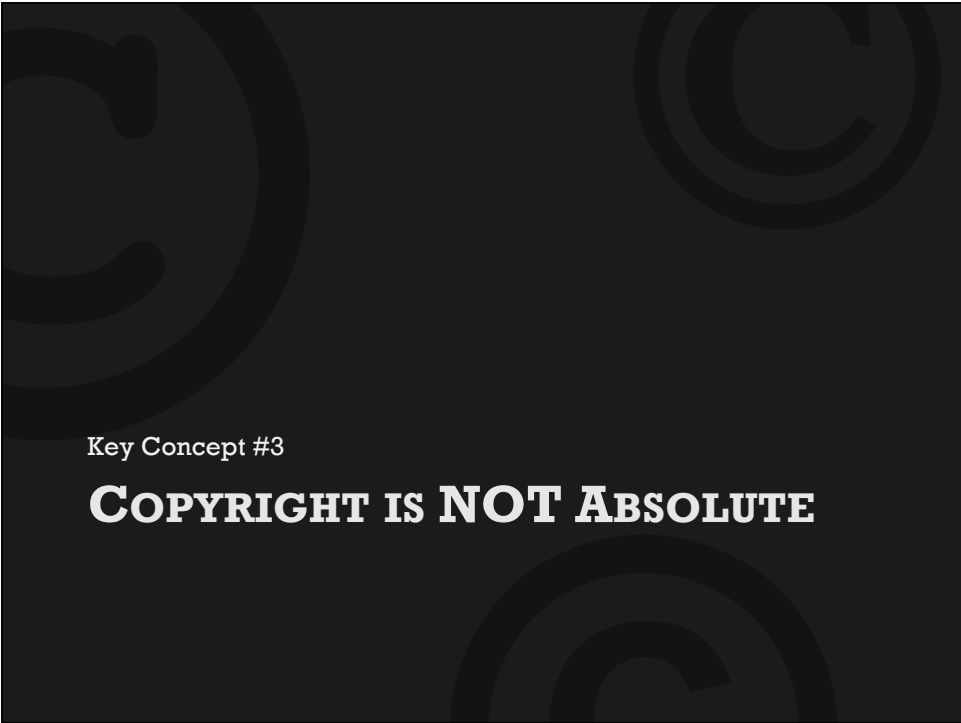
Contracts affect copyrights.

Copyright is NOT absolute.

Copyright Triage:
Bonus key concepts for library folks

Libraries have special rights!

**Individuals are responsible
for their own behavior**



Key Concept #3

COPYRIGHT IS NOT ABSOLUTE

Copyright owners have...

Rights to do/authorize others to: 17 USC §106

- Reproduce (make copies)
- Distribute (sell, rent, lend copies)
- Perform or display publicly
- Prepare derivative works (translations, adaptations)



Optic c BY-SA Germán Meyer

What rights do people who aren't the copyright owner have?

Rights to:

- Reproduce (make copies)
- Distribute (sell, rent, lend copies)
- Perform or display publicly
- Prepare derivative works (translations, adaptations)

• Why?

- Fair use
- *Other exceptions*

- **EVERYTHING NOT ON THE LIST ABOVE**

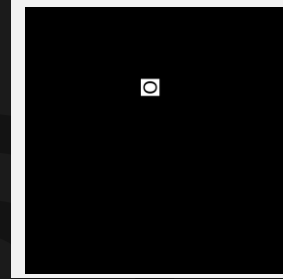
Sharing music, Romantic style c by-sa Ed Youden



Copyright ENDS


Rule of thumb:
published in US
before 1923 =
Public Domain

**And some things aren't
owned in the first place.**



Two little girls in a park near Union Station, Washington, D.C. (LOC)
Farm Security Administration - Office of War Information Collection
12002-68 (DLC) 93845501 ~1943
http://www.flickr.com/photos/library_of_congress/2179917826

And the other one is transportation dept(?) for Logan Airport planning.
And *Phenolphthalein*



But even where copyrights
exist and are still active,
some uses are 100% okay,
without permission or payment.

Laundromat with style c by-nc Elisha Marshall



Classroom use exemption.

Fair Use: the breathing space in © law



This is not the droid we're looking for c by-nc-sa StéfánZ

Fair use is a uniquely American piece of law, incorporating First Amendment speech interests and other ideas about the public purposes of copyright.



FAIR USE DETAILS

Not talking today abt any CPs you own, how they get created, how transferred, how long last, any of that. Talking abt use.

Statutory Fair Use Factors

- 17 USC § 107
 - 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.

Before 1976 act, was all judge-made law.

Statutory Fair Use Factors

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- 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.

Note ONE of the factors is about your use,

Statutory Fair Use Factors

- 17 USC § 107
 - 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 OTHER THREE are about the other work – have to think it through every time!

Things that weigh in favor of fair use

- Purpose
 - Educational
 - Non-profit
 - Criticism & commentary
- Nature of original
 - Published
 - Factual
- Amount & substntlty
 - Proportionately smaller amount
 - Used peripheral parts of work
- Market harm
 - No harm to sales of copies or licenses

Things that weigh against fair use

- Purpose
 - Commercial/for-profit
 - (Purely decorative, not critical, use.)
- Nature of original
 - Unpublished
 - Creative
- Amount & substntlty
 - Proportionately larger amount
 - Used central parts of work
- Market harm
 - Harm to sales of copies or licenses
 - Harm to possible future market...

Transformative Use

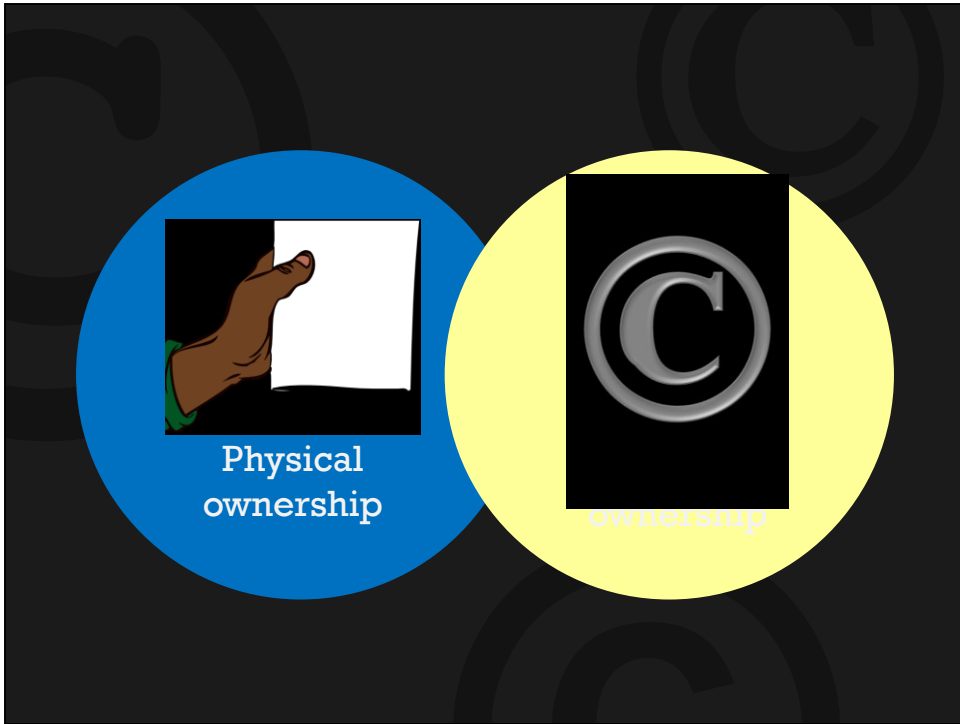
- Doing something new (and valued) with the work
 - Parody, criticism, commentary
 - New technologies
- Even when the traditional four factors all weigh against, a transformative use may still be fair.

Parody – 1st Am values, not likely to be _able_ to get permission




Bonus key concept for library folks

LIBRARIES HAVE SPECIAL RIGHTS!
(in addition to all the rights everyone else has)



This is basically the orphan works problem in a nutshell.



Physical ownership
does *not* convey
copyright ownership.

Without a formal, in-writing transfer, you do not own the copyright to works in your collection.

(This is basically the orphan works problem in a nutshell)



Working on old photo c by ac-aid Verme grigio

Exceptions/Exemptions in the Law

- Library exceptions 17 USC § 108
 - Photocopiers/reproduction equipment”
 - Making copies for patrons
 - ILL
 - Preservation copies...



Making copies (clones?) c by BitBoy

Note, I'm not going to talk about library licensed resources as “free stuff”, because we paid for it, and because other than single-use by individuals on campus, we actually haven't paid for

Lib exception not that exciting to anyone who's not a librarian. But, for example, it's how we do ILL, provide photocopiers in libraries, etc.

Classroom exemption – VERY IMPORTANT

NOT FAIR USE – bigger than that!

Who knows about YouTube...

Bonus key concept for library folks:

**INDIVIDUALS ARE RESPONSIBLE
FOR THEIR OWN BEHAVIOR**

“I need to help people understand what they can and can’t do.”



Talk to the hand c by-nc-nd Tom Fassbender

I think some of the folks asking this question want to know how to set limits on other ppl's uses.

Not sure why they want to do that. Generally NOT responsible for other ppl's actions.



Citation needed CC by Dan4th Nicholas



Contributory infringement = knowing (ACTUAL KNOWLEDGE) & helping. Vicarious = "right & ability to control" & benefit. In fact, libraries have protections for UNSUPERVISED copying that they don't have for supervised. Even _for profits_ just put warnings...

“Erring on
the side
of...?”

Bella's "Angry Face" © by Renato Ganoza



QUESTIONS?

Thank you for attending!
Join us July 1



Introducing AASHTO's re:source
Kim Swanson, AASHTO Accreditation Lab

Coming in Summer 2018: Visit the TLR Archive at its new home
as a collection in ROSA P <https://rosap.ntl.bts.gov/>