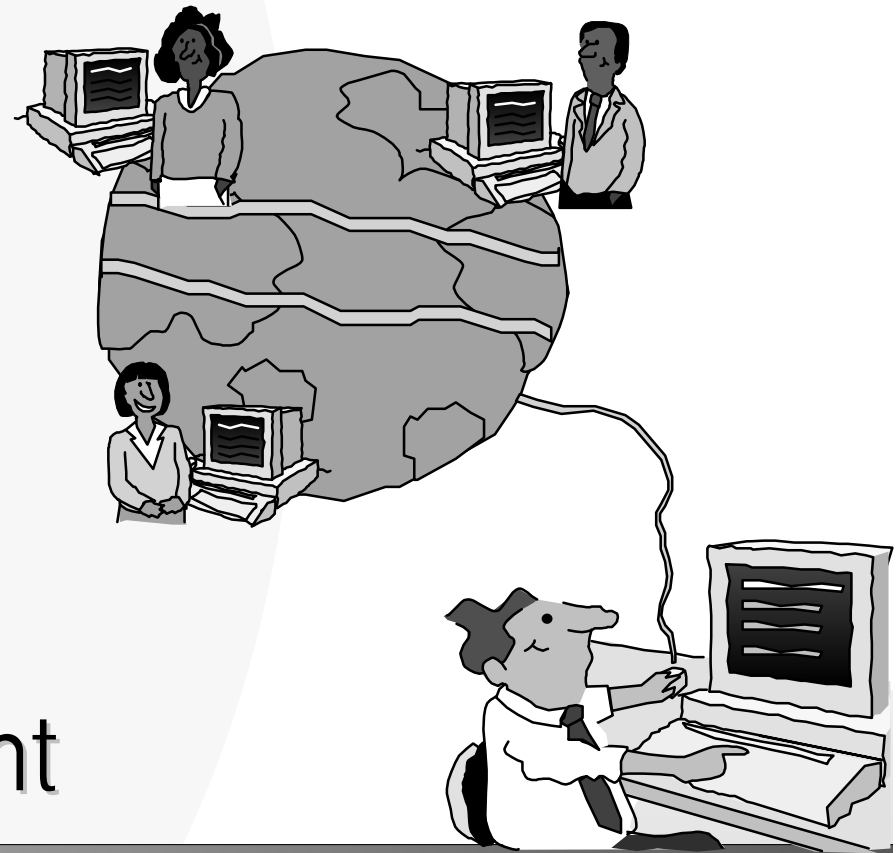

Copyright in the Digital Age

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Outline

- What is Copyright?
- What's Protected... and What's Not
- Rights of Authors
- Copyright Logistics
- Consequences of Infringement
- Exceptions and Fair Use
- Software Licenses
- Promoting Compliance
- What's Not in This Presentation

Basis for Copyright

- The Constitution authorizes Congress "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries..."
 - Article I, Section 8

What is Copyright?

- Legally, copyright is the exercise of Congress' constitutional power through the enactment and repeated amendment of

Title 17 of the U. S. Code: Federal Copyright Law

- In layman's terms, copyright is the legal control of a work granted to its author by virtue of his or her originality, creativity, and novelty.

Protected Works

- Literary
- Musical
- Dramatic
- Pantomimic & Choreographic
- Pictorial, Graphic & Sculptural
- Motion Picture & Audiovisual
- Sound Recording
- Architectural

Exclusive Rights of Authors

	Literary	Musical, Dramatic, Pantomimic, Choreographic	Pictorial, Graphic, Sculptural	Motion Picture, Audiovisual, Software	Sound Recording	Architectural
Reproduction	✓	✓	✓	✓	✓	✓
Distribution	✓	✓	✓	✓	✓	✓
Adaptation	✓	✓	✓	✓	✓	✓
Performance	✓	✓		✓		
Display	✓	✓	✓	✓		
Attribution			✓			
Integrity			✓			
Rental				✓		
Communication	✓				✓	

Transferral of Rights

- Exclusive rights may be transferred in writing; non-exclusive rights may be transferred by any means.
- A copyright (or an individually transferred right) is personal property and is governed by local, state and federal property laws.

Copyright Begins

- At the moment an original work of authorship is fixed in any tangible medium of expression, now known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Copyright Expires*

- For works by known author(s)
 - 70 years after death of last surviving author

- For anonymous or pseudonymous works or works for hire
 - 120 years after creation
 - or
 - 95 years after publication
 - ...whichever comes first

- Renewal is not permitted

Registration

- Registration is NOT required for protection

- Registration with the U.S. Copyright Office permits
 - Actual damages for infringement if registered before lawsuit
 - Statutory damages for infringement if registered before infringement
 - Protection by the U. S. Customs Service against infringing imports or exports

- Registration costs \$20 and requires a deposit of the work

Notice

- Notice is NOT required for protection (after 1989)
- But notice can prevent claim of accidental infringement
- Notice should be in form

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but no specific form is required for protection

International Protection

- The United States has joined the
 - Universal Copyright Convention
 - Berne Convention for the Protection of Literary and Artistic Property
 - Uruguay Round Agreements Act
 - World Intellectual Property Organization Copyright Treaties

- These treaties essentially provide that a work created in one signatory country will be protected in all other signatory countries.

- BUT... There is no such thing as an "international copyright."

Non-Treaty Countries

As of 1996, the following countries maintain no copyright relations with the United States. Note that protection for works in countries with relations may still be minimal.

- Afghanistan
- Bhutan
- Ethiopia
- Iran
- Iraq
- Mongolia
- Nepal
- Oman
- San Marino
- Tonga
- United Arab Emirates
- Yemen

Publication and Mandatory Deposit

- Publication is distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
 - A copy of any work published after 1978 with notice or after 1989 with or without notice must be deposited with the Copyright Office, with or without registration, within three months of publication.
 - Failure to deposit carries a fine of \$250 to \$2500.
 - Special relief may be granted by the Copyright Office.
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Exemptions from Mandatory Deposit

- Scientific and technical models, drawings, and plans
- Greeting cards, picture postcards, and stationery
- Individual lectures, sermons, and speeches
- Audio recordings of literature, drama, and music
- Online databases
- Three-dimensional sculptures, models, and toys (not including maps)
- Advertising material
- Individual contributions to collective works
- Tests

Consequences of Copyright Infringement

- Civil Action (lawsuit by copyright owner)
 - ▶ Injunction
 - ▶ Actual Damages
 - ▶ Statutory Damages
 - ▶ Attorney's Fees

 - Criminal Action (prosecution by U.S. Attorney)
 - ▶ Fines
 - ▶ Prison
-
-

Remedies in Civil Actions

- Injunction (Order by a judge prohibiting further infringement)
- Actual Damages
 - ▶ Out-of-pocket losses proven in court
 - ▶ Available only if work was registered prior to lawsuit
- Statutory Damages
 - ▶ Available instead of actual damages at option of author
 - ▶ From \$200 for unintentional infringement...
 - ▶ ...To \$100,000 for willful infringement
 - ▶ Available only if work was registered prior to infringement
- Attorney's Fees
- Statute of limitations is 3 years from date of infringement
- Federal, state, and local governments CAN be sued

Results of Criminal Actions

- Infringement for commercial or private financial gain
 - Includes trading copies of works
 - Felony Infringement
 - 10+ copies in 180 days worth >\$2500
 - Misdemeanor Infringement
 - 1 or more copies within 180 days worth >\$1000
- Statute of limitations is 5 years from date of infringement

Non-Protected Works

- Ideas
- Facts
- Titles
- Names
- Short Phrases

Example

- U. S. Copyright Office Frequently Asked Question 58: "How do I protect my sighting of Elvis?"
 - "Copyright law does not protect sightings. However, copyright law will protect your photo (or other depiction) of your sighting of Elvis. Just send it to us with a form VA application and the \$20 filing fee. No one can lawfully use your photo of your sighting, although someone else may file his own photo of his sighting. Copyright law protects the original photograph, not the subject of the photograph."
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Public Domain

■ Non-Protected Works

- Ideas, Facts, Titles, Names, Short Phrases, etc.

■ Lost Copyright

- Works created prior to 1978 for which copyright was not renewed

■ Expired Copyright

- Works for which a non-renewable copyright has expired

■ Federal Government Works

- Works produced (but not works received) by the U. S. Government

■ Abandoned Works

- Works given to the public domain by deliberate action of the author
-

Exemptions for Libraries and Archives

- A library or archive may copy a work without infringement if:
 - ▶ No more than three copies are made;
 - ▶ The library or archive is open to the public;
 - ▶ A notice of copyright appears on the copy; and
 - ▶ The library receives no direct or indirect commercial advantage.

- The purpose of the copy must be:
 - ▶ In the case of an unpublished work, to preserve or secure the work or transfer a copy to another eligible library
 - ▶ In the case of a published work, to replace a damaged, deteriorating, lost or stolen copy, or a copy in an obsolete format, if no new copy can be obtained at a fair price.

- In the last 20 years of a copyright, a library may make unlimited copies of a work if it will be used for preservation, scholarship, or research, will not be exploited commercially, and is no longer available at a reasonable price

Library Copying for Patrons

■ A library may copy...

- One article out of a periodical in the library's collections
- An entire literary work in the library's collections if the work cannot be obtained by the patron at a fair price

...Only if

- The copy will become the property of the patron;
- The library has had no notice that the copy would be used for any purpose other than private study, scholarship, or research;
- The copy is an isolated request and not a systematic attempt to make a number of copies or avoid subscribing to a periodical; and
- The library displays a copyright warning sign.

- ## ■ Organizations specializing in material for the disabled may copy without infringement any previously published, nondramatic literary work into a special format that can be used by the disabled.

Title 17, §107: Fair Use

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

Examples of Possible Fair Use

- Excerpts for commentary or review
- Parody
- Summary or incidental showing for news
- Small reproduction by a teacher to illustrate a concept
- Legislative or judicial proceedings

Software Protection

- Federal copyright law prohibits copying software without the permission of the author, except for:
 - One copy made solely for backup purposes
 - One copy to convert to appropriate medium
 - A copy made solely by virtue of turning on a computer for maintenance or repair

- Software is a fully protected "literary work."

- Software and sound recordings generally may not be rented, leased, or loaned for direct or indirect commercial advantage without the permission of the author.

Digital Protection

- Federal law prohibits "bootlegging" a live performance such as a concert by taping it or feeding it live.
- Federal law generally prohibits selling, purchasing, or using any device to circumvent copy protection. Criminal penalties can be as high as \$1 million and ten years in prison per offense.

Internet Protection

- Generally, a service provider (including a school or library) cannot be held liable for infringement by a user if the provider is not aware of the infringement.
- Web authors generally cannot be held liable for unknowingly linking to infringing material on the Internet.
- Owners of copyright can subpoena a service provider to obtain the identity of an infringing user.

Licensing Agreements

- Govern use of software
- Are binding upon use of program
- Stipulate *license* (rental), not *ownership*
- Have the force of contract
- Grant rights as well as restrictions

Types of Licensing Agreements

- Individual License
- Lab Pack
- Network License
- Site License
- Corporate / District License

Why You Should Obey the Law

- It's the law.
- It encourages and protects companies and authors.
- It serves as a role model for students and patrons.

Promoting Compliance: CEDARS

- Clean up your act.
- Educate the users.
- Distribute a clear policy.
- Assign site coordinators.
- Reward compliance.
- Scan disks and drives regularly.

What's Not in This Presentation

- Protection for works created prior to 1978
- Compulsory Music Licensing (e.g. radio royalties)
- Protection for satellite and digital music services

For more information...

- Craig T. Fifer
 - E-Mail the author at craig@fifer.net
 - This presentation is regularly updated on the Internet at www.fifer.net/copyright
- U.S. Copyright Office
 - www.loc.gov/copyright
- "The Copyright Website"
 - www.benedict.com
- Software Publishers Association
 - 1-800-388-PIR8
 - www.spa.org