

AN ANALYTICAL STUDY OF COPYRIGHT PROTECTION TO ACADEMIC RESEARCH ISSUES

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ABSTRACT

In the era of print, the usage of research papers (in the form of journal articles or conference papers) was governed by copyright law alone. Publishers and authors did not try to impose additional restrictions on the use of their works, and if users wished to make more liberal use of them, they would either have to take out a copyright licence such as those provided by the UK Copyright Licensing Agency (CLA) or negotiate directly with the rights holder. As we moved into the electronic era, copyright law still protected works in digital media by virtue of them being in 'fixed form'. However, the electronic era saw a new departure for the distribution of such copyright works: instead of them being sold outright to purchasers in parallel with their print equivalents, publishers began to license access to them instead. The licensing phenomenon has been much discussed and is not the focus of this paper. However, one of the most significant consequences of licensing was that the usage of such licensed works was no longer solely governed by copyright law, but by the terms of the license agreement signed by the subscriber.

Keyword: - Copyright, License, Print, Electronic, Copyright Licensing Agency

1. INTRODUCTION

Two models are proposed by the open access movement: 1) freely available electronic journals, and 2) author self-archiving of research papers on institutional or subject-based repositories. Although they are seen as complementary, the institutional repository model has been promoted as the fastest way to make open access a reality. If the current scholarly journal literature became open-access overnight (and there are estimates that this consists of 2,000,000 articles per annum) there would undoubtedly be enormous benefits. However, it would leave the scholarly journal literature facing the same problems that other open-access web pages have faced since the birth of the Internet, namely, the misunderstanding that 'publicly available' means 'in the public domain'. Of course, while the protection of copyright law still technically applies to web pages, there is a common misconception that posting to the internet gives end-users an 'implied license' to use - or abuse. Concerns about abuse have led many web-based information providers to invest in digital rights management systems to provide technical protection for their copyright material. There has also been a proliferation of 'click-through' licenses which force end-users to agree to conditions of use. However, discussions about the best way of protecting the copyright in web-based scholarly literature may be premature. Who is to say that academic authors wish to assert and protect the rights that copyright law grants them over their works?¹

¹ <http://www.lboro.ac.uk/microsites/infosci/romeo/RoMEO%20Studies%202.pdf>

2. FAIR USE:

Virtually all copyright legislation provides for reasonable "fair use" of copyrighted material under certain circumstances, for example to allow a book critic to quote extracts from a book he is reviewing. The ability to include extracts from the book can be considered necessary for a book reviewer to do his job; thus "fair use" allows him the right to reproduce passages from the book without needing to obtain permission from the copyright owner or being liable for royalty payments. However, "fair use" allows the use of only small portions of a copyrighted work.

3. ACADEMIC [OR "EDUCATIONAL"] FAIR USE

Academic [or "educational"] fair use extends the basic concept of "fair use" to cover, for example, scholarly research and writing within the context of higher education. Such research will often require more extensive portions of copyrighted work(s) than those allowed by basic "fair use" to enable full scholarly analysis of the work(s) in question. As with "fair use," *academic fair use* also allows scholars to use relevant copyrighted materials in their research and writing without the need to obtain permission from the owner(s) of the copyrighted material. Examples of such scholarly research and writing would include papers written by students to meet the requirements of supervised academic instruction at University.

4. EXPLICIT AND INHERENT COPYRIGHT:

In commercially printed materials, copyright ownership is indicated via the inclusion of a copyright text and copyright symbol [©]. This may be referred to as *explicit copyright*, where the text and symbol clearly specify that the copyright belongs to the creator/author of a work of intellectual property (which may be a text, painting, digital image, film, piece of music, multimedia composition, etc.) or the current owner of the copyright, if for example an author has signed over copyright ownership to the publisher of his book, or to some other party. Copyright always belongs in the first instance to the author or creator of the intellectual property, but may be transferred to another party by explicit agreement.

The principle of *inherent copyright*, in contrast, is that all work which can be identified as the original creation of a certain author (or authors) is automatically protected by international copyright legislation as the intellectual property of the author(s). Even original work (such as "anonymous" web pages in which an author is not identified) enjoys copyright status in the abstract, and must be cited appropriately in order to avoid the risk of plagiarism.

However, a work must be original and "identifiable" in order to have copyright protection. For instance, a web page background graphic showing a sky with clouds, without any author identification or unique aspect to distinguish it from thousands of other similar graphics, would not have copyright protection. Also, a text which is so short and elementary that it could reasonably have been produced by numerous other people would not likely enjoy copyright protection. Further, to use an extreme example, a text which has copied the works of others (plagiarism, in other words) would certainly not enjoy copyright protection, even if the author was identified and a copyright symbol was present. In brief, mere existence in discrete form does not in itself establish copyright protection; the work must be distinguishable as an original creation.

Inherent copyright protection applies *automatically* regardless of whether a text includes a copyright statement or the international copyright symbol or whether the author is specifically identified. Thus for example student papers published in the *FAST* website are the copyrighted work of the student whose name appears at the top of the paper, regardless of whether the papers have either a copyright symbol [©] or a text saying that the copyright belongs to the student.

Similarly, instructional texts (such as this one) published by teachers in the *FAST* website (unless the text has been identified as having come from another source) are copyrighted to the teacher in question, even if the teacher's name may not appear on the page in question, as the identity of the teacher will be apparent in the context of the course material.

In the above examples, the "publisher" would be the *FAST* Area Studies Website, Department of Translation Studies, School of Modern Languages and Translation Studies, University of Tampere, Finland. However, the

copyrights for work published in the *FAST* Website belong to the authors, not to the *FAST* Program, the Department of Translation Studies, or the University of Tampere.

FAST web materials have been used here only as an example; the same principles apply to all other materials on the internet, unless specifically stated otherwise in those materials. The basic points thus far are that:

- All internet material is copyright-protected, regardless of whether the copyright ownership is explicitly stated;
- Thus, internet materials cannot be used "freely," notwithstanding the ease (relative to print materials) with which digital texts, images, audio files, etc., may be incorporated into one's papers;
- However, for legitimate academic research or writing the principle of *academic fair use* does allow certain amounts and types of copyrighted material to be included in one's research or writing without the need to obtain explicit permission for this;
- Where such materials are used, they must always be appropriately cited.

5. FIVE CRITERIA THAT MUST BE MET FOR ACADEMIC FAIR USE:

- The research or paper in question must be legitimate academic work.
The research or paper in question must be "legitimate" academic work. While this definition is open to interpretation, a paper which is supervised by a particular instructor for a course in a recognized educational institution will almost always qualify, as the reputation of the instructor and institution support the paper's "legitimacy." Conversely, individuals without formal academic connections who are writing on their own may need to establish the "legitimacy" of their work.
- The material used must be directly relevant to the topic.
The material used must be directly relevant to the explication of the paper. In the examples of the student papers cited below, the language and pictures of the cartoons were explicitly discussed in the explication of the papers. Conversely, if a cartoon had not been explicitly discussed, but had been used as a decoration, illustration, or just to add color or style, this would not qualify.
- The source and possible copyright must be cited
It must be clear from where the material was taken and, to the extent possible, who created it. If the material was copied from a website or scanned from a print reference, this distinction should be clear. In all cases, an citation must be given for the original source.
- The paper must be for non-profit educational purposes
Academic fair use does not allow one to profit from the use of another person's copyrighted work. Normally, as in the case of papers written by Translation Department students which may be selected for the *FAST* website (or the Master's, Licentiate and Doctoral theses that are published in PDF format elsewhere in the university website), there is no question of profit or other financial benefit to the author of the paper, the website or the university, as all are non-profit educational instances.

However, if the student were later to sell copies of his paper which included copyrighted work that may have established or enhanced the market value of the paper, this would disqualify one from academic fair use. In this case the student would need to seek permission to use the copyrighted material and possibly contract for royalties payments on a proportional basis.

Moreover, if the university or *FAST* program were to charge tuition fees which included course materials, including papers in the *FAST* website which contained copyrighted extracts, or if these papers were on a website that was available only via subscription or a membership fee, this may also invalidate the *non-profit* clause. In other words if a "non-profit paper" appears in a "commercial context" this may disqualify the paper, regardless of whether the paper in its own right met the requirements for fair use.

- The amount of copyrighted material used must not be excessive, and must not affect the market value of the original.
The main concern of "excessive" in this clause is that the amount of copyrighted material used must not

infringe on the original author's ability to "profit" via his own work. In particular, one cannot use enough of the author's material that the paper in which this material appeared could be considered an alternative to purchasing the original work of the author.

In the paper cited below as an example, only a few cartoons were used to represent thousands which have been published in numerous volumes. The few cartoons used were enough to document the analysis being made, without infringing on the ability of the cartoonists to continue to make money via the sales of their cartoon collections. If the paper had reproduced all or most of a single volume, then conceivably a person who otherwise may have purchased the printed volume of cartoons at a bookstore could have downloaded the paper instead and gotten the "same thing." This would, at least in principle, violate the "excessive amount" clause and not qualify as academic fair use.

Similarly, the "market value" clause may allow one to use substantial extracts from or possibly even complete texts of articles from a particular newspaper, or a particular journalist from one or several newspapers. If the articles are not commercially available separately from the newspaper(s) in which they were originally published, one would probably not be infringing on either the newspaper's or the journalist's ability to make money, as one might be if one reproduced complete issues of the newspaper, or most of the journalist's entire production of articles².

6. CONCLUSION

Public domain materials are perceived to be somewhat useful for the creation of new works: all academic authors surveyed somewhat use public domain materials, and at least some of their creations require them. However, the study finds no evidence that current copyright protections are seriously restricting access to public domain materials, which are mainly used for reference purposes and creation of derivative works. Public domain materials most commonly used are: scholarly papers, works of art, software applications, fiction books, non-fiction books and websites.

Generally, respondents do not confront many problems or barriers when using copyright-protected materials. The two principal problems with using copyright-protected material are of financial and administrative nature: the need to pay for the (high) cost of access, and the difficulty in seeking permission to use copyright protected materials.

Most academic authors prefer short copyright durations: a term of 20 years or less with an option to renew when expired is the most-favored term choice. "No protection required" comes in second, followed by the midrange term (author lifetime, or maximum 50 years of protection). The current copyright protection (author lifetime plus 70 years) proves least popular. The usage level of public domain materials and monetary rewards do not have any impact on the preferred copyright duration (i.e. academic authors who are motivated by monetary reward when they writer/create their work do not necessarily require longer copyright protection).

Protection duration preference is found to depend on the following motivating factors: royalty received (the greater the market success of a creation the longer the term of copyright protection desired), type of work written/created (producers of different types of work prefer different copyright protection terms), category of academic author (academic authors from different categories differ on their choice of protection duration, e.g. textbook authors versus assistant professors publishing scholarly papers).

In view of the factors determining the preferred copyright protection duration, the author concludes that a short but renewable duration (20 years or shorter, with option to renew when expired) would be the best amongst all the models of copyright protection to protect academic authors' works. This model ensures that works that need protection are protected, and that those no longer needing protection enter the public domain as soon as possible.

² <http://www15.uta.fi/FAST/PK6/REF/fairuse.html>

7. REFERENCES

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