

Copyright: Objectives and Current Issues

Presentation by James G. Neal, Dean of University Libraries, Johns Hopkins University at the 1999 IFLA Conference, Bangkok, Thailand.

PRESENTATION OBJECTIVES

- 1. Objectives and Philosophy of Copyright.*
- 2. Copyright Issues in the Digital Environment.*
- 3. Role of Librarians in the Copyright Debate.*

BASIC COPYRIGHT DEFINITIONS

- *Exclusive Rights*
- *Fair Use*
- *Fixed*
- *Infringement*
- *Originality*
- *Works for Hire*
- *Public Domain*

Copyright Ownership

Exclusive rights of:

- *Reproduction*
- *Distribution*
- *Adaptation*
- *Public Performance*
- *Public Display*

DEFINING FAIR USE

- *What is the purpose or character of the use?*

- *What is the nature of the work that is copyrighted?*
- *What is the volume of use?*
- *What is the impact on the market?*

INTELLECTUAL PROPERTY REVOLUTION

- *International Treaties*
- *National Legislation*
- *Licensing*
- *Use Guidelines*
- *Technological Controls*
- *Ownership of Software/Courseware*

INTERNATIONAL COPYRIGHT

Several Important Principles:

- *National Treatment*
- *Territoriality*
- *Moral Rights*
 - Paternity*
 - Integrity*
- *Enforcement of Rights*

INTERNATIONAL COPYRIGHT

- *British/U.S. Common Law Tradition*
- *French/European Rights of Author Tradition*
- *Berne Convention (1886)*
- *Universal Copyright Convention (1952)*
- *Rome Convention (1961)*
- *GATT/TRIPS (1994)*
- *WIPO Diplomatic Conference*

(1996)

*ADVANTAGES OF
DIGITAL INFORMATION*

- *Accessibility*
- *Availability*
- *Immediacy*
- *Searchability*
- *Currency*
- *Researchability*
- *Dynamism/Fluidity*
- *Interdisciplinarity*

*ADVANTAGES OF
DIGITAL INFORMATION*

- *Collaboration*
- *Multimedia*
- *Linkability*
- *Interactive*
- *Procedural*
- *Spatial*
- *Encyclopedic*

COPYRIGHT ISSUES IN THE DIGITAL ENVIRONMENT

- *Digital and Network Based
Distribution and Copying*
- *Online Service Provider Liability*
- *Copyright Management
Systems/Anticircumvention*
- *Fair Use and Access Prohibitions*
- *Digital Preservation/Archiving*
- *Distance Learning*
- *Copyrightable Works*

COPYRIGHT TENSIONS

*Natural Property Rights
and
Encouraging Innovation
and
Public Welfare
and
Public Access*

Creator/Distributor/Consumer

BASIC IP PRINCIPLES

- *Copyright law provisions for digital works should maintain a balance between the interests of creators and copyright owners and the public that is equivalent to that embodied in current statute.*
- *Copyright law should foster the maintenance of a viable economic framework of relations between owners and users of copyrighted works.*
- *Copyright laws should encourage enhanced ease of compliance rather than increasingly punitive enforcement measures.*
- *Copyright law should promote the maintenance of a robust public domain for intellectual properties as a necessary condition for maintaining our intellectual and cultural heritage.*
- *Facts should be treated as belonging to the public domain as they are under current law.*

BASIC IP PRINCIPLES

- *Copyright law should uphold the principle that liability for infringing activity rests with the infringing party rather than with third parties.*
- *Educational institutions should foster a climate of institutional respect for intellectual property rights by providing appropriate information to all members of the community.*
- *New rights and protections should be created cautiously and only so far as experience proves necessary to meet the Constitutional provision for a limited monopoly to promote the "Progress of Science and useful Arts."*
- *Copyright enforcement provisions should not hinder research simply because the products of a line of inquiry might be used in support of infringing activity.*
- *Copyright law should assure that respect for personal privacy is incorporated into access and rights management systems.*

ROLE OF LIBRARIANS

- *Knowledgeable Resources for the community*
- *Political and Legislative Advocates for Community Interests*
- *Education in Community on Respect for Copyright*
- *Documenters of Impact of Changes in Copyright Laws*
- *Aggressive Negotiators of License Agreements*
- *Active Supporters of New Strategies for Ownership of Intellectual Property*

COPYRIGHT STRATEGIES AFTER WIPO

*THE NORTH AMERICAN
AND SOUTH AMERICAN
EXPERIENCE
WIPO LESSONS*

- *Complexity of Legal and Technical Issues*
- *Significant Financial Interests at Risk*
- *Role of U.S. and Western Europe*
- *International Treaty Process Challenging*
- *Electronic Piracy and Internet Commerce vs. Fair Use*
- *Coalition Politics*
- *Domestic Implementation*

WIPO COPYRIGHT TREATY IMPLEMENTATION

- *Signatories to Treaty*
- *Ratifications of Treaty*
- *Significant Legislative or Legal Changes*
- *No Action*

WIPO COPYRIGHT TREATY NATIONAL EXAMPLES

- *Brazil*
- *Ecuador*
- *Canada*
- *Mexico*
- *Venezuela*
- *United States*

RECENT COPYRIGHT LEGISLATION IN U.S.

- *Copyright Term Extension*
- *Digital Millennium Copyright Act*
- *Collections of Information Antipiracy Act*
- *Consumer and Investor Access to Information Act*

KEY COPYRIGHT ISSUES FOR HIGHER EDUCATION COMMUNITY

- *International Harmonization*
- *Reconciling Fair Use with Access Prohibitions*
- *Maintenance of Public Domain*
- *Online Service Provider Liability*
- *Copyright Management Systems/Anticircumvention*
- *Distance Learning*

DISTANCE EDUCATION AND COPYRIGHT

Factors to be considered in study:

1. *Need for an exemption for distance education through distance networks.*
2. *Appropriate quantitative limitations on portions of works that may be used.*
3. *Who is eligible to access materials.*
4. *Whether and what types of technological measures to stop unauthorized use.*
5. *Extent to which availability of licenses for use of copyrighted works should be considered.*

COPYRIGHT AND DISTANCE LEARNING

- *Digital Transmission*
- *Mediated Instruction*
- *Physical Classroom*
- *Technological Controls*
- *Nonprofit Institutions*
- *Audio-Visual Works*
- *Lawful Copies*
- *Ephemeral Recording*

COPYRIGHT LEGISLATION

KEY IMPLICATIONS

- *More Copyrighted Works Encrypted*
- *Importance of Contract Negotiations*
- *LC Access Study/Regulatory Action*

- *OSP Limitation of Liability/Major Litigation Arena*
- *Major Battleground - Learning and Internet*
- *Library Exemptions Sustained*
- *Term Extension and Definition of Commercial Exploitation*
- *Database Protection as New Licensing Regime for Facts and Data Top Agenda Item for Content Community*

DIGITAL MILLENIUM COPYRIGHT ACT CHECKLIST FOR ACTION

- *Ensure appropriate expertise and resources to deal with copyright issues*
- *Determine who will be the campus agent to receive notifications of copyright infringement from the Copyright Office*
- *Develop or update campus policy and procedures on copyright*
- *Post the campus policy online*
- *Register the campus agent with the Copyright Office*
- *Educate the community about the law and promote compliance*

IFLA COMMITTEE ON COPYRIGHT AND OTHER LEGAL MATTERS

1. *Copyright*
 - *WIPO/National Legislation*
 - *Database Protection*
 - *Network of Experts/Counsel and Representation*
 - *Copyright Education*
 - *Political and Legislative Advocacy*
 - *Key Strategic Alliances*
 - *Copyright Information and Management Systems*
 - *Diversity of Copyright Traditions*

- *Fair Use as Global Principle*

*IFLA COMMITTEE ON
COPYRIGHT AND OTHER LEGAL MATTERS*

2. *Licensing*
3. *Tariffs on Educational Materials
(Florence Agreement)*
4. *Corporate Mergers in
Publishing Industry*
5. *Multilateral Agreement on
Investment*
6. *Privacy/Confidentiality*
7. *Destruction of Cultural Property*
8. *Reparations/Return of Stolen
Property*