Copyright Law: Its Academic Applicability and Implications

by

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Lecture presented at the Forum held at St. Thomas of Villanova Libraries of San Sebastian College-Recoletos de Cavite in the observance of the 2008 Library and Information Services Month, Cavite City, 2008 November 24
Scope of the Lecture

- What is protected by Copyright Law?
- What reproduction rights do libraries/archives have under the law?
- How can libraries/archives avoid copyright liability?
- What can we do to help in the enforcement of the law?
When may libraries or archives reproduce a literary work without permission from its copyright owner?

- If the work is not available in their collection?
- If the original copy is expensive?
- If the work is a prescribed course reading of a faculty for his class?
- If the work is fragile/rare and cannot be lent out in its original form?
When may libraries or archives reproduce its own copy of a sound recording or a videotape?

- When it is needed by the library for rental purposes.
- When it is needed to provide a copy to another library.
- When it is needed for public showing in a place where no admission fee is charged.
- When permission from the creator/producer has been obtained.
How many copies of a book or pamphlet may libraries or archives make for preservation or security?

- One copy
- Two copies
- Three copies
- Ten copies
Survey on copyright issues encountered by librarians:

- Students photocopy textbooks to avoid cost of expensive original copies (60%)
- Readers photocopy portions of theses without permission (55.1%)
- Requests to copy entire books by researchers from other institutions (48%)

(From Felicitas de la Rosa, thesis on Copyright Law Awareness and Compliance in Selected University Libraries in Metro Manila, 2000)
Copyright problems

- Photocopying multiple copies of textbooks to avoid purchase
- Photocopying theses without author’s permission
- Arranging with faculty multiple copying of materials for class use
- Requesting thru interlibrary loan photocopy of an entire book to accommodate user request
- Allowing unsupervised copying
- Making extra copies of films/videos
- Supplying chapters or articles from journal for document delivery
- Buying pirated editions to economize
What is Intellectual Property Code (RA No. 8293)?

- Prescribes the law on -
  - Copyright and Related rights
  - Trademarks and Service Marks
  - Geographic Indications
  - Industrial Designs
  - Patents
  - Layout Designs of Integrated Circuits
  - Protection of Undisclosed Information

- Establishes the Property Intellectual Office, providing for its powers and functions
Copyright is

- an intangible, incorporeal right
- granted by statute to the author or originator of certain literary or artistic productions
- whereby he is invested, for a limited period,
- with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. (Sibal, 1986)
Copyright -

- Works are protected from the moment of creation
- Not protected are ideas, procedure, system, method of operation, discovery, concept or mere data
- No copyright for government works (but prior approval from the gov’t agency is required for the exploitation of such work for profit)
Copyright protects creators of:

Original works

- literary
- dramatic
- musical
- artistic
- other forms of expressions
  - sound recordings
  - cinematographic works
  - sound/tv broadcasts
  - pictorial illustrations and advertisements
  - other scholarly or scientific works
Copyright protects creators of:

**Derivative (or new) works**

- Dramatizations, translations, adaptations, abridgements, arrangement, and other alterations of literary or artistic works
- Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents
New Works Protected

- Multi-media e.g. cd-roms
- Databases
- Software protected as a literary work
Exclusive rights of creators of:

**literary, dramatic, & musical works**
- reproduce
- publish if unpublished
- perform in public/ or display in public
- broadcast
- include in cable program
- make an adaptation/ dramatization/translation
- Right to first sale
- Rental right

**artistic work**
- reproduce
- include in a tv broadcast
- display in public
- include in a cable program
- Right to first sale
RENTAL RIGHT - Right to make commercial rental arrangements

applies to:

- computer programs
- sound recordings
- cinematographic works
Ownership and Duration

Generally owned by author/creator except:

- journalists’ works
- commissioned photos, engravings, drawings, paintings, etc.
- employee works
- government works

Generally lifetime of author/creator plus 50 years, except

- unpublished works
- anonymous/pseudonymous
- photos
- government works
Terms of Protection

✓ Authors/creators: 50 years after death
✓ Joint authors: 50 years after death of last surviving author
✓ Anonymous/pseudonymous works: 50 years from date when work was first lawfully published
✓ Applied art: 25 years from date of making
✓ Photographic works: 50 years from publication, and if unpublished, 50 years from the making
✓ Performers: 50 years from the end of year when performance took place
✓ Recording companies: 50 years from end of year when recording took place
✓ Broadcasters: 20 years from date broadcast took place
Deposit requirements

- 2 copies of all works must be deposited with The National Library and Supreme Court Library.
- Failure to deposit despite written demand would subject copyright owner to daily fine.
Copyright Infringement

- **Violating** exclusive rights of copyright owner
- **Possession** for sale, hire, distribution or trade exhibit by person who knows or ought to know that copies are pirated
Penalties

- **First Offense**: imprisonment of 1 to 3 years and fine of ₱50,000 to ₱150,000
- **Second Offense**: imprisonment of 3 to 6 years and fine of ₱150,000 to ₱300,000
- **Third Offense**: imprisonment of 6 to 9 years and fine of ₱500,000 to ₱1.5 M
When a single copy may be reproduced:

• works of fragile character or rarity
• isolated articles or brief portions of works... for study or research
• for preservation
• for replacing lost or destroyed copies, if no longer available with publisher
What cannot be reproduced even for **PRIVATE** study and research:

- works of architecture
- entire book or substantial part thereof
- musical works in graphic form
- compilations
- computer program (except back-up)
- any reproduction that will conflict with normal use or prejudice author's interests
Library right to reproduce one copy of:

- Original works whose fragility/rarity justifies their not being lent out;
- Articles contained in composite works or brief portions of other published works, for reason of expediency, may be copied for purposes of research and private study, instead of lending the entire volumes containing them;
- For preservation or replacement of lost, stolen, destroyed, unusable copy in the library’s collection or in another library/archives collection, provided, they are NO LONGER available from publisher.
General defenses against Copyright

- out of print, out of stock, rare
- for preservation
- For security (as in back-up copy for computer programs)
- Fair use for purposes of scholarship, research and private study, criticism and review, news reporting, classroom teaching and similar purposes (provided it is not for an entire book or a substantial part of it)
Factors in determining what is “fair use”

- purpose and character of the use -- commercial or non-profit, educational purposes
- nature of the copyrighted work -- for general audience or textbook
- amount and substantiality of the portion used in relation to the work as a whole
- effect of the use on the potential market for or value of the work
Philippine law on “fair use”

- for criticism, comment
- news reporting
- teaching, including multiple copies for classroom use
- scholarship, research and similar purposes
Acceptable conditions for classroom copying

- single copy (not an entire book, or database, or computer program) for teaching/research
- multiple copies, provided copy is brief, and for one course
- provided such copy is not repeated by the same faculty for the same material from term to term
- provided such copying is done at the instance of the individual faculty and not by a higher authority
- provided only the actual photocopying cost is charged to the student
Infringement under E-Commerce Act

- Piracy or the unauthorized copying,
- Reproduction, dissemination, distribution
- Importation, use
- Removal, alteration, substitution, modification
- Storage, uploading, downloading
- Communication, making available to the public, or broadcasting

of protected material, electronic signature, or copyrighted works
Infringement under e-Commerce Act

legally protected sound through the use of telecommunication networks, such as, but not limited to, the Internet, in a manner that infringes intellectual property rights.
Optical Media Act of 2003

Prohibits

- mastering, manufacture or replication
- of any intellectual property in optical media
- intended for commercial profit or pecuniary gain
- without authority or consent of the owner
How can Libraries/Archives avoid copyright liability

- Post a warning sign/notice on every location of unsupervised copying machines concerning copyright restrictions
- Include in published rules that the library reserves the right to refuse to accept a copying request
- In circulating materials for home use, users must be reminded that copying the books lent out may exceed fair use privileges in violation of copyright
Library policies implementing Copyright Law

- Include photocopying guidelines in Library Guide and library orientation program
- Avoid library arrangement for systematic reproduction of multiple copies for users
- Include policy of requesting author's / publishers permission to photocopy his textbook
- Prohibit copying of copyrighted materials not allowed by fair use, license agreement, or permission of copyright owner
- Include in student/faculty handbook rules that place liability for willful infringement on student/faculty violators
- Keep records regarding requests for permissions, responses to requests, and license agreements
OTHER Library policies...

✓ Document delivery policy
✓ Interlibrary loan policy
✓ Photocopying/digitizing Preservation Copies
✓ Policy on Nonbook materials Reproduction
✓ Guidelines for Fair Use of Copyrighted Materials
✓ Guidelines for Fair Use of Unpublished Materials
✓ Guidelines for Use of Films and Video
✓ Guidelines on Photographic Services
Promoting Copyright Law enforcement...

- By discussing copyright problems encountered in the workplace during meetings with staff
- By discussing copyright policies during Student/Faculty Orientation
- By encouraging librarians and staff to attend seminars on Copyright Law
- By strict implementation of library policies related to copyright protection
- By reporting violations to proper authorities
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You can get in touch with me at my email address - verzosaf@dlsu.edu.ph - and at our PAARL website - http://groups.yahoo.com/group/PAARL/