

6th Annual Copyright Conference
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Ball State University

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Copyright is a topic of perennial interest to academic librarians, and much has been written on the subject. The Ball State University Copyright Conference features excellent presentations by attorneys who specialize in copyright, but still the conference amounts to a review of copyright issues rather than a presentation of new and exciting discoveries. There is, in the end, little new and almost nothing exciting that can be said about copyright. This report presents some aspects of copyright that were reviewed in the conference sessions.

Summary of Conference Sessions:

General Copyright

Michelle L. Cooper, Attorney in the Education Law Group at Bose McKinney & Evans, LLP in Indianapolis, IN

As the name implies, this was a general overview of copyright laws and principles, including these facts:

- A work is copyrightable if it is an original work of authorship, fixed in a tangible medium of expression
- These original works of authorship are eligible for copyright protection:
 - Literary works
 - Musical works
 - Dramatic works
 - Pantomime and choreographic works
 - Pictorial, graphic, and sculptural works
 - Motion pictures and other audiovisual works
 - Sound recordings
 - Architectural works
- These works are **not** copyrightable:
 - U.S. Government works
 - Ideas
 - Processes and procedures

- Systems
- Methods of operation
- Concepts
- Principles
- Discoveries

➤ A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a “derivative work”.

Fair Use

Dwayne K. Buttler, Professor, University Libraries, Evelyn J. Schneider Endowed Chair for Scholarly Communication, University of Louisville

- The provision of fair use is covered in section 107 of the Copyright Law:
- Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, 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-*
- (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 fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.*

Recent Copyright Cases

Donna L. Ferullo, Director, University Copyright Office, Purdue University

Cases reviewed included:

- Fair Copyright in Research Works Act. H.R. 801
- Higher Education Opportunity Act
- Cambridge University Press *et al* v. Patton *et al* (Georgia State)
- Siegel v. Warner Bros. (Superman)

Common Copyright Misperceptions

James R. Williams, Ball State University legal counsel for education law

A common misperception:

➤ "I am using copyrighted work for educational or non-profit purposes. Therefore, I don't need permission!"

➤ Reality: **Not necessarily so!** You still need to go through a careful fair use analysis. Your educational purpose is but one of four factors in the analysis, and it does not insulate you in all circumstances. The other factors are:

- The nature of the work
- The quantity and substantiality of the work you are intending to use
- The balancing test (if the nature of your use were widespread, what effect would it have on the market for the original?)

International Copyright

Janice T. Pilch, Associate Professor of Library Administration and Head of Slavic and East European Acquisitions in the University Library, University of Illinois at Urbana-Champaign; ALA International Copyright Advocate

Principles of international copyright:

➤ International copyright is not governed by a defined body of law, but by terms of international treaties and agreements that are implemented in national laws

➤ International copyright operates on the basis of relations between nations:

- The country of origin
- The protecting country

➤ International copyright operates on principles of:

- Territoriality
- National treatment
- Minimum protection

➤ U.S. law governs use within the U.S. of eligible foreign works

- Whether a work is copyrighted in U.S.
- The term of copyright
- How a work may be used

➤ The law of the country of origin generally determines

- Issues of ownership and transfer
- Definition of author

- International treaties, conventions, and agreements governing copyright:
 - World Intellectual Property Organization (WIPO):
 - Berne Convention for the Protection of Literary and Artistic Works (1886)
The U.S. entered this agreement March 1, 1989
 - WIPO Copyright Treaty (1996)
The U.S. entered this agreement March 6, 2002
 - WIPO Performances and Phonograms Treaty (1996)
The U.S. entered this agreement May 20, 2002
 - UNESCO (United Nations Educational, Scientific and Cultural Organization)
 - Universal Copyright Convention (1952)
The U.S. entered this agreement September 16, 1955
 - World Trade Organization (WTO)
 - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1995)
The U.S. entered this agreement January 1, 1995
 - Regional copyright treaties and agreements
 - Bilateral treaties and agreements