

University of Massachusetts Amherst

From the Selected Works of Laura Quilter

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Copyright for Academics (Comparative Literature Dept.)

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Available at: https://works.bepress.com/laura_quilter/31/



copyright for academics

Laura Quilter

Comp Lit Grad Students, 2013/11/08

roadmap

- defining copyright
- your copyrights
- other people's copyrights

defining copyright

- a limited set of rights
- held by the copyright holder (the author, their employer, or someone they give the copyright to)
- to authorize particular uses
 - copying (reproducing)
 - distributing (publishing, selling)
 - derivative works (adaptations, translations, abridgements)
 - performances & displays

what copyright is NOT

a right of attribution

a right to control ALL uses

fair uses, first sales, de minimis, etc

unlimited in time > expires to public domain

not copyrightable at all

ideas, facts

titles

patent or trademark

your copyrights

how you get them, how you keep them, how to use them

how do I get a copyright?

- “fixation” in “any tangible medium”
 - email! post-it notes! shopping lists! photos!
 - manuscript drafts
- registration ?
 - not required to “have” a copyright
 - but useful if you’re going to make commercial use or anticipating needing to sue!
 - how?
 - *Copyright Office* at <http://copyright.gov/> plus \$35
 - your publisher (depending)
- © symbol?
 - not necessary to “have” a copyright
 - but useful for affixing a recognizable date & attribution

creative commons?

- “some rights reserved” versus “all rights reserved”
- a way to *authorize* reproduction & distribution, and *require* attribution
 - options : derivative works, non-profit uses only, “share-alike”, dedicated to public domain,
- you still retain copyright! and *you* can still “sell” or do other things with it
- why or why not?
 - depends on your goals for the material
 - greater publicity (threats: obscurity or piracy?)
 - control : reproduction & distribution
- how? <http://creativecommons.org/>

publisher agreements

- many publishers will ask for your copyright, whether monographs or journals
 - exception : open access publication

“you don’t own me”

- as the author, you START as the copyright holder
- but when you ASSIGN your copyright, the publisher is the copyright holder

... which means that you are (mostly) a legal stranger to your own paper. Ask permission from the publisher to:

- distribute your own paper to colleagues
- distribute your own paper to your students
- revise your own paper
- include your own paper in new collections
- re-use content from your own paper beyond “fair use”

bargaining power!

- a publisher agreement is a *contract*, like buying a home or a car ... only you are *giving away your property*, for free
- use your **bargaining power!**
- once your paper has been accepted, the journal has made most of its investment *already* -- in working through the peer review process

options

- assign a *license* instead of your copyright,

OR

- retain some rights for yourself
 - SPARC addendum <http://sparc.arl.org/>
 - fill it out & attach it to the publisher agreement
 - it reserves *your* rights to re-distribute, re-use, re-write, teach with ...



other people's copyrights

what's fair, what's not, when to ask permission

**mantra :
not all uses
of other people's works
are regulated by copyright**

public domain

No copyright at all. Use freely.

Copyright has expired -- term has passed (currently, 70 years after author's death; most pre-1923 works; some 1923 - 1978 works, depending).

NB: Each country has its own rules!

US government employee works automatically in public domain.

NB: States and other national governments are likely copyrighted.

non-copyrightable stuff

17 USC 102(b) : “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

i.e., facts and ideas (and recipes) are not copyrightable

Titles & short phrases are also not copyrightable.
These can be trademarked, if you plan to make commercial use; limitations still apply.

de minimis

de minimis non curat lex : the law does not concern itself with trifles

no harm, no foul

fair use

17 USC 107

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.

fair use

4 factors, balanced together: (1) purpose & character of *my* use; (2) nature of *their* work; (3) how much of their work I take; (4) is there a market substitution ?

but consider it a gut-check test:

Is my use fair to the copyright holder? or is it an unfair exploitation of their work for my benefit?

purpose or character of the use

more fair

less fair

- transformative in character?
- transformative purpose?
- non-profit educational?
(multiple copies for classroom use)
- substitutive

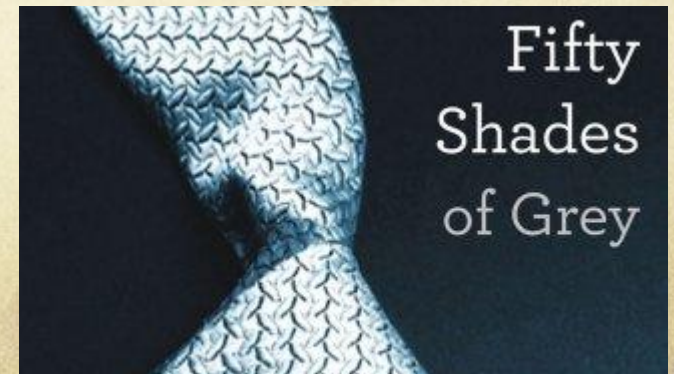


nature of the copyrighted work

more fair

less fair

- factual?
- published?
- not commercially available at a reasonable price?
- creative (fictional, artistic)
- unpublished? * [not dispositive]
- commercially available?



amount & substantiality taken

more fair

less fair

- only as much needed?
- a small portion?
- a portion that doesn't substitute?
- more than needed?
- the whole thing?
- the heart of the work?

effect on the market

more fair

less fair

- does not substitute in the market?
- does not substitute for a derivative market?
- no licenses available
- substitutes in the market?
- substitutes for a derivative market?
- licenses available (reasonable \$\$)

other factors to consider

more fair

less fair

- public benefit?
- no public benefit
- benefits purposes of copyright?
- good faith?
- bad faith
- clean hands?
- unclean hands
- attribution?
- no attribution

FAIR USE: IT'S THE LAW



**EXERCISE YOUR COPYRIGHT
RIGHTS IN THE CLASSROOM**

Timothy Vollmer, <http://www.flickr.com/photos/sixteenmilesOfString/2596569134/>

think of it this way:

- the *economic* uses are most regulated :
distribution, reproduction
- the *intellectual* uses are least regulated
 - citation - not a “use” of the *work*, so not regulated by copyright law!
 - description of the work or ideas in the work - not regulated by copyright law, because these are “facts” and “ideas”
 - quotation from the work - “reproduction” or “fair use” or “de minimis”?
 - translation - “derivative work” or “fair use”?
 - adaptation - “derivative work” or “fair use”?

what about ...?

- translation of a work, for a dissertation?
 -
- inclusion of images, screenshots from films, quotations?
 -

what about ...?

- translation of a work, for a dissertation?
 - Publication without permission not advised as this is clearly a “derivative work”. Recommend: Translation as a scholarly exercise, and private distribution.
- inclusion of images, screenshots from films, quotations?
 - Fair use a strong argument. Bolster your fair use arguments by transforming those excerpts with critique, commentary, contextualization; and by limiting how much you “take” (reduce image size or quality; screenshots instead of full-length films).

what about ...?

- including material in presentation?

-

- assigning readings to class?

-

what about ...?

- including material in presentation?
 - A “display” is less likely to lead to market harm, so more likely to be fair use. But, “transform” and limit “quantity” taken as needed. Nonprofit educational presentations also get a +.
- assigning readings to class?
 - Nonprofit educational uses, including “multiple copies for classroom use”, are paradigmatic fair uses. BUT, reproducing whole works that are readily available for purchase in appropriate formats for this purpose weighs substantially against. Textbooks & other materials produced for student purchase should be used with caution. Fair use, open educational resources, library

“best practices”

discipline-specific guides to fair use
that apply the general principles of fair use
to common scenarios in a discipline

examples:

poetry ... dance scholarship ... journalism ...
documentary filmmakers ... communication ...
media literacy education ... film & media educators
... images in teaching, research & study

<http://cmsimpact.org/fair-use>

... I don't think it's fair use?

- permission already given?
 - Creative Commons, other open access
 - your copy, with rights
 - library-licensed resource, with rights
 - NB: Just because it's on the Internet doesn't mean it's open access or that the author has "given permission" or "licensed" the use!
- ask permission:

The work you want to use may include information about who to contact for rights. If not, contact the author; if they can't grant rights, contact the publisher.

by the way

All of this *does* apply to your own works, that you have assigned to publishers.

And as the original author, you have whatever else you bargained for in your contract.

You may also have some additional de facto leniency, because publishers might think it would look bad to sue or harass the authors who gave them their works to sell. *But some publishers are doing it anyway.*

thanks!

Specific questions?

The library is here for you. Contact the Office of Scholarly Communication, 19th floor, Du Bois Library, for questions about open access, Creative Commons, publisher agreements, copyright, fair use, and other issues.

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