

Copyright Corner

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Check it Out!

There are many organized efforts, on many fronts of people trying to clarify and understand how technology and copyright can co-exist—how the needs of the academic community and content proprietors can be balanced.

The National Information Infrastructure Task Force (NII), headed by Bruce Lehman, is expected to release its “White Paper” report in August. The report examines intellectual property rights in a networked society.

The Multimedia Law Handbook by Dianne Brinson and Mark F. Radcliffe, is an impressive book! The appendices alone make it a worthwhile purchase, including form contracts, clearing-houses, content sources, and organizations. The book provides a detailed look at the process of creating a multimedia product, from an intellectual property perspective. It addresses all areas of intellectual property (IP) law (copyright, patent, trademark, trade secret) and provides a look at contract law, libel, and the rights of privacy and publicity. The authors examine the relationships between primary creators and other participants, provide valuable information about licensing copyrighted materials, and review distribution issues. The book does not purport to make the process of creating a legal multimedia work look or feel “easy,” but it does provide a thorough and well-organized resource to help you on the way.

The WWW Multimedia Law page, created by Sandy Jane Wong, M.P.A., is an excellent stop on your Internet search for information on IP law. Wong, a self-styled Internet expedite, has tried to create a site that provides one stop shopping for all the people involved in multimedia licensing. The web site evolved from Wong’s work with the law firm Fenwick and West to enhance their visibility by providing them with an Internet presence. The site is organized by section and includes:

- Multimedia Law Firms
- Multimedia Law Publications
- Multimedia Law Repositories and Sites: Other Links

- Multimedia Association
- Copyright, Patent and Trademark Cases: Statistics
- On-line Services and Standards

Each section contains a wealth of information and numerous links to an incredible array of copyright information sources. An example of its richness is the "Multimedia Law Publications" section, where several excellent papers appear such as "Multimedia and the Superhighway: Rapid Acceleration or Foot on the Brake?" by Fred Greguras (law firm of Fenwick and West) and Sandy J. Wong. The paper presents an excellent summary of the rights and permissions situation for multimedia, and the information is applicable to all copyright situations. The front portion and first four chapters from *The Multimedia Law Handbook* by J. Dianne Brinson and Mark F. Radcliffe are also accessible. Links from the "Multimedia Law Repositories and Sites: Other Links" section connect you with the Coalition for Networked Information server and NII documents, where one might spend hours of productive study. I highly recommend browsing this site!

Wong accepts items from other people, and updates the site weekly, or when a new paper is received from her clients. Her favorite link is the "Hot News of the Week" section where she posts items of U.S. and international interest. She says, "By collecting these new pieces of information and putting them up, I am also educating myself about today's developments." When asked for her viewpoint on the future of copyright in light of the Internet and digital technology in general, she replied, "When it comes to copyright I think there will be mechanisms. These mechanisms are taking shape. The same types of laws will work but it just takes time." Wong says software programmer and friend, Henry McGilton, gave her this advice, "Whenever there is a new medium people use, the rest of society has to adapt to that medium. Remember the days when you had telephone and radio there are laws that are different when you see radio to broadcast as opposed to telephone. Now we have the Net and people will have to adapt to this new medium of communication. Whenever a new medium comes into play, society will have to adjust."

**The Duration of
Copyright and the
Public Domain
(and I thought
rocket science was
complicated!)**

There are several ways a work can enter the public domain, such as if it is a work of the United States government or its creator places the work in the public domain and abandons its copyright. Most works, however, are eligible for copyright protection and the creators choose to retain some of all the rights afforded through copyright. Due to numerous revisions in the U.S. Copyright Law since 1909, determining when a

work will lose its copyright protection and enter the public domain can be difficult. (It's important to note that although copyright protection may not be applicable, other rights, such as privacy, publicity or trademark may still apply!) The duration of copyright depends on when the work was originally created or published, by whom (single author or joint authors), in what context (an individual work or a work for hire), and which version of the copyright law governs its term. Laura Gasaway, Director of the Law Library and Professor of Law at the University of North Carolina has created a chart that will help you to determine when a work passes into the public domain:

When Works Pass Into the Public Domain

<i>Date of Work</i>	<i>Protected From</i>	<i>Term</i>
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 50 years (or, if work of corporate authorship, 75 years from publication, or 100 years from creation, whichever is first)
Published between 1964 – 77	When published with notice	28 years for first term; now automatic extension of 47 years for second term
Published between 75 years ago and 1963	When published with notice	28 years + could be renewed for 47 years; if not so renewed, now in public domain
Published more than 75 years ago	Now in public domain	None
Created before 1-1-79 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 50 years. All works that remain unpublished as of 12-31-2002 will pass into public domain on that date
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the Act which eliminated common law copyright	Passes into public domain 12-31-2027

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Bruce Bertram has placed copies of the chart in his ftp directory at <ftp://ftp.netcom.com/pub/bm/bmb>. This site is a busy one, but be persistent! The addresses are:

Mac: Word Perfect PubDomain.wp.sit.hqx
 Microsoft Word PubDomain.wp.sit.hqx
 PC: Word Perfect PubDomain.wp.zip

User Perspectives on Fair Use

I hope to cover the things in this column that you want to discuss. Fair use has been a hot topic recently. Christopher Jones, Director of the Language Learning Resource Center at Carnegie Mellon University and Jan Marston, Director of the Foreign Language Learning Center at Southern Methodist University agreed to give a spontaneous response to a few questions about fair use. What would your answers have been?

Question: What do you think fair use is?

Jones: My understanding is the fair use is essentially an educational exception to the copyright law.

Marston: This must be the hardest question! We make a fairly narrow and conservative definition of fair use, and follow what is done in our Center for Media and Instructional Technology (CMIT). We don't make archival copies of the videos we have. Or tapes are available for check out to professors, and when a tape is out, it's out, and if it's lost, it's lost. We don't copy anything without copyright permission. It's been a policy that's been very hard to institute. We stay within the 45-day guidelines (Guidelines for Off-Air Taping), and it's not a problem. For me, the next issue is copyright on the Internet: how do you properly attribute and cite, and when is something published?

Question: Have you ever made a fair use "call"?

Jones: Oh, yes. I'm involved in a lot of materials development. I had a colleague who was involved in a CD-ROM project; he wanted to digitize textual materials and images from a slide set. This was intended for commercial distribution. I recommended he apply for copyright clearance before continuing.

Marston: Within the above guidelines, yes. Because of the way we control our media, "yes" means we'll follow the rules. Spontaneous needs may be relevant at some point, but it's different from long term needs. We're supposed to acknowledge intellectual property and if we don't respect it we are not setting a good example. I recognize that I can't control everyone but if they do not conform to this copyright policy, then it is their neck. As a representative of an institutional entity I need to protect my university. And, I feel very strongly about intellectual property.

Question: Do you, or someone else within your institution make fair use decisions on a regular basis? From whom do you ask advice or support?

Jones: I only give advice if someone asks me. I have no legal or professional responsibility for making those decisions among my peers. People are personally responsible for their

actions; the difference is I may have a little more exposure. There is a lawyer who reviews copyright issues and a technology transfer "office" that oversees commercialization—the moving of products beyond the university wall—and they are responsible for making those determinations. They are not very accessible to the general community, only for those people who are focused and aggressive.

Marston: The person in charge of CMIT has to make those decisions for the library, and he is very accessible to me. If I have any qualms he supports my decisions. The institution's lawyers don't always work and play well with others.

Question: Anything to add?

Jones: I attended a Netscape workshop and the leader said there are all sorts of copyright free materials on the Internet and if it's not marked as copyrighted, it's freely usable. This was someone giving instruction! My experience has been just the opposite—anything you don't know explicitly that you can use is copyrighted. As projects get more involved they need greater funding to obtain copyright clearances. We are creating many of our own materials rather than trying to obtain permissions for existing materials. For various projects I am currently involved in, we are shooting original video, making new audio recordings, and writing glossaries from scratch because we want to be able to, at least, locally distribute our own materials.

Marston: I would like to have a clear statement or standard, that IALL might set, saying this is what we see as a point of reference. It would be really useful to those of us who have to make these decisions on a regular basis. This is an important issue.

Let's Hear From You!

Do you have a copyright success (or horror) story you'd like to share? Do you have a topic you would like to see explored in this column? Please send your suggestions to me at lynne@ark.lrc.lsa.umich.edu. ■

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