Copyright Issues in the E-Environment

Copyright

- Copyright – a bundle of rights granted under the IP Code to “authors”
  - To copy
  - To publish
  - To make derivative works

- Examples
  - Text
  - Pictures
  - Music
  - Movies

- How long? It attaches from moment of creation until 50 years from death of author

Rights Granted

- Right to reproduce (copy)
- Right to dramatize, adapt or transform the work (derivative works)
- First public distribution of the original
- Rental right
- Public display
- Public performance
- Other communication to the public of the work

Copyright may be owned by different people
  - The author or artist
  - The publisher

Copyright may subsist in different levels
  - Ex. Song
    - Words
    - Music
    - Subject matter
**Excluded Works**
- Public Domain
  - Contributed to the Public Domain
  - Copyright has expired
- Idea-Expression Dichotomy
- Works of the Government

**Copyright**
- Fair Use
  - Use of copyrighted works without need for license from copyright owner
  - Generally allowed so long as the use does not affect the commercial rights of the owner
  - Is the use commercial or non-commercial?
  - Is it the entire work or just a part?
  - Does it affect the present and future market for the work?

**Limitations to Copyright**
- Fair Use
  - Purpose and character of use (commercial or non-profit)
  - Nature of the copyrighted work (artistic or technical)
  - Amount of portion used (whole or part)
  - Effect of the use on the potential market for the work
- Compulsory licenses – US law; textbooks
- Other uses
  - Private performance for charitable and religious purposes
  - Quotations and attribution
  - Judicial proceedings or to give legal advice
  - Mass media – part of news

**Other features**
- Term of Protection
  - From moment of creation
  - Lifetime plus 50 years
- Registration and Notice (not required)
- Ownership
  - Author
  - Joint authors – co-ownership
  - Employee
    - Regular duties – employer
    - Not part of regular duties – employee
  - Commissioned work – copyright to creator
Copyright

- Be careful
  - Work on the assumption that the text, music, etc. are all covered by copyright
  - Get permission if you're going to copy a substantial portion
- Always attribute source (plagiarism v. infringement)
- Do not alter or make derivative works

On-Line Piracy

On-Line Piracy under the ECA

SEC. 33. Penalties. - The following Acts shall be penalized by fine and/or imprisonment, as follows:

b) 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 including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunication networks, such as, but not limited to, the internet, in a manner that infringes intellectual property rights shall be punished by a minimum fine of One hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years.

What's Covered in OnLine Piracy

- The following unauthorized acts:
  - copying, reproduction
  - dissemination, distribution, importation, use
  - removal
  - alteration, substitution, modification
  - storage
  - uploading, downloading, communication
  - making available to the public, or broadcasting
- IP protected material – TM, ©, & Patent
- Use of telecommunication networks
- In a manner that infringes IP rights
Service Provider Exception

Sec. 5(j). “Service provider” refers to a provider of—

(i) Online services or network access, or the operator of facilities therefor, including entities offering the transmission, routing, or providing of connections for online communications, digital or otherwise, between or among points specified by a user, of electronic documents of the user’s choosing;

(ii) The necessary technical means by which electronic documents of an originator may be stored and made accessible to a designated or undesignated third party.

Such service providers shall have no authority to modify or alter the content of the electronic documents received or to make any entry therein on behalf of the originator, addressee or any third party unless specifically authorized to do so, and who shall retain the electronic document in accordance with the specific request or as necessary for the purpose of performing the services it was engaged to perform.

Examples of Service Providers

- ISPs
- Telecomms Companies (wire and wireless)
- Webhosts
- Mail Providers (Yahoo!, Gmail, Ymail, PinoyMail)
- YouTube, Google Video
- Pix Sites (Flickr)
- Groupmail (Yahoo!/Google Groups)
- Social Networking Sites (Facebook, Friendster)
- SMS-Web Providers (Chikka)
- Blogging services (blogger.com, wordpress.com)

Service Provider Exception

SEC. 30. Extent of Liability of a Service Provider.

Except as otherwise provided in the Section, no person or party shall be subject to any civil or criminal liability in respect of the electronic data message or electronic document for which the person or party acting as a service provider merely provides access if such liability is founded on—

b.) The making, publication, dissemination or distribution of such material or any statement made in such material, including, possible arrangement of any right subsisting in or in relation to such material. Provided That

a) The service provider has no actual knowledge, or is not aware of the facts or circumstances from which it is apparent, that the making, publication, dissemination or distribution of such material is unlawful, or infringes any rights subsisting in or in relation to such material;

b) The service provider does not knowingly receive a financial benefit directly attributable to the unlawful or infringing activity;

c) The service provider does not directly commit any infringement or other unlawful act and does not induce or cause another person or party to commit any infringement or other unlawful act or benefit financially from the infringing activity or unlawful act of another person or party.

Trends in Copyright

- Terms of protection are longer
- Scope of copyrightable works is expanding
- Broader copyright rights
- Easier to qualify for copyright protection
- Creation of completely new rights (e.g., sui generis protection to topographies of integrated circuits & plant varieties; anticircumvention under WIPO Inet Treaties; WIPO’s Broadcast Flag Treaty)
- Shifting costs of enforcement (e.g., Optical Media Law & LGU IP ordinances)
**Fundamental Question**

*Do we have too much or too little copyright protection?*

**Rising Cost of Copyright**

- **Impositions on creative process**
  - Default rights result in copyright clearing issues
  - Granting of additional rights imposes further costs (broadcasters treaty)

- **Attacks on fair use** (exaggerates its inherent weakness)
  - Anti-circumvention (Lexmark case)

- **Rent-seeking**
  - Longer terms when there is no benefit to be gained

- **Other costs**
  - Anti-competitive behaviour (Aibo Pet)
  - Restricting technological innovation (P2P)
  - Free speech/Censorship (Bush-Blair)

- **Internet magnification**
  - Copyright claims imposes costs on the use of the efficient distribution network that is the Internet
  - Impositions upon Internet users (StarWars Kid)
  - What the Internet can do (Free Culture)
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  - Blogs (cheap speech)
  - Archiving/Libraries
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The New York Public Library Research Libraries share with the beneficiaries of Google's mission, the Yale University Library, the University of Michigan, the University of Chicago, and the University of California, the underlying reasons for this ground-breaking partnership, which is making history in the world of information. A partnership that will greatly enhance the amount of information that can be accessed by everyone. A partnership that will make it possible to bring together the knowledge base of the world's largest libraries in the world's most efficient and effective manner, with a limited number of obstacles in our way. We are combining our forces to create a new and innovative approach to content and service delivery, in the digital age. This partnership is an important and significant step forward for the future of information services.

David Farbman, Assistant Director and Chief Programs Officer, The New York Public Library
Learn more about The New York Public Library’s involvement in the project.

Oxford University

The British Library’s mission, from its founding in 1973, has been based on Sir Thomas Bodley’s vision: to build a library serving the worldwide Republic of Letters, which is the library’s collections span the entire range of human knowledge and creativity. The mission is to its core, as it is to all libraries, to enable access to the knowledge contained within its collections. Oxford University Library, the University of Chicago Library, Yale University Library, the University of Michigan Library, and the University of California Library, have each made significant contributions to the creation of this digital library. We are excited about the possibilities that this will bring to the academic community and the general public. This collaboration will be a powerful tool in the university’s mission to make research and teaching available to the world. It is only by working together that we can realize the full potential of this digital library.

Richard Niles, Acting Director of Oxford University Library & Bodley’s Librarian
Learn more about Oxford University Library’s involvement in the project.

Innovative University

You are an innovative university. You have developed a remarkable collection of resources that can be accessed by a wide array of users. The contents of your library are organized and stored in various formats, making it difficult for researchers and students to access the information they need. The key to unlocking the full potential of your library is to make it accessible to all. This is where Google comes in. Google Books is a digital library that allows you to access the full text of books, newspapers, and other materials. It is a powerful tool that can be used to research, teach, and learn.

Alexis Stair, Innovative University Librarian
Learn more about innovative university librarians’ involvement in the project.

University of Michigan

The University of Michigan is one of the most respected universities in the world. It is a leader in research and teaching, and is home to some of the brightest minds in the world. The university has a long history of excellence, and is committed to providing a world-class education to all students. The university library is a vital part of the university’s mission, and is committed to providing students with access to the latest information and resources. The Google Books settlement is an important step forward for the university, and will help to ensure that all students have access to the information they need to succeed.

John P. Wilcox, Associate University Librarian
Learn more about University of Michigan’s involvement in the project.

University of Texas at Austin

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Fred H. Hsu, Vice President and Director of Libraries
Learn more about University of Texas at Austin’s involvement in the project.

Thank you!