

*Content & Content Management:  
Digital Rights Management –  
Our Present Environment and Solutions*

SSP Seminar – November 17, 2004  
Copyright Basics/Society Publisher Perspective  
Presented by:  
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*Disclaimer*

These slides are only intended to provide a brief background to the basics of copyright. It is recommended you research the information contained on these slides in order to have a fuller understanding of the topics covered.

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*Today's Program*

- Part I – 9:30-10:15 a.m.  
Copyright Basics
- Part II – 1:00-1:30 p.m.  
Issues Facing Society Publishers (focus on STM publishers)
- Part II segues into Open Access discussion at 2:00 p.m.

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### *Part I--Copyright Basics Legislative Background*

- **United States Constitution**  
Article I, Section 8
- **Title 17 -- United States Code**
- **Major Legislation**  
1909, 1976, 1988 (Berne), 1998 (DMCA)
- **The Federal Courts**

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### *Online Rights of Copyright Owners*

- **Same digitally as in print:**
  - Section 102 - Subject Matter of Copyright
  - Section 106 - Exclusive Rights of Copyright
  - Section 107 – Fair Use & other limitations on exclusive rights
  - Notice of Copyright
  - Duration of Copyright

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### *Definition of Copyright*

#### **Section 102(a) of Copyright Act:**

- Copyright protection subsists, ..., in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

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## *Subject Matter of Copyright What's Protected under ©*

- **Section 102(a) of Copyright Act:**
  - (1) Literary Works (incl. compilations)
  - (2) Musical Works (incl. accompanying words)
  - (3) Dramatic Works (incl. accompanying music)
  - (4) Pantomime & Choreographic Works
  - (5) Pictorial, Graphic, & Sculptural Works
  - (6) Motion Picture & Other A/V Works
  - (7) Sound Recordings
  - (8) Architectural Works

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## *What's Not Protected*

- **Section 102(b) of Copyright Act:**
  - works not fixed in a tangible form of expression
  - titles, names, short phrases, slogans, familiar symbols or designs (these items may be protected under trademark or service mark laws)
  - listings of ingredients or contents
  - ideas, procedures, methods, systems, processes, concepts, principles, discoveries, devices (these items may be protected under patent law)
  - standard calendars, rulers, lists or tables taken from public domain documents or sources and other works containing no original authorship

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## *Notice of Copyright*

- Works published prior to March 1, 1989 must contain a copyright notice to avoid loss of copyright. For works published after that date, copyright notice is voluntary, although it is still recommended for some legal, but mostly commercial, purposes.
- A proper copyright notice must include the symbol "©" or word "Copyright" or abbreviation "Copr."; the copyright year (year of first publication); and the name of copyright owner.

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### *Exclusive Rights of Copyright*

- **Author's exclusive rights under copyright**  
**Section 106 of Copyright Act:**
  - (1) reproduce in copies
  - (2) prepare derivative works
  - (3) distribute copies publicly
  - (4) perform the work publicly
  - (5) display the work publicly
  - (6) sound recordings -- perform work publicly

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### *Duration of Copyright*

- Under current law:
  - When vested in the author – life of the author plus 70 years.
  - When work for hire or in scope of employment – 95 years or 120 years from date of creation (whichever expires first).

*Note – There have been a number of increases in duration since 1790. Most recent update (CTEA of 1998) has been upheld as constitutional by Supreme Court in Eldred v. Ashcroft, a challenge to CTEA.*

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### *Misc.*

- **Registration** – not mandatory; required to obtain statutory damages and to institute infringement action.
- **Renewal of copyright** – not necessary.
- **Transfers** – rights may transferred.
- **Termination** – rights may be terminated.
- **Remedies under Sections 501-511**; include injunctions, damages, costs and attorney's fees (civil and criminal remedies available).

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*Online Rights of Copyright Users*

- Fair Use
- Public Domain
- U. S. Government Works
- TEACH Act
- Non-copyrightable aspects of works

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*Limitations on Exclusive Rights Fair Use*

- Fair use allows user to do things otherwise exclusive right of copyright owner:
  - must be for "fair use" purposes such as those enumerated; AND
  - must pass four-factor test

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*Limitations on Exclusive Rights Fair Use*

- Uses generally recognized as eligible for fair use defense under Section 107:
  - criticism
  - comment
  - news reporting
  - teaching (NOTE: not all teaching uses constitute fair use)
  - scholarship
  - research

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### *Limitations on Exclusive Rights Fair Use*

- Four factors to consider in determining if use is fair use:
  - purpose and character of use
  - nature of work
  - amount and substantiality of portion used
  - effect of use on potential market for value of copyrighted work

**Note** – Supreme Court upheld fair use argument in *Sony* (1984); similar type of argument not persuasive for 9<sup>th</sup> Circuit in *Napster* (2001). The *Sony* case dealt with home use of VCR's, held to be non-infringing.

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### *Limitations on Exclusive Rights Reproduction by Libraries*

**Permitted Library Uses** (Section 108 of Copyright Act):

- replace damaged or lost copy
- backup copy
- a single photocopy for patron for private scholarship, or research (entire works only if the work cannot be obtained at a fair price)

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### *Limitations on Exclusive Rights: TEACH Act*

- "TEACH" is acronym for the "Technology, Education, and Copyright Harmonization Act of 2002."
- Allows for exemption of certain performances and displays for educational uses by amending Section 110 of the Copyright Act.
- Expands the scope of educators' rights to perform and display works, allowing for the digitization of works for use in digital distance education.
- Certain requirements must be met, e.g., the user must be from an accredited, non-profit educational institution; the material must be presented at the direction of an instructor as part of a class session; the transmission is limited only to students officially enrolled in the course; plus others.

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### *Public Domain*

- **Public Domain**
  - U.S. government works
  - Works published before 1978 w/o proper © notice
  - Works dedicated to the public domain by their creator
  - Works whose copyright term has expired

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### *Part II--Publisher Issues Copyright and the Internet*

- **From ACS Learning Module:**
  - Most info. on the net is protected by © b/c it's "fixed in a tangible medium of expression."
  - The net is not a "free for all;" users should seek permission from © owner prior to use.
- **Generally:**
  - Always look for © notice, contact information. Be especially careful of photos and graphic images. If in doubt, do not use!!

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### *Copyright and the Internet*

- The importance of contractual agreements; specification of what rights are granted.
- Court cases:
  1. Music Industry – Napster, Aimster, Grokster
  2. Publishing Industry
    - Tasini – freelance writers
    - Greenberg, Faulkner – freelance photographers
    - Rosetta Books – e-books

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### *Electronic Copyright Issues*

**The Society Perspective:**

- Licensing/Subscriptions vs. Copyright  
--access to content and IP rights of the publisher (copyright owner)
- Purported Uses of material  
--how will content be used, i.e., in what context, in which formats, etc.
- Publishers' Copyright Policies
- Open Access – Sabo Bill; NIH Initiative; Creative Commons ([www.psp.org](http://www.psp.org); [www.creativecommons.org](http://www.creativecommons.org))

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### *Enforcement + Education = Compliance?*

- **Challenges** in protecting and enforcing copyright.
- **Educating users** of content – permissible and nonpermissible uses (ACS Learning Module, programs offered via SSP and AAP, etc.).
- **Enforcement models** – publishers' working groups aimed at unauthorized uses of copyrighted material. Targets include document delivery services (domestic and foreign), copy shops, university/library electronic-reserve policies, subscription agents.

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### *Compliance?*

- Overall goal is to achieve compliance, as close to 100% as possible.
- Balancing Act for STM publishers: sharing research (access as a broad issue) vs. protecting IP vs. author's rights

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*Contact Information*

- e\_slater@acs.org/202-872-4367
- Copyright Resources:
  - US Copyright Office, [www.copyright.gov](http://www.copyright.gov)
  - SSP, [www.sspnet.org](http://www.sspnet.org)
  - CCC, [www.copyright.com](http://www.copyright.com)
  - AAP, [www.publishers.org](http://www.publishers.org)

THANK YOU!!  
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