



## **DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING**

### **THE CATHOLIC UNIVERSITY OF AMERICA**

*Office of the General Counsel*

Summary of Federal Laws

Miscellaneous Laws Affecting Universities

General Revision of the Copyright Law (1976) and

Judicial Improvement Act of 1990

17 U.S.C. § 101 *et seq.*; 37 C.F.R. § 201.1 *et seq.*, 48 C.F.R. § 52.227-2

The copyright law gives copyright owners the sole right to reproduce all or part of the work, distribute copies, prepare new (derivative) versions of the work, and perform and display the work publicly. Copyright protection governs "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). The law protects unpublished as well as published material.

Fair Use: The fair use doctrine (17 U.S.C. § 107) allows for the use of copyrighted work, including some reproduction of the work, without obtaining the copyright owner's permission, if certain conditions are met. The factors to be considered are:

\* the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

\* the nature of the copyrighted work;

\* the amount and substantiality of the portion of the work used in relation to the copyrighted work as a whole; and

\* the effect of the use in question upon the potential market for or value of the copyrighted work.

For a case applying the doctrine see *Princeton University Press v. Michigan Document Services*, 99 F.3d 1381 (6th Cir. 1996). In that case, the court found fair use was not available as a defense. The purpose of the copying was commercial, the loss of copyright permission fees diminished the value of the books that had been copied, the material was creative and not publicly available, and the excerpts were lengthy (8,000 words or longer).

For a case applying fair use in the electronic environment, and finding that fair use was not applicable to the wholesale posting of copyrighted news articles, see the Tentative Order issued in *Los Angeles Times v. Free Republic*, No. 98-7840 (C.D. Cal. Nov. 8, 1999), online at <http://www.techlawjournal.com/courts/freerep/19991108.htm>. Free Republic is a bulletin board Web site that posted exact copies of articles that had appeared in the *Los Angeles Times* and *Washington Post*, and then allowed visitors to comment or criticize each article. Under the purpose part of the four-factor test, the court held that adding copy to a verbatim copy of a copyrighted work does not make the work "transformative." The court also found that despite defendant's non-profit status, the conduct would be considered commercial as use of the articles generated advertising revenue, and promoted the Web site. The court also rejected the First Amendment defense.

See *Tasini v. New York Times*, 206 F.3d 161 (2nd Cir. 2000) for the amended version of the Second Circuit's finding that appellants' copyrights were infringed when the *New York Times* and other companies put previously-published individual articles into electronic databases available to the public without specific permission to do so. For a useful analysis of the decision, see "The Importance of Electronic Publication Rights," by Michael Landau, online at <http://www.gigalaw.com/articles/landau-2000-01-p1.html>.

### Visual Images and Copyright

Important Resource: *Copyright and Fair Use: The Great Image Debate*, edited by Robert Baron. Originally published in 1997 as Volume XII, numbers 3 and 4, of the journal "Visual Resources." Check with your librarians to see if they can locate this special issue. If not, it can be ordered in book form from 1-800-326-8917. The book has a number of different articles on copyright and visual images, including digital images, and the articles are written with the interests of both museums and educators in mind.

Important Case: *Bridgeman Art Library v. Corel*, 36 F. Supp. 2d 191 (S.D.N.Y. 1999). In the *Bridgeman* case, the court held that color transparencies of paintings which themselves are in the public domain, were not original and therefore not permissible subjects of valid copyright.

### Institutional Action that Will Help Prevent Copyright Violations:

\* The institution's copy center should seek permission from the publisher for material to be used in coursepacks.

\* Professors and other employees of the university who request copies to be made by the copy center which will not go through routine copyright clearance should be asked to sign a certification of copyright compliance. See sample Certification of Copyright Compliance form.

\* The institution as an Online Service Provider should designate an agent to receive notification of claimed infringement of copyright, in order to obtain the protections offered by the Digital Millennium Copyright Act of 1998 (DMCA). See 63 Fed. Reg. 59,233 (Nov. 3, 1998) and <http://lcweb.loc.gov/copyright/onlinesp/>.

\* The institution should have a copying policy, as well offer training on copyright compliance.

\* The institution should provide to all users of its system or network informational materials that accurately describe and promote compliance with U.S. copyright law. Linking to the U.S. Copyright Office Web page, <http://lcweb.loc.gov/copyright/>, will be considered compliance with this prerequisite to obtaining certain protections under the DMCA.

\* Establish computer use copyright policies. The circulation of copyrighted material on networked computers and the sharing of information gained from computerized databases through interlibrary loan may be subject to criminal penalties for copyright infringement. See 18 U.S.C. § 2319(b).

#### Resources:

Attorney Georgia Harper at The University of Texas has created the "Crash Course in Copyright." The "Course" will answer all your copyright questions in easy-to-read language, and can be found online at <http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>.

This site also contains a link to the Copyright Clearance Center and a summary of the "Guidelines for Classroom Copying of Books and Periodicals."

See "What is the Public Domain?" for a discussion of this topic.

See "[Your Copying Rights Under Copyright Law](#)" for a discussion on fair use and copying.

See also "[Copyright and Digital Images](#)."

For a wonderful chart entitled "When Works Pass into the Public Domain" go to <http://www.unc.edu/~unclng/public-d.htm>.

See <http://www.loc.gov/copyright/title17/> for the April 2000 edition of Circular 92, the Copyright Law of the United States. The preface has a list of all amendments to copyright law since 1976.

NACUA publishes "A Guide to Copyright Issues in Higher Education."

The Cornell Web page links to all intellectual property laws at <http://www.law.cornell.edu/>.

The copyright and fair use site at Stanford is <http://fairuse.stanford.edu/>.

The U.S. Copyright Office is online at <http://lcweb.loc.gov/copyright>.

CUA's [Copyright Guidelines](#) are also online.

1998 Changes to the Copyright Law:

See the [Sonny Bono Copyright Term Extension Act of 1998](#) and the [Digital Millennium Copyright Act of 1998](#).

Updated 1/15/00 (*Free Republic*)

Updated 7/20/00 (*Tasini*)

[Next](#)

[Return to the Beginning of this Section](#)

[Return to the Summary of Federal Laws Page](#)

[Return to the Office of General Counsel Home Page](#)

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