

## COPY RIGHTS

*Shane Cole—McKay Library*

One of the most noble of our pursuits at BYU-Idaho, indeed part of our very mission, is to prepare students for lifelong learning. Promoting science and useful arts is a great cause directly related to the purpose of copyright.

When the Association of College & Research Libraries established competency standards for information literacy in higher education, it said, “Information literacy forms the basis for lifelong learning.”<sup>1</sup> These standards have been endorsed by both the American Association for Higher Education and the Council of Independent Colleges. One of the information literacy standards deals with copyright; it states, “The information literate student understands many of the economic, legal, and social issues surrounding the use of information and accesses and uses information ethically and legally.”<sup>2</sup> Our mission to prepare students for lifelong learning includes teaching them through instruction and example to use information ethically and legally.

Today copyright law and the ubiquity of the technology to create and copy information make it quite possible for every lifelong learner to be a copyright owner as well as a copyright infringer. To become a copyright owner, simply fix an original work in a tangible medium. The ideas or facts behind the work need not be original because ideas and facts cannot be copyrighted: only the expression of ideas or facts need be original. Once your original expression is fixed; you are a copyright owner. Copyright owners have the exclusive right to reproduce, distribute, modify, display, and publicly perform their works.

To become a copyright infringer simply copy someone else’s original expression without permission. We are warned about becoming copyright infringers in the preamble to BYU-Idaho’s copyright policy:

Because of advances in technology individuals must increasingly be aware of copyright implications when using a wide range of materials. Copyright violations related to copying printed materials, materials in digital format, audio and video recordings, music, Internet transmissions, and computer programs and databases, create potential legal liability for the university and the individuals involved.<sup>3</sup>

Within the warning the preamble makes a long but not exhaustive list of the tangible media we can use to create or copy an original work. These tangible media, along with those unnamed and undiscovered, are and will be the tools of the lifelong learner in the information age.

**Copyright owners  
have the exclusive  
right to reproduce,  
distribute, modify,  
display, and  
publicly perform  
their works.**

If you are dedicated to a lifetime of learning, you will encounter the need to make decisions about the use of copyrighted materials. BYU-Idaho’s copyright policy states: “Most materials (regardless of form, format, or notice) are copyrighted. If you cannot determine that a particular work is not copyrighted, you should assume that it is.”<sup>4</sup> This broad assumption is necessary because no registration or other formal process beyond that explained above is required for individuals to become copyright owners. Because copyright protects original works of authorship so broadly, it is important to remember what exactly it is in those works that copyright protects. Copyright law states:

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.”<sup>5</sup>

For most, copyright consists of the frequently seen warnings about copying videos and music, and somewhere in our memory there might be a vague recollection that Kinko’s was sued for copying materials for course packets. We typically don’t see much in the news about copyright unless a high profile court case takes place. Often these lawsuits involve individuals and corporations in the music or movie industry seeking to protect their rights. Counter arguments to these suits are often based on the perceived greed of the copyright owners. It is argued that a little file sharing won’t hurt them; they already make millions. Such cases, along with copyright law that tends to favor copyright owners, lead to a general perception that the purpose of copyright is to assure that artists, authors, and inventors get paid. One goal of our instruction might be to emphasize that the purpose of copyright is to promote the progress of science and art. Another goal of our instruction might be to remind learners that ideas, facts, principles, concepts, etc. belong to everyone who will learn about them.

In the court opinion for *Feist Publications vs. Rural Telephone Service Co.*, Supreme Court Justice Sandra Day O’Connor explained that granting exclusive rights to authors and inventors over their work is simply the means by which we accomplish the true objective of copyright. The case was a dispute over the extent of copyright protection for telephone directory white pages. Rural Telephone was required by law to create a telephone directory for the area of its monopolized service. Feist Publications was in the business of taking several local directories and creating a regional directory. Each local telephone company in the region except Rural Telephone had licensed the use of its directory to Feist. When Rural refused to license the use of its directory, Feist used it anyway. Rural then claimed infringement of copyright and took Feist to court.

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The Supreme Court overturned lower court decisions by finding that the white pages were not eligible for copyright protection because they were based solely on fact, and while it may have taken some effort to compile the facts, the alphabetical arrangement of them was in no way an original expression. O'Connor stated:

The primary objective of copyright is not to reward the labor of authors, but [to] promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This principle, known as the idea/expression or fact/expression dichotomy, applies to all works of authorship. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.<sup>6</sup>

If copyright law extended protection beyond original expression to the ideas and facts per se, it would stifle rather than promote the progress of science and art. By clarifying to students what is and is not protected by copyright we can encourage them to build freely upon the ideas, concepts, and principles they encounter in the course of their studies. We can teach them to seek creative ways to form their original expressions of the multitude of ideas and facts at their disposal. Certainly within the course of their academic work for the purpose of criticism and commentary, students will be compelled to cite the works of others, but these limited citations fall easily within the bounds of fair use.

Fair use is the doctrine that allows limited use of another's work without gaining permission or compensating the copyright owner. Concerns about fair use arise when faculty create course packets that are essentially compilations of the work of others. It is our creation of course packets that will most likely give students insight to our ethical and legal use of information. Our example should be beyond reproach. Unlike white page directories, the articles, web pages, and chapters from books that may be compiled in a course packet are highly creative and would in most cases meet the standard of original expression. When we use copyrighted materials in this way we should gain the permission of the copyright owners. Permission is normally granted when compensation is made.

The Kinko's case was about the materials being used in course packets. Kinko's argued that the purpose and character of the use of the copyrighted materials was educational and therefore fair. However, the court determined that just because the materials were being used in an educational institution the purpose of copying them was not educational. No evidence of comment, criticism, interpretation, analysis, or transformative work was found surrounding the copied materials. Without any of these, the purpose and nature of the use of the copyrighted

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materials could not be considered educational. Though the gathering of the materials into one work was convenient for the students and faculty in an educational institution, the purpose could only be viewed as commercial because Kinko's was profiting from the sale of the copied pages while the course packets did nothing to promote or advance the ideas and concepts in the field of study they covered. If there were no chance that the textbooks or periodicals would be purchased by the students or institution, the source of income to the copyright owners would be severely limited.<sup>7</sup>

An ethical approach to using copyrighted materials is to direct students to those materials for which the university has paid. Beyond the 800 periodical titles on the shelves of the library are the millions of digitized articles available through the many databases to which the library subscribes. The licensing agreements with the vendors of these databases cover the use of the information found in them by those affiliated with the university. Access to these materials is gained through user-IDs and passwords. Thousands of dollars have already been paid for the right to use these materials for educational purposes.

If we think more about how our work is promoting the progress of science and the useful arts and less about how much we can copy and still be legal, our decisions will be easier to make. We follow the spirit of copyright law when we build upon the work of others with our own original expressions. We comply with copyright law when we pay to use the work of others who themselves have labored to promote the progress of science and art. As we teach the principles of copyright through our instruction and example, we will prepare students to be honest and to become creative lifelong learners. ☺

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#### NOTES:

1. Information Literacy Competency Standards for Higher Education, accessed online at <http://www.ala.org/ala/acrl/acrlstandards/informationliteracycompetency.htm> [29 October 2004].
2. Ibid.
3. BYU-Idaho Copyright Policy, accessed online at <http://www.byui.edu/copyright> [29 October 2004].
4. Ibid.
5. U.S. Code Title 17 Chapter 1 Section 102b
6. *Feist Publications Inc. v. Rural Telephone Service, Co.*, 499 US 340, 349 [1991]
7. *Basic Books, Inc. v. Kinko's Graphics Corp.*, 758 F.Supp. 1522 (S.D.N.Y. 1991)