Copyright and Digital Libraries: The U.S. Perspective and International Implications

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Abstract

The success of digital libraries depends greatly on the applicability of copyright law to the storage, transmission, and delivery of digital text and other content. Copyright in the U.S. and other countries grants rights of reproduction and distribution to copyright owners. Digital libraries, however, function for the purpose of creating electronic copies and making those copies available to users over networked systems. While copyright is fundamentally a barrier to such innovation, the law also provides exceptions. Those exceptions can enable some limited activities that might otherwise be violations of the law. The best known of these exceptions is "fair use."

Fair use is one of the most troublesome and misunderstood provisions of American copyright law. Yet it is essential for advancing education and research by allowing limited uses of protected works. The uncertainty of the meaning of fair use also has been a source of conflict and tension, particularly as educators and librarians seek to build upon existing works for electronic access, and as publishers and authors often argue that fair use intrudes upon their ability to market and receive revenues from licensing or selling those works.

Much of the tension and struggle surrounding fair use and digital libraries may be addressed in effective licensing of protected works, but meaningful licensing must begin with an understanding of user rights. Some of the tension may also be reduced by changes in the copyright law. American law has changed in many important respects in recent years, largely in the name of "harmonizing" American law with the laws of other countries with which the U.S. conducts substantial business. The laws of other countries, however, are often less open to fair use and other rights to use and to build upon the works of others. Overall, copyright in the U.S. and elsewhere is changing in ways that are often exacerbating the constraining effects of the law on the success of digital libraries.

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I. The Nature of the Conflict.

The success of digital libraries in the United States and in other countries depends on maximum access to and means of delivery of information resources. The very reason for the push for digital libraries has been the promise of technology and its capability of storing, organizing, and retrieving information by means that ought to be vastly more efficient and versatile than the use of print media. Yet, just as librarians, researchers, and technologists have begun to develop new means for efficient and productive digital libraries, we are discovering that the law of copyright sets limits—sometimes rigorous limits—on the means to pursue the growth and sharing of knowledge. These limits founded in copyright law are often viewed as a conflict with the objective of copyright as set forth in the United States Constitution.

I realize that the U.S. Constitution is not the constitution of other countries. I am well aware that in our pride and exuberance about the American constitutional system we have, shall I say, politely offered our Constitution to other countries as a model. Yet, there in the U.S. Constitution is a provision that gives the United States Congress the power to make copyright law. That provision does much more than simply grant a source of power to Congress. The provision also specifies that Congress shall make copyright law in furtherance of a social objective: the promotion of the progress of learning and knowledge.

That constitutional objective demands considerable introspection and ultimately mandates a balancing of interests. The promotion of progress through copyright is both a securing of rights for the copyright owner in order to encourage the creation of new works and their publication, as well as a boundary around that set of rights in order to prevent complete constraints on the public's right to utilize the works owned by others and to build on them with new insights and new works. Hence, the competing implications of copyright—the securing of private rights and the granting of public rights—are often viewed as an inherent conflict in the law.

The achievement of a balance between these conflicting objectives is the source of a great deal of confusion and monumental tension at this evolutionary stage of American copyright law. The quest for an understanding of copyright's application to the growth of digital libraries often yields diverging perspectives on the meaning of copyright law with its protection of creators' rights and its grants of fair use and other public rights. A wide variety of different points of view about that interrelationship and the balancing of interests is possible, but often two polarizing views dominate the debate. One group is often seen as advocating maximum rights of use for the digitization, storage, and retrieval of information, and those perspectives often struggle with pressure to accept limits on the ability to deploy new technologies and to institute digital libraries. From the opposite perspective, proponents of strict protection for copyrighted works are forced to reconcile the realities of fair use and to identify and accept those rights that belong to the public. Even in an ideal setting, any reconciliation of these two interests is often a defiant challenge to the objective of either securing the fullest rights to the copyright owner or providing an environment for the fullest potential of digital libraries.

Moreover, digital libraries are of course rooted in technological innovation and the advancement of scientific possibilities. Rarely do the engineers and designers of the new technological advances pursue them with a sensitivity that they should somehow inhibit their inventiveness because of the concern that their software or hardware may be deployed in a manner that might run afoul of copyright law. Consequently, the march of technology moves forward with all of its alluring possibilities for our advancing information systems.

II. The Construct of Copyright and the Exacerbation of Conflict.

To underscore a critical point, copyright in the United States is a federal law created by Congress pursuant to a constitutional grant of authority. That constitutional provision is not merely a source of raw power, but it is also an establishment of a social principle that the law is ideally intended to advance. American copyright law was first created by Congress in 1790, early in the history of our country. The federal copyright law was most recently fully revised in 1976, but the 1976 act has been revised and amended many times in the intervening decades. Interpreting the statutes as enacted by Congress and giving them a broader meaning as applied to specific circumstances is the job of the courts which apply the law to specific circumstances in cases and controversies that individual litigants may face.

The general paradigm of American copyright law is to extend its scope broadly, but then to curtail that scope with a set of limitations or exceptions allowing the public to use copyrighted materials in certain ways without infringement. The enormous breadth of copyright's scope may be seen first by the range of materials that are now subject to copyright protection. Copyright law embraces materials that meet two qualifications. They must be original works of authorship and they must be fixed in any tangible medium of expression. The wide range of materials that the law encompasses include writings, photographs, sculpture, computer programs, music, and digitized text, images, or sound.

Only in recent years has American law forgone the requirement of placing a formal copyright notice on a work or registering the work with a federal agency—the U.S. Copyright Office—in order to secure copyright protection. From the view of most other countries around the world, the United States was late in dropping those requirements of formalities. From the view of the United States, the transition from needing to claim one's copyright to having automatic protection has been the source of tremendously important but subtle conflict in both our cultural and legal expectations about property rights. This change to automatic protection is a radical reversal of previous law that now brings under copyright an enormous range of materials that were often presumed to be without protection, such as private correspondence, family photographs, ephemeral materials, and even many publications.

The elimination of formalities as a requirement for copyright protection has been a difficult adjustment for many scholars, researchers, and librarians in the United States who are often surprised, if not shocked, to learn that virtually all of the material that they may now easily access in their traditional libraries and in the electronic domain are in fact protected by copyright. The distinction between free access and public domain is one that is difficult for many members of the American community to recognize and integrate into their information utilization routines.

Once a work has been deemed to be protected by copyright, the grant of copyright gives to the owner the full set of "exclusive rights":

1. the right to reproduce the work in copies;
2. the right to distribute those copies to the public;
3. the right to make derivative works;
4. the right of public display of certain works; and
5. the right of public performance of certain works.

Upon granting that set of rights, however, the law next proceeds to create a long series of "limitations" on those rights. The best known of those limitations is the right of fair use. Fair use and a variety of other rights are imperative to the success of digital libraries.

III. Copyright's Limitations and the Success of Digital Libraries.

Many of the limitations of owners' rights under American law are seen as a peculiarity of copyright in the United States. American law is generally regarded as going much further than the law of most other countries in creating exceptions to the rights of the copyright owner and granting rights of use to the public. Despite that generalization about the relatively broad scope of fair use and other user rights in the United States, these rights do not go far enough to satisfy most advocates of digital libraries. I would contend that they do not go far enough for digital libraries to safely pursue the innovations and services even once taking into consideration growing opportunities to license a wealth of material for digital storage and delivery.

The most prominent example of the meaning of fair use in the United States is a 1994 decision from the United States Supreme Court, which has little direct meaning for digital libraries but nevertheless reveals a tremendous amount about the current status of fair use and its general conceptual underpinnings. That decision is known as the "Pretty Woman" case, or more formally entitled *Campbell v. Acuff-Rose Music*. In that decision a well-known song, "Oh, Pretty Woman," had been written and recorded by singer Roy Orbison in the mid-1960s. More than twenty-five years later a rap music group called "2 Live Crew" recorded a version of the song, but altering the instrumentation and the lyrics in a way that were not flattering to the original.

The original song is generally understood as a ballad reflecting the romantic interests of one lonely man as he thinks about a good looking woman walking past him and who turns around to give him a second look. The 2 Live Crew version is a rap song that expresses a sentiment about romantic relationships that hardly reflects the same values and the same romantic perspectives as the original. Indeed, 2 Live Crew changes the lyrics considerable to include what one might fairly call hostile comments about women in general. Not only was the new version performed to a rap music style, but it was also largely understood as a parody of both the original song and the social values it expresses.

The copyright owners of the original song objected to the new version and sued 2 Live Crew for copyright infringement. In 1994 the U.S. Supreme Court ruled that the parody version was a fair use of the original song and that 2 Live Crew could release and sell copies of the records without permission of the owner of the original song and without any payment of royalties. How did the court reach this conclusion? It did so by applying the four factors that the fair-use statute says one must evaluate in determining any question of whether an activity is or is not fair use. Those factors are as follows:

1. The purpose or character of the use;
2. The nature of the copyrighted work being used;
3. The amount and substantiality of the work being used; and
4. The effect of the use on the market for or value of the original.

While this law is called into action for such seemingly unlikely activities as rap parody versions of popular songs, it is also the law that has been used to sanction the making of copies of articles for interlibrary lending, the making of copies for library reserve operations, the cutting and pasting of digital materials for the creation of multimedia works, the transmission of performances of displays in pursuit of distance learning, and the inclusion of pieces of copyright protected materials on Internet sites. In the context of library services, scholarship, teaching, and research, we know surprisingly little about the actual legal definition of fair use. Fair use is invoked in nearly every imaginable circumstance to justify

or not justify a variety of activities. Yet virtually none of the common activities that might give rise to frequent questions about fair use actually has been the subject of any judicial ruling anywhere in the United States. As a result, the meaning of fair use for digital libraries is still a question open to extensive and often vigorous debate.

The few cases of any relevance for interpreting fair use offer these, perhaps over-simplified, generalizations:

The creation of photocopied coursepacks of lengthy excerpts from books for colleges and university courses is not fair use when undertaken by commercial photocopy shops.

A library may use fair use to make photocopies of articles from journals for delivery to requesting parties not present at the library in the name of interlibrary loan, subject to practical limits on the frequency of requests.

One publication may include lengthy excerpts from an earlier publication if the first work is out of print and the second work is seeking to make critical commentary of it. Even short excerpts may not be allowed if the original work is not yet published.

A school system may not make, and retain for long periods of time, reproductions of educational films and videotapes for use by students.

A publication may include a fact-based chart or graph from another work if the use is part of an educational publication.

In addition to the broad and flexible generalities of fair use, the United States Copyright Act includes several additional provisions of importance to library functions:

Section 108 of the U.S. Copyright Act allows most libraries to make single copies of works for study by patrons or for preservation of deteriorating or damaged works. This statute also includes a provision allowing libraries to make copies of materials for sharing in the name of interlibrary loans. Although the law may be most often applied to the making of photocopies of print materials, it is also applicable to many other media, including audiovisual and digital works.

Section 109 allows nonprofit academic libraries to engage in the renting and lending of all types of materials, including software.

Section 110 allows displays and performances of all types of works in the face-to-face classroom setting. This section also allows displays of works and performances of some types of works in the context of distance learning. The technological innovations in digital libraries are an important support to the growing demands for distance learning by our institutions of higher education. This statutory provision will prove to be of enormous importance in the success of digital libraries in support of educational programs. This statute will also eventually come under enormous criticism as users begin to discover both its complexity and its severe, arbitrary, and technologically naïve limitations.

Section 121 is a new provision that allows certain institutions to make copies of materials in order to meet the needs of persons with visual impairments who are unable to see or read books, audiovisual works, and other materials.

Overall, these provisions of the U.S. copyright law indicate not only that important rights of use are embodied in the law outside the generalities of fair use, but also that the scope of the rights of use are subject to review and amendment by congressional action. Just as these provisions have been added and changed through the years since the original passage of the 1976 Copyright Act, we can be certain that other changes will be forthcoming as the conflict between copyright law and the implementation of technology for digital library service continue to grow.

IV. The Future of Fair Use.

The unsettled nature of fair use and the lack of judicial rulings to clarify its meaning for common library and education needs gave rise to demands at the time of passage of the 1976 Copyright Act for the creation of guidelines that would purport to interpret and apply fair use. Four sets of guidelines emerged in the ensuing few years.

The earliest set was the so-called "Classroom Guidelines" which, in meticulous and exacting terms, defined the amount of material that an instructor may photocopy for distribution to students in his or her class. Another set of early guidelines detailed the amount of printed and recorded music that an instructor could reproduce for instructional purposes. A few years after passage of the 1976 Act came negotiated guidelines for the use of videotapes recorded from television broadcasts and later used in the classroom. The fourth set of early guidelines detailed the limits for making photocopies of journal articles for delivery in the context of interlibrary loan services pursuant to provisions of Section 108 of the Copyright Act. The ILL guidelines are known as the "CONTU Guidelines," having been created and issued by a group known as CONTU, the Commission on New Technological Uses of Copyrighted Works. The other three guidelines, by contrast, were the result of negotiations among educators, librarians, publishers, authors, and other private interested parties.

In the many years since the development of those guidelines, they have been the subject of much debate about their appropriateness and feasibility. The ILL guidelines—the "CONTU Guidelines"—have been the subject of a series of fairly good examinations about their practical effect at libraries. The Classroom Guidelines have been referenced in a few court cases, but they have never been endorsed by a court nor read into the law. In fact, at least one court decision drew one significant element of the Classroom Guidelines into serious question. Moreover, the Classroom Guidelines especially have been the subject of rigorous and critical attack for their unrealistic limits and their questionable relationship to an honest interpretation of fair-use law.

Despite the shortcomings of guidelines from the past, the pressure by some parties for new guidelines to address digital issues has given rise to an ongoing effort known as the Conference on Fair Use, or "Confu." Confu is, like the negotiations of the past, a gathering of private parties with an interest in the application of fair use and the outcome of any decision about guidelines. The numerous parties engaged in the Confu negotiations include representation from the many copyright industries as well as the major organizations representing education and libraries. Following nearly two and a half years of negotiation and debate, an Interim Report issued in December 1996 included proposed fair-use guidelines for three broad areas: the creation of digitized visual images for instructional purposes; the development of multimedia projects for education; and the transmission of works in distance education. The delicate and hazardous nature of the subject matter meant that the Confu participants were unable to reach any consensus with respect to two of the most important areas that it addressed: the digital transmission

of materials in the name of interlibrary loan, and the creation of electronic reserve systems embodying selected readings for educational purposes.

The December 1996 report was an invitation to interested parties to indicate whether they were prepared to support or not support the proposed guidelines. As of this writing, one trend was unquestionably clear. Most major national associations representing educational institutions and libraries were opposing all three of the proposed guidelines. Some library and education groups were supporting the distance learning guidelines. Some of the smaller or more specialized education associations were supporting the multimedia guidelines. The commercial publishing groups were generally supporting the multimedia guidelines, but had taken no position as yet with respect to the other two. Only two conclusions seem safe at this time. First, no strong consensus is emerging around any interpretation of fair use for its application to digital media. Second, the major education and library associations are rejecting these particular guidelines.

Yet, one thesis of this paper is that fair use is crucial to the growth of digital libraries. Fair use is also vital to the successful licensing of materials under terms that can help avoid the problems associated with an unsettled fair-use law. The opposition by the major library and education groups to the proposed fair-use guidelines evidences one of the peculiar ironies of fair use under American law. Its uncertain nature may be unsettling, but its lack of definition is in fact a source of the law's strength and importance. The uncertainty about fair use may in fact be crucial for the pursuit of experimentation with digital material in the context of library services. The lack of specific definition of fair use means that proponents of digital libraries are free to test the law's application and meaning and to experiment with diverse interpretations in order to find definitions that best serve the advancement of technology and library services, while also finding acceptability in the evolving relationship between libraries, their users, and the providers of protected content.

V. The Value and Limits of Licensing.

In light of the tenuous nature of fair use and the paucity of relevant cases, and given the increasingly contractual nature of the relationship between libraries and vendors of information resources, suppliers and users of a great deal of materials within the context of digital libraries are turning to agreements or licenses to define the terms of use. Yet the effort to define terms of use of protected materials by license has moved attention back in a full circle to the foundation of copyright and fair use. In fact, an understanding of legal rights of use under copyright law is generally the most reliable and most rational starting place for the negotiation of terms to include in licenses. The license can in turn be a crucial and important means for defining the terms of use, particularly if fair use is of uncertain scope or applicability. Nevertheless, licensing has been of only limited success as a means for defining the relationship between copyright owner and the user of materials accessible in a digital library.

One fundamental barrier to the establishment of widespread licensing has been the proliferation of diverse license terms. Under American copyright law each copyright owner is entitled to make the first salvo in defining license terms. Therefore, each copyright owner is free to state and stand by distinct terms that may bear little relationship to the licensing terms pursued by other copyright proprietors.

The United States has relatively little capacity for collective licensing of copyrighted works for two reasons. First, the United States has a tradition of independent property ownership and management, with each property owner free to declare his or her terms of control. Second, the United States also has

a reasonably effective body of anti-trust law which forbids competing parties from agreeing to the terms, conditions, or prices on which they will do business in the same marketplace. Consequently, copyright owners may not agree with one another to license their software, text, or other materials on similar terms or at similar prices.

For the licensing of photocopy and some digital reproduction rights of text, the United States does have the Copyright Clearance Center (CCC), our equivalent of the various "reproduction rights organizations" established in many countries around the world. The CCC does act as the collective licensing agent with respect to as many as two million different publications from many different publishers. Although the CCC may function as a collective agent in order to ease the process of identifying a party that may grant rights and state fees, the CCC is not allowed to establish or even discuss general aspects of the terms or prices with its member copyright owners. Any effort to facilitate consistency of pricing or terms could easily be construed as a violation of federal anti-trust laws.

By contrast, the United States does have several collective licensing agents for performance rights of music. Two of those major organizations are Broadcast Music, Inc. (BMI) and the American Society of Composers, Authors and Publishers (ASCAP). ASCAP and BMI do act as licensing agents on behalf of numerous composers of music, and they are able to establish relatively consistent terms and prices for the licensing. When these organizations first engaged in such licensing in the 1930s, they were promptly charged with antitrust violations. They eventually settled those cases by agreeing to oversight by the court in order to ascertain that their uniform licensing terms would not inhibit competition for the effective licensing of musical compositions in the marketplace. While such court oversight is a possibility for uniform management of licensing of print and digital materials through the CCC, the Copyright Clearance Center would undoubtedly not want to pursue such action for many reasons. Among those reasons is the extraordinary expense of any litigation with no certainty of the outcome.

Thus, while large-scale collective licensing may simplify and in fact greatly encourage the creation of digital libraries, collective licensing is not a likely possibility in the near future under American law. The creators of digital libraries must therefore turn once again to the construct of copyright law in order to identify the opportunities that may be allowed under fair use and other statutorily established rights of use.

VI. The Survival of Digital Libraries and the Harmonization of Copyright Law.

A major force on American copyright law has been the quest for harmonization—the urge to revise and recast American law in order to achieve a greater degree of consistency with the copyright laws of other countries where the United States may conduct substantial business. Consistency of the law is an ideal manifest in many ways in many areas of the law. Consistency allows for greater predictability and for more uniform decision-making as one does business in multiple jurisdictions. Nevertheless, the pursuit of harmonization almost always involves a select harmonization. Rarely does a state forfeit all of its distinctive legal attributes in order to adopt a framework provided by another nation just for the purpose of consistency. Lawmakers inevitably make decisions to accept certain elements of available law and to avoid others.

The march of harmonization and its influence on American law is nevertheless clear in many respects. The most significant recent change in American law is a direct result of harmonization and

the decision by the United States to join the Berne Convention. This change was the elimination of the so-called formalities for securing copyright. As described earlier in this paper, until recent years the United States required that published works be registered and that they include a copyright notice in order to secure copyright protection. Absent those formalities, the creator of a new work risked losing all protection and placing the work in the public domain. In gradual steps, American law dropped both of those formalities, until in 1989 the law completed the process by dropping the formalities entirely in order to comply with requirements of joining the Berne Convention.

Many other Berne Convention members from around the world, however, are sharply critical of the United States because, in our own reluctance to change a long-standing traditional doctrine too radically, our law continues to encourage registration and copyright notices. While one may still own the copyright to a work that fully lacks the formalities, the formalities do provide important practical and legal benefits. One must register a work before filing a lawsuit at all, and if the work was registered before the infringement took place, a copyright owner has important additional remedies for successful infringement litigation, notably the right to recover statutory damages in lieu of actual damages and the ability to ask the court for reimbursement of attorneys fees. As a practical matter, without those two financial remedies a lawsuit may be far more costly to pursue than it may be worth. One may own a copyright in the United States, but without registration the copyright may not be worth enforcing.

Another major change in the name of harmonization was the change of the term of protection in the United States from an initial term of twenty-eight years of protection followed by a renewal term of an additional twenty-eight years for published and registered works. The term of protection for most works in the United States is today the same as the term available in most other countries around the world: the life of the author plus fifty years. Such a duration formula reflects the steady transition from copyright as a "property claim" to copyright as a personal, perhaps natural, right.

Harmonization is also shaping American law in ways that are also important, but less prominent. Because of the complex nature of a constitutional foundation for American copyright law, bootleg sound recordings of performances lacked any copyright protection, leaving composers and performers with weak legal recourse against persons who tape musical performances and sell copies. Today, bootleg recordings are unlawful in the U.S., but not as a copyright violation. That law is enacted by Congress as an exercise of its more general powers to regulate commerce.

Harmonization efforts continue, and they continue to challenge the social implications of copyright protection and the debate in Congress over possible statutory provisions. Some countries around the world have extended the term of copyright protection from life of the author plus fifty years to life of the author plus seventy years. Bills in Congress would revise American law to provide the longer term of protection. Fortunately, many members of the public and of Congress have recognized that extending the term of copyright would have severely detrimental consequences for the advancement of knowledge and learning. Term extension may be promoted in the name of harmonizing American law with the laws of other countries, but it is little more than an aggressive reach for more revenue by a few copyright owners, while imposing twenty additional years of severe restrictions on an enormous range of materials that ought not to be protected at all.

The power of the argument of harmonization carries enormous intuitive logic and superficial appeal, such that it has been used by American interests to urge revisions of international treaties in order that the United States may in turn be compelled to change its laws accordingly. For example, a basic tenet of American copyright law is that no copyright protection applies to facts and data. Some

major producers and distributors of data resources sought to have Congress enact law, separate from copyright law, that would provide a *sui generis* set of statutes for database protection beyond what copyright may be able to afford. Advocates of that protection were not successful in urging Congress to act. Faced with that defeat, they carried the proposal to the World Intellectual Property Organization in December 1996, seeking to have database protection included in international treaties to which the United States was a party. The expectation was that if database protection could be included as a treaty requirement, Congress would be forced to enact the corresponding law in the name of harmonization even though Congress had balked at enacting the law on its merits. The good news is that the nations of the world participating in the WIPO negotiations in late 1996 rejected the effort to include database protection in the multi-national treaties.

VII. Implications for Digital Libraries and the Public.

Digital libraries exist to provide information to meet the needs of information users. Copyright law seeks to balance the encouragement of the creation and the dissemination of information resources with the need to provide public rights to access and utilize those resources. Yet, many of the trends identify in recent years in the context of fair use and the harmonization of copyright law shows a dominate trend toward additional restrictions on the ability of digital libraries to serve their public needs. Narrow interests have sought to severely constrain the full range of materials in the name of copyright term extension and database protection. Strong negotiating parties with influence and organization beyond that of library and education groups have sought to inhibit and curtail the application of fair use to the digital environment. These trends are a crucial blow to the value of technology and the creativity that has proved valuable to the economies of numerous countries. Ultimately, however, when the law seeks to constrain the technology and services of digital libraries and the advancement of library services and educational opportunities, the public suffers through the diminution of the growth of knowledge and the availability of information resources.

VIII. Implications for the Future of Copyright.

These trends also reveal some crucial redefinitions of the fundamental character of American Copyright Law. First, the trends evidence a shifting of the influence of key stakeholders from the dominance of the public interest to the dominance of a few powerful and well-placed commercial interest. Second, at least under American law these trends show a shift away from a law founded on the authority of Congress granted by the Copyright Clause of the U.S. Constitution. This shift is of enormous importance because the Copyright Clause as described above does not merely empower Congress to make copyright law, but it empowers Congress to make that law pursuant to the social objective of promoting the progress of knowledge and learning. Congressional power to protect a broadened array of intellectual property works is slowly becoming rooted in a more general provision of the Constitution known as the "Commerce Clause," or yet another provision known as the "Treaty Clause." Those sources of congressional powers include no standards to govern the social implications of information. Ultimately, a broad implication for copyright is a general shift away from the social goal of promoting the progress of knowledge and learning to an unbalanced domination of the goal of commercial protection, much to the detriment to the importance of the public interest and the success of digital libraries.

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a. U.S. CONST. art. I, Sec. 8, cl. 8 [Copyright Clause of the United States Constitution].

The Clause giving Congress the power to make laws concerning Copyright. Goal of Copyright to promote the progress of the useful arts and sciences.

b. U.S. CONST. art. I, Sec. 8, cl. 3 [Commerce Clause of the United States Constitution].

The Clause giving Congress the power to regulate commerce in and among the states.

c. U.S. CONST. art. I, Sec. 10 [Treaty Clause of the United States Constitution].

The Clause giving Congress an implied power to make treaties.

d. U.S. Copyright Act, 17 U.S.C. Sec. 101 et seq. [U.S. Copyright Act, Title 17 of the United States Annotated, section 101 and following].

The provisions of the United States establishing copyright law and defining the rights and privileges with respect to protected works.

e. 12. H.R. Rep. No. 1476, 94th Cong., 2d. Sess. 68 (1976) [House Committee Report: Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions].

Guidelines for classroom distribution and use of photocopied materials, recorded and printed music, and mention of forthcoming guidelines regarding videotapes of television broadcasts.

II. Cases

a. Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994) [decision from the Supreme Court of the United States].

Decision concerning fair use and parodies in the context of the song "Oh, Pretty Woman."

b. Basic Books, Inc. v. Kinko's Graphics Corporation, 758 F.Supp. 1522 (S.D.N.Y. 1991) [United States District Court, Southern District of New York].

Decision determining that it is not fair use when a commercial photocopy shop makes and sells student coursepacks that include large excerpts from books.

c. Maxtone-Graham v. Burtchaell, 805 F.2d 1253 (2nd Cir.. 1986) [United States Court of Appeals, Second Circuit].

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d. Encyclopaedia Britannica Educational Corp. v. Crooks, 447 F.Supp. 243 (W.D.N.Y. 1978), 542 F.Supp. 1156 (W.D.N.Y. 1982), 558 F.Supp. 1247 (W.D.N.Y. 1983) [United States District Court, Western District of New York].

Decision concluding that school systems may not make and maintain reproductions for educational use over long periods of time.

e. Rubin v. Brooks/Cole Publishing Co., 836 F.Supp. 909 (D.Mass. 1993) [United States District Court, District of Massachusetts].

Decision allowing fact-based charts, etc. in an educational publication. f. Feist Publications, Inc. v. Rural Telephone Service Company, Inc., 111 S.Ct. 1282 (1991) [Supreme Court of the United States].

Decision stating that there is no protection for facts and data.

III. Treaties

a. Berne Convention for the Protection of Literary and Artistic Works (1886) [available at http://www.wipo.org/eng/general/copyrght/bern.htm].

Multinational organization and agreement for the establishment of compatible copyright law among member nations. The resulting treaties have affected United States law in several respects, including the elimination of formalities for copyright protection.

IV. Organizations

a. Final Report of the National Commission on New Technological Uses of Copyrighted Works (Washington, D.C.: Library of Congress, 1979), 52-55.

Guidelines for making photocopies for interlibrary loans in accordance with Sec. 108 of the Copyright Act.

b. The Conference on Fair Use: An Interim Report to the Commissioner (1996) [Confu; report available at http://www.uspto.gov/web/offices/olia/confu/].

Proposes fair-use guidelines for digital visual images, distance learning transmissions, and multimedia projects in the educational setting. These guidelines have been heavily criticized, particularly by the educational community.

c. Copyright Clearance Center [CCC; information available at http://www.brobeck.com/top/ccc.htm].

The equivalent in the United States to the "reproduction rights organizations" existing in many countries. This group focuses mostly on the licensing of photocopy and digital reproduction rights of textual materials.

d. American Society of Composers, Authors and Publishers [ASCAP; information available at http://www.ascap.com/].

A collective licensing agency for performance rights of music.

e. Broadcast Music, Inc. [BMI; information available at http://bmi.com/].

A collective licensing agency for performance rights of music.

f. World Intellectual Property Organization (1978) [WIPO; information available at http://www.wipo.org/].

An organization which administers the Berne Convention and several other international treaties concerning intellectual property.