

Editorial

Often we come across online content with a copyright statement that we may freely use that content for non-commercial purposes without obtaining any permissions or paying any fees. Most of us would interpret such a general statement as allowing us to reproduce the content for private study. However, would that statement apply to research undertaken by a consultant being paid \$100 per hour? In other words, how does one draw the line between commercial and non-commercial purposes?

A study was published by Creative Commons (“CC”) on September 14, 2009 to explore the understandings of the terms “commercial use” and “non-commercial use”. CC is a non-profit organization that provides creators free “short” licenses to quickly and easily license their online content. The Study, *Defining “Noncommercial”: A Study of How the Online Population Understands “Noncommercial Use”*, is at: http://wiki.creativecommons.org/Defining_Noncommercial.

The study has two components; the first is an empirical study to determine U.S. Internet users’ understanding of the terms when used in the context of the wide variety of copyright-protected works and content made available on the Internet. The second part is an informal study of worldwide Internet users. The result of the study indicates that there is more uncertainty than clarity around whether specific uses of online content are commercial or non-commercial.

Results: U.S. Online Creators and Users

From the study of U.S. users, it appears that creators and users have similar views of non-commercial use and that overall, online U.S. creators and users are more alike than different in their understanding of non-commercial use.

“Both creators and users generally consider uses that earn users money or involve online advertising to be commercial, while uses by organizations, by individuals, or for charitable purposes are less commercial but not decidedly non-commercial. Similarly, uses by for-profit companies are typically considered more commercial.”



There was a large majority, over 75% of both creators and users, who agree that something is “definitely” a commercial use if some money is made from the use of the work. The majority considered the sale of a copy of a work, or revenue from online advertising around or in connection with the work, as a commercial use.

The single largest difference between creators and users was when looking at uses by individuals. Both groups rate a large number of such uses as non-commercial. However, users are more likely than creators to rate personal or private uses as non-commercial. →

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Results: Worldwide Online Creators and Users

The result of the informal study of worldwide online individuals indicates that they have a more expansive view of what can be a non-commercial use compared to the U.S. online population. In particular, global creators and users consider uses in connection with online advertising less commercial than the U.S. online population, and are much less likely to think that use in connection with online advertising from which the user makes money is “definitely” commercial.

As well, less global users consider that it is absolutely a commercial use if a work is used on a Web site that is supported by advertising than compared with the U.S. online population.

A similarity among the global and U.S. online populations is that both rate personal and private use the least commercial of all scenarios studied. However, unlike the U.S. online population, global creators and users are equally certain that personal or private use is “definitely” non-commercial.

Moving Forward

From the Study, there appears to be a desire among creators and users to simplify the distinction between commercial and non-commercial use around the idea that non-commercial is a use where no money is made. However, complex situations require a more refined evaluation of whether a use should be classified as commercial.

As well, the empirical findings suggest that the vast majority of both U.S. creators and users do not know the basics of copyright law, adding to other studies that indicate the need for more copyright law and fair use education.

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COPYRIGHT PROTECTION OF ARCHITECTURAL WORKS

By Meaghan Hemmings Kent

At its most basic, copyright exists for works that are: (1) original; and (2) fixed in a tangible medium of expression. “Original” requires “independent creation” - not necessarily novelty or uniqueness - while “fixed” requires that the work “is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” (17 U.S.C. § 101.) While this basic definition is accurate for architectural works, each of these terms has developed a slightly more refined and complicated meaning under the U.S. *Copyright Act* and the established case law for architectural works. This article discusses how these terms have evolved in the architectural work context.

Definition of “Architectural Work”

The U.S. *Copyright Act* specifically defines an “architectural work as “the design of a building as embodied in *any tangible medium of expression, including in a building, architectural plans, or drawings*. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, *but does not include individual standard features*.” (17 U.S.C. § 101, emphasis added.) The addition of coverage for a building itself was made in 1990 with the passage of the U.S. *Architectural Works Copyright Protection Act* (“*Architectural Works Act*”) which became effective December 1, 1990.

While this article focuses on copyright protection of architectural works in the United States, it is worth noting that many other countries provide protection for “architectural works.” In fact, the *Architectural Works Act* was passed in part to adhere to the *Berne Convention*, which includes works of architecture within the definition of protected works. (*Berne Convention for the Protection of Literary and Artistic Works*, Article 2. See: www.wipo.org.) Presumably, most Berne member countries will have adopted the inclusion of architectural work as a protected work. For instance, the Canadian *Copyright Act* states that artistic works are protectable

subject matter, specifically includes architectural works within the definition of artistic work, and defines “architectural work” as “any building or structure or any model of a building or structure” (R.S., c. C-42, s. 2). The Canadian *Copyright Act* even explains that “for the purposes of this Act, ‘publication’ means ... (ii) the construction of an architectural work.” (R.S., c. C-42, s. 2.2).

Copyright in Buildings and Drawings

You will note that for architectural works, the term “fixed” has been further defined in the U.S. *Copyright Act* as “any tangible medium of expression, including in a building, architectural plans, or drawings....” Thus, according to the statute, a copyright exists in a building, an architectural plan or in a drawing.

Prior to the passage of the *Architectural Works Act*, architectural works were protected as graphic or pictorial works only and copyright protection was only afforded to technical drawings and specifications, and not the buildings themselves. This meant that there was arguably no copyright infringement if a building was copied if the drawings and specifications were not copied; though derivative works arguments could exist.

Since the passage of the *Architectural Works Act*, there are now two distinct copyrights for an architectural work. There is one for the actual “architectural work”: that is, the design embodied in the drawings or building. There is also one for the “graphic” or “pictorial” works: that is, the technical drawings or plans themselves. Now, therefore, copying a building constructed or otherwise published after December 1, 1990 can more easily be shown to be a copyright infringement, even if the plans were not copied.

Registration

Since there are now two distinct copyrights, the owner of the copyrights register their work not only as plans or technical drawings but also as architectural works.



The U.S. Copyright Office explains in its Circular on architectural works that “A claim to copyright in an architectural work is distinct from a claim in technical drawings of the work. If registration is sought for both an architectural work and technical drawings of the work, separate applications and fees must be submitted.” See: www.copyright.gov/circs/circ41.pdf. Note that copyright registration is not mandatory in the U.S. or in any Berne member countries in order to have copyright protection, however the copyright owner may be entitled to certain advantages when a work is registered.

Limited Protection

Protection in an architectural work extends to the overall form as well as to the arrangement and composition of spaces and elements in the design. Protection does not, however, include individual standard features or design elements that are functionally required. Individual standard features include such things as windows, doors and other staple building components.

According to the legislative history, functionally determined design elements are not protected. Congress explained that for copyrightability, a “two-step analysis is envisioned. First an architectural work should be examined to determine whether there are original design elements present, including overall shape and interior architecture. If such design elements are present, a second step is reasoned to examine whether the design elements are functionally required. If the design elements are not functionally required, the work is protectable without regard to physical or conceptual separability.” (H.R. Rep. Co. 101-735, 101st Congress, 2d Session 20-21 (1990).)

Indeed, defendants in architectural plan infringement cases often argue that the functional requirements, not any original design, determine the layout of a home. The argument that there are only so many ways to draw a home in a particular shape can be powerful, and has been successful. In *Howard v. Sterchi* (974 F.2d 1272, 1276 (11th Cir. 1992)), the judge stated, “The variety of ways a two-story rectangle can be divided into three bedrooms, two baths, a kitchen, a great room or living room, closets, porches, etc., is finite.”

This argument is particularly strong when lot limitations, local regulations, and customer desires are considered. For instance, the lot size and shape affects the layout. Further, local regulations may include requirement that all bedrooms be on exterior walls, or other such limitations. Beyond basic regulations, functional and customer need factors further limit the design. For example, the functional element or idea of placing administrative offices near the front of the building close to the road to permit employee and public access is not protectable. Similarly, placing garages and service shops in the back is not protectable. (*Greenberg v. Town of Falmouth*, 2006 U.S. Dist. LEXIS 4792 (D. Ma. 2006).) Likewise, the width of the go-kart track that accommodated the cars and the inclusion of walls to keep the cars on the track, are non-protectable, functionally inspired elements. (*Fun Spot of Fla., Inc. v. Magical Midway of Cent. Fla., Ltd.*, 242 F. Supp. 2d 1183, 1198 (M.D. Fla. 2002).)

This concept of functional limitation can also fall within the merger doctrine, which holds that if a particular idea can only be expressed in a very limited number of ways, including the way that the plaintiff is attempting to claim copyright protection, that may not be protected by copyright. For instance, in the architectural plan context, if setback requirements and other local regulations dictate much of the design, the merger doctrine dictates that those similarities should not be considered in evaluating substantial similarity.

Ideas and Concepts Are Not Protected

As with all works, copyright of an architectural plan does not protect ideas or concepts. As you will recall, copyright protects against copying the *expression* of those abstract ideas or concepts. For example, one can argue that the following concepts are not protectable: the concept of a split plan with secondary bedrooms separated from the master suite, the concept of a master suite, the concept of a great room that leads to the backyard, the concept of the popular open floor plan. Their particular expression, however, if original, may be protectable. As an example, one case found that the concept of an island (a peninsula-shaped bar to bisect a seating area which has booths on one side and stool seating on the other) was held not copyrightable because at that “level of generality,” it is “nothing more than a concept, as distinct from an original form of expression.” (*Ale House Management, Inc. v. Raleigh Ale House, Inc.*, 205 F.3d 137, 143 (4th Cir. 2000).)

(Continued on Page 7, right column)

CANADIAN PHOTOCOPYING TARIFF DECISION

By Wanda Noel and Aidan O'Neill

On June 26, 2009, the Copyright Board of Canada released its long awaited decision on a photocopying tariff for elementary and secondary schools for the years 2005 to 2009. The tariff was filed by Access Copyright, a Canadian copyright collective representing authors and publishers of published print material. This tariff replaced a previously negotiated pan-Canadian license, which expired on August 31, 2004. This license had been extended by agreement until the Copyright Board rendered its decision on the tariff. Note there is no Canadian equivalent to the multiple copying for educational uses found in the U.S. fair use provision, and all schools in Canada from kindergarten to grade 12 pay for the reproduction of print materials for teaching purposes, subject to some minor exceptions.

Decisions by the Copyright Board are final and binding on the parties involved. Nonetheless, the parties can apply for judicial review to the Federal Court of Appeal if they are of the view that the Board committed any errors of law or exceeded its statutory jurisdiction. In this regard, an application for judicial review was filed by representatives of elementary and secondary schools on July 27, 2009.

The Mandate of the Copyright Board

The Copyright Board (www.cb-cda.gc.ca/) is empowered under the Canadian *Copyright Act* to establish royalties for various uses of copyright-protected material when copyright is administered by a copyright "collective." A collective is an organization that administers rights provided in the *Copyright Act* on behalf of rights holders that are affiliated with the collective. Access Copyright, the collective in this case, came into existence in response to the increasing use of photocopiers that reproduce published print material of authors and publishers. (See Access Copyright at: www.accesscopyright.ca.)

Collectives exist around the world managing various rights and creator/owner groups. Collectives have existed in Canada since 1925, initially for the performing rights in musical works. The Copyright Board's authority to certify tariffs and set royalty rates ensures that the interests of users are protected when a collective represents a large number of rights holders. The role of the Copyright Board is two-fold: to serve the public interest by supervising collectives that could exercise a monopoly over the use of various types of copyright-protected material; and to ensure that rights holders are fairly compensated for the use of their works. The Board's statutory mandate is to establish tariffs that are fair and equitable to the interests of both copyright owners and users.

The procedure for certifying tariffs is set out in the Canadian *Copyright Act*. A collective must file a statement of proposed royalties which the Copyright Board publishes in the *Canada Gazette*. The user groups targeted by the tariff may object to the proposal of the collective within sixty days of the tariff's publication. The collective and any objectors to the tariff then have an opportunity to argue their case at a hearing held before the Copyright Board. After considering the evidence submitted by the participants, the Board certifies the tariff it finds to be fair and equitable, and issues a written decision explaining the reasons for its conclusions.

The Tariff

The original tariff application filed by Access Copyright requested that the Copyright Board set an annual rate of \$12 per full-time student equivalent ("FTE") for photocopying in elementary and secondary schools. During the hearings on this application, Access Copyright submitted evidence which it claimed supported an annual rate of \$8.92 per FTE. The Copyright Board's decision set the rate at \$5.16 per FTE, with a 10% discount for the first four years, resulting in a tariff of \$4.64 per FTE for the years 2005 to 2008. (These amounts are in Canadian currency.)



The Copyright Board based the tariff on volume, defined as the number of pages photocopied, and the estimated value of each page. Future tariff rates will also likely be set based on increases or decreases in the volume of photocopying. The rate was calculated by:

1. Determining the volume of compensable copying;
2. Multiplying the number of copies (volume) by the estimated value of each page of photocopied material; and
3. Dividing by the number of students enrolled in elementary and secondary schools in the 2005 2006 school year.

Fair Dealing

The Copyright Board decision in this proceeding is important because it interprets and applies the fair dealing provision in the Canadian *Copyright Act* in elementary and secondary schools. “Fair dealing” in section 29 of the *Act* is a provision that allows dealings with copyright-protected materials for the purposes of research, private study, criticism, review, and news reporting, without permission or payment of copyright royalties. Photocopies made for these purposes should be excluded from the volume of copies used to calculate the tariff rate. (The *Act* is at: <http://laws.justice.gc.ca/en/C-42/index.html>.)

During the hearings before the Copyright Board, the Objectors argued that fair dealing should apply to numerous activities that occur within a school setting. The rationale for this argument was based on the 2004 Supreme Court of Canada decision in the landmark case of *CCH Canadian Ltd. v. Law Society of Upper Canada* (“CCH”), in which the Supreme Court ordered lower courts to give fair dealing a broad and liberal interpretation.

A consortium representing elementary and secondary schools – the Objectors at the Copyright Board’s hearing – has applied for judicial review of some aspects of the Copyright Board’s decision on this question of fair dealing. The Objectors believe that the Copyright Board did not interpret fair dealing in the broad and liberal manner described by the Supreme Court of Canada in the CCH case. In its June 26, 2009, decision, the Copyright Board ruled in a manner that, in the view of the Objectors, narrowly and restrictively interprets the right of users to deal fairly with copyright-protected material.

Tests and Examinations

The Objectors have also requested judicial review of the Copyright Board’s interpretation of the provision in the *Copyright Act* permitting educational institutions to copy a work for inclusion in a test or examination, except where the work is “commercially available in a medium that is appropriate for the purpose” of a test or examination.

The Copyright Board’s decision states that since almost all works included in tests or examinations consist of material that is part of Access Copyright’s repertoire and would be covered by this tariff, the material is “commercially available” and, therefore, does not qualify for this users’ right.

The Objectors disagree with the Board’s interpretation. In their view, the Board’s interpretation fails to give any meaning to the words “in a medium that is appropriate for the purpose.” These words are arguably intended to remove only tests and examinations that are prepared by commercial publishers and sold to schools. In other words, according to the Objectors, the wording should not apply to copyright-protected material used in tests and examinations that are prepared by teachers. The Board’s interpretation renders the exception essentially meaningless and results in a situation in which educational institutions are obliged to take up the tariff in order to continue the practise of including excerpts from protected works in tests and examinations. As a result, the choice to take up the tariff or not to is all but eliminated.

Judicial Review

The application of fair dealing to educational activities, and the interpretation of the provision on tests and examinations in the Canadian *Copyright Act*, has significant monetary implications, and perhaps more importantly, long term practical consequences for the activities students and teachers may engage in without having to ask for permission or paying copyright royalties. For these important public policy reasons, the Objectors have asked the Federal Court of Appeal to review the Board’s decision on these matters. If successful, the result will be a reduction in the annual tariff rate and the establishment of a broader and more liberal interpretation of fair dealing and the provision on tests and examinations.



It is impossible to predict, of course, how the Federal Court of Appeal will rule on the application for judicial review. The Objectors must successfully argue that the Copyright Board was incorrect in its legal analysis of these issues.

Although the Copyright Board is not owed any deference by the Federal Court of Appeal on matters of law, its reasoning may, on a *prima facie* basis, be considered persuasive by the Court.

This judicial review application will be closely watched by all those who have an interest in the scope of the Canadian *Copyright Act* and in particular on the scope of fair dealing and exceptions for educational institutions and other user groups. The final outcome will have important implications for all copyright owners and users in Canada. ■

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www.licensingdigitalcontent.blogspot.com

(Continued from Page 4)

Similarly, standard configurations of spaces are generally not afforded copyright protection because they are arguably ideas or concepts, standard elements, or functionally required. Nor do common geometric shapes that are insufficiently original qualify for copyright protection. For instance, in a architectural plan copyright case in Massachusetts, the court held that forty-five degree angled walls in a hallway were basic geometric shapes that were not copyrightable. (*Greenberg v. Town of Falmouth*, 2006 U.S. Dist. LEXIS 4792, * 9 (D. Ma. 2006).)

The Protection of Architectural Plans

Even with the limitations discussed above, architectural plans *are* copyright protected and the protection goes to the overall form as well as to the arrangement and composition of spaces and elements in the design. (*T-Peg, Inc. v. Vermont Timber Works, Inc.*, 2009 WL 839522 (D.N.H. 2009).) Original architectural works that have been fixed in a tangible means of expression – be in on paper, in CAD, or in brick – are protected by copyright. ■

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ONLINE USE AGREEMENTS

By John Cannan

At the bottom of most Web sites and blogs is the phrase “Terms of Service” or “Conditions of Use” in hyperlinked text. Clicking on this brings up the terms under which you agree to use the site and content therein, binding you to use restrictions, intellectual property controls, and arbitration clauses. Such contracting is perfectly legal. This article covers how these Terms of Use Agreements (“TOUAs”) evolved, and it explains how they apply when using content in blogs.

Contracting in the Digital Age

TOUAs are standard form contracts: forms with fine print “legalese,” governing the terms of transactions. They are comparable to traditional paper standard form contracts such as shipping receipts, credit card slips, and car rental agreements.

Shrinkwrap

Standard form contracts evolved into digital form when software manufacturers started using them to protect intellectual property sold through third parties. This first stage was the TOUA, or End User License Agreement (“EULA”). Also known as the “shrinkwrap” contract—the EULA is a standard form contract printed on a card that accompanies software disks—either in the box or outside of the box under its plastic wrap. The language on the card sets the terms by which the purchaser agrees to use the software. For example, the shrinkwrap TOUA might forbid copying the product and reselling it commercially. By breaking the wrap, the purchaser agrees to the TOUA.

Clickwrap

The standard form contract’s next evolutionary step occurred when software products began being downloaded from the Internet. In such transactions, there is no paper license to impose terms on users. The solution was to digitize the standard form, thus resulting in the “clickwrap” contract. When a person wishes to download a program, he is presented with a box with a TOUA. The user then

indicates if he agrees to the TOUA by clicking a “yes” or “no” button. If the user clicks “no,” use of the site or service is forbidden. After the user clicks “yes,” the user can access the program or access the online content under the terms of the TOUA.

Browsewrap

The most recent TOUA innovation is “browsewrap”. With a browsewrap agreement, the act of browsing a Web site or blog means acceptance of the TOUA. The TOUA is usually a statement placed somewhere on the site. While shrinkwrap and clickwrap have generally been upheld by courts, the final word on browsewrap is sketchy. Generally, courts enforce browsewrap TOUAs where there has been “reasonably conspicuous notice” of their existence, such as a hyperlinked phrase like “Terms of Use” on the site home page that links to the TOUA.

TOUA Terms

Why is it important to know that TOUAs exist? Paper standard form contracts are criticized because they are often one-sided, consumers rarely know of their existence, and consumers do not always understand the terms and conditions in the contracts. This has created a contractual regime that puts consumers at a disadvantage against merchants using standard forms. Clickwrap and browsewrap have brought this arguable unfairness to the computer screen.

So what *are* we agreeing to with the new generation of TOUAs? In a random review of several blog TOUAs, I noted some of them are only a few paragraphs while others are quite lengthy and even reference multiple TOUAs. The TOUA terms I reviewed were remarkably similar and, according to the literature I examined on the subject, they were the same as those found in most other Web 2.0 applications and services. Some common terms are reviewed below.

User Rights

In this article, rights refer to a privilege to perform a certain action. In most blog TOUAs, users have only one right: termination of their use of the service.



User Restrictions

Many of the blog TOUAs specify what the user may not do in relation to the associated site. Many of these restrictions are reasonable. The most common use restriction prohibits employing the site for “illegal and unlawful activities.” Other restrictions are more beneficial to the provider, such as forbidding the spread of spam or viruses or any act that would burden the site. Use of a blog for commercial purposes is generally prohibited. In most cases, the term “commercial” is not defined in the TOUAs. Many blog TOUAs also do not allow the impersonation of other users.

User Intellectual Property Rights

Most of the blog TOUAs contain a statement that users retain ownership of any content they post. This sounds acceptable, but there is another term that gives the blog provider the next best thing to ownership—a license to employ user content. The creation of this licensor/licensee relationship may have some interesting consequences as it relates to TOUA allocation of risk terms.

Allocation of Risk

The majority of blog TOUAs I reviewed had multiple provisions to abnegate most, if not all, responsibility for any problems resulting from their dealings with users—mostly warranty disclaimers. Another popular form of limiting legal risk is through indemnification clauses which protect providers from third-party claims arising from user content. A user is giving an unlimited license for any content he posts on a blog and often the user is also agreeing that he does in fact have the intellectual property rights to post the content. If the user does not have those rights and someone files a complaint for infringement, that user is obligated to step into the provider’s shoes, defend against the suit, and potentially pay any damages if the suit is lost.

Terms Governing Legal Disputes

If providers and users do find themselves in legal proceedings, the TOUA often specifies the jurisdiction where litigation will take place. Many agreements require arbitration of disputes; set the governing law and venue of legal actions (usually that of the provider’s location); and make the user responsible for the provider’s legal fees.

Now What?

Like it or not, TOUAs are a permanent concern in the Digital Era. Do users need to read the TOUA of every Web site or blog? No, but it is advisable to become familiar with TOUAs so their purpose and the general nature of terms and conditions of use of online content is understood. ■

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REVIEWS

DIGITAL

THE CATHOLIC UNIVERSITY OF AMERICA THE OFFICE OF GENERAL COUNSEL

<http://counsel.cua.edu/copyright>

The copyright section of the Catholic University of America's Web site has an impressive quantity and quality of resources available to its online visitors. The first page of the copyright section sets out current copyright information affecting educational institutions, followed by the following sections: Quick Clicks; Fedlaw, Publications, Video & Web; Tutorials; Q & As; Resources, and Forms & Checklists.

The first section includes access to Educause tutorials. Educause is a nonprofit organization concerned with the use of information technology in higher education. Many of the materials in this portion are of interest to students, such as "What is wrong with ripping." Included are items of recent interest, such as a summary of the Department of Education's NPRM on Peer-to-Peer file sharing on campus networks, and the Google settlement. Two useful educational tools that all will find helpful are the interactive "Copyright Slider" which helps determine public domain status, and the "Section 108 Spinner," which indicates when permission must be obtained to reproduce copyright-protected materials. The Fedlaw section provides handy access to important legislative resources and related case law. The Publications, Video and Web section contains a variety of resources of interest to college students and scholars, including reports available for download. ■

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PRIMARY SOURCES ON COPYRIGHT (1450-1900)

ARTS & HUMANITIES RESEARCH COUNCIL

www.copyrighthistory.org

Primary Sources on Copyright is a digital archive with documents from 1450 to 1886 and beyond. The archive—partially funded by the United Kingdom Arts & Humanities Research Council, includes materials from Renaissance Italy, France, Germany, the United States and Britain. Sources are selected, translated, transcribed, and commented on by a team of editors. Editors limited their selections to fifty core documents from Germany, France and Britain, and twenty selections from Italy and the United States. An international advisory board supervised the selection process. The governing body selected documents using the following three criteria: (1) Documents must open up alternative interpretations of copyright history; (2) Documents should illustrate interaction of copyright laws with commercial and aesthetic developments; (3) documents must evidence influences across jurisdictions. Each document in the archive is preceded by an abstract. Materials are organized and searchable by geographic region, original language, person, place, or by keyword. In addition, you can limit your selections to core documents, or view all documents in the archive.

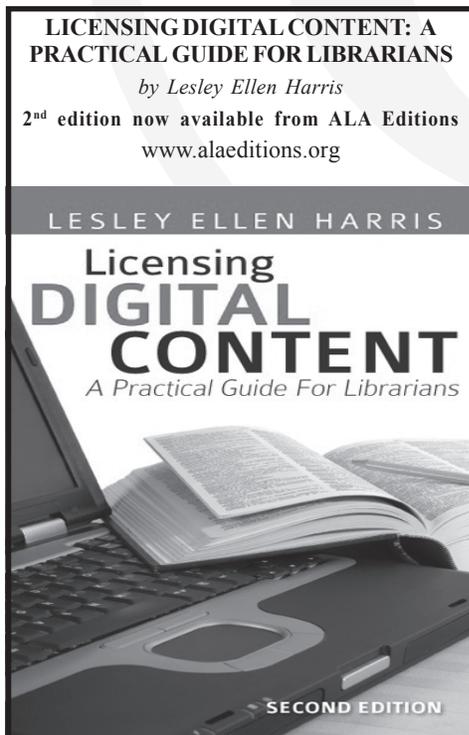
Each section of the Web site provides an interesting walk through copyright history. "John Usher's Printing Privilege," the first document in the American archive, provides a glimpse of regulation in seventeenth century Massachusetts. Older important documents appear in the European sections, giving the researcher an important resource for examining the development of copyright in the West. This Web site contains a wealth of information of both historical and legal significance, and will be of interest to scholars and legal professionals alike. ■

**SOFTWARE & INFORMATION INDUSTRY
ASSOCIATION**

DON'T COPY THAT FLOPPY 2

www.dontcopythat2.com

The Software & Information Industry Association (“SIIA”, www.siiia.net) has released a new version of its 1992 educational video, “Don’t Copy That Floppy.” The original rap artist returns in “Don’t Copy That 2,” along with a number of new characters. This new video features government agents who bash down doors and haul away copyright law violators, and the odd Kling-on or two. The presentation attempts to convey a serious message with the use of humor and rap-style music, in order to appeal to a younger audience. Though it is clear that one should not copy software, this video also emphasizes that it is wrong to profit from pirated software. A young man appearing at the end of the video who is serving prison time for violating the law, brings the point home. He echoes the words in the rest of the film about the fact that pirating software is a crime. The video is available for (legal) download from You-Tube. ■



**News Brief
CANADIAN COPYRIGHT LAW REFORM
CONSULTATIONS**

During the summer, the Canadian government has been holding a number of public consultations to establish a “wish-list” for copyright reform in Canada. This round of consultations concluded on September 13, 2009. See: <http://copyright.econsultation.ca/>.

**News Brief
REPRODUCTION OF 11 WORDS MAY BE
INFRINGEMENT**

Danske Dagblades Forening, a Danish newspaper industry body, is suing Infopaq, a Danish clippings service, over its reproduction of 11-word snippets of news for sale to clients. The European Court of Justice stated that copyright law would apply to extracts even if they contained just 11 words. However, the Court has not yet ruled in this case. The Court stated that it is up to a national court to decide first whether a newspaper article has copyright protection (though generally newspaper articles are protected by copyright.)

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COPYRIGHT QUESTIONS & ANSWERS

Question: Are U.S. government works protected by copyright?

Answer: U.S. government works are not protected by copyright. This means that a work created by a U.S. government employee for purposes of their job duties does not have copyright protection. However, the U.S. government may own copyright-protected works. For example, the U.S. government could own a protected work by obtaining an assignment of copyright from a copyright owner.

Question: Do you need permission to include images in a print museum catalogue that will be sold in a bookstore?

Answer: Yes, you should obtain permission whether or not the catalogue is being sold. The inclusion of the image is a reproduction of that work. In some circumstances, you may be able to imply permission from the circumstances but that would not be in every case.

Question: What are some steps we can take to ensure copyright compliance in our enterprise?

Answer: Some recommendations include instituting an enterprise-wide written copyright policy; providing on-going education about copyright and licensing issues; undertaking periodic audits on computer software licenses; and posting copyright warnings/notices near photocopiers, computers and printers.

Email your questions to: editor@copyrightlaws.com or post them at: www.copyrightanswers.blogspot.com.



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