THE ©OPYRIGHT & NEW MEDIA LAW
n e w s l e t t e r

Editorial

In the late 1980's I worked with the government on the receiving end of lobbyists, preparing discussion papers and background research on copyright reform issues, and participating in meetings between copyright stakeholders. This was the pre-Internet days when the interests of copyright owners were comparatively more clearly divided. Authors were creators and not publishers, publishers were distributors and not bookstores, and libraries were consumers of copyright-protected materials and not gatekeepers to our vast world of content. At the time, garage bands were in garages and not on the Internet, and Google did not exist. From a policy making perspective, what we civil servants welcomed from the public was real life examples. We wanted to hear how copyright-protected works were used and by whom. We also wanted to hear when the law did not make sense because it prohibited distribution of, and access to, content either because of lack of speed, cost of access, or the inability to reach copyright holders to obtain permissions to use their works.

The role of lobbyists was to ensure that we stuck to the balance that copyright was aimed to protect. The lobbyists and interest groups were invited to formal and informal meetings and round table discussions. Of course lobbyists also took the initiative to contact us by phone and send us letters and documents providing their perspective and arguing for further rights or exceptions in their particular favor.

Fast forward to 2009 where the lines between authors, publishers, and distributors of content are blurred, and where Google is building the world's greatest library while being sued for alleged copyright infringement.

One thing that has not changed is the need for all of us to voice our opinions about copyright – because copyright protects most of the content we use in almost in every moment of our lives – whether for business, education or entertainment. Those responsible for copyright policy and legislative reform need to have the full picture of how content is created, distributed and used.

Large trade associations in the U.S. have always been vocal in the copyright reform arena, including the Motion Picture Association of America, American Association of Publishers and the Software and Information Industry Association, on the owner side. And various library associations (such as the American Library Association) and the Electronic Frontier Association have been vocal about the rights of the public with respect to using copyright-protected content. However, individuals have a large role in copyright reform. Think about the many things you can do to make a difference:

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- join professional and trade associations that actively lobby for copyright reform (get active on their copyright committees)
- discuss copyright issues with friends and family (teenagers are content kings – hear their perspective and tell them yours)
- write a letter to your elected officials
- discuss with your children's teachers whether the one piece of computer software purchased for a school computer may be used on more than one computer
- become as knowledgeable as possible about copyright law
- stay aware of current developments in copyright law and copyright reform domestically and internationally
- stay balanced in your own approach. Even though you may be a creator, all of us are consumers of copyright-protected materials. We need to look at copyright issues from all perspectives, not just from the perspective of our day jobs. ■

Lesley Ellen Harris
Editor

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COPYRIGHT RULES OF THE ROAD FOR BLOGGERS

By Ronald D. Coleman

Most blog content, it seems fair to say, is original (at least in copyright parlance). Bloggers fundamentally publish online because they have original things to say. But many bloggers, especially those blogging in the political sphere, have trouble resisting the temptation of copyright infringement by the unauthorized use of photographs or video from news services, or excerpts of reporting or other writing published by mainstream media outlets. Even non-political bloggers seeking clipart or photographs for their posts often find they have a particular famous image in mind, and may not be aware that they risk liability for copyright infringement by using that content without permission. This article sets out basic issues of copyright as they relate to using content on blogs.

Fair Use

Fair use is the saving grace of copyright law, but everyone agrees that its application is not necessarily intuitive. Fair use allows a blogger, just as it allows anyone else, to reproduce the copyright-protected work of someone else for specific purposes including commentary and criticism.

The four factors considered by courts when evaluating a fair use defense to copyright infringement are:

1. the purpose and character of a use (whether one is "transforming" it by adding to it, or merely using it in the same way its creator used it)
2. the nature of the copyright-protected work (fiction is protected more than non-fiction and reporting)
3. the amount and substantiality of the portion taken, and
4. the effect of the use upon the potential market.

If there is a single most important one of these, in terms of a blogger's likelihood of being approached by a copyright owner with a demand letter (to stop using that work), it is probably the fourth factor.

This factor is the question whether the supposed fair use replaces or undermines the need for the original work.

Mainstream Media

Keeping in mind the factor of how a blogger's use of a copyright-protected work could affect that work's commercial value helps avoid the fallacy of assuming that it is legal to use "a little bit" of a published news story. For example, the view of the Associated Press ("AP"), and a number of other publishers, is that the headline and the lead paragraph of a news story may not be reproduced verbatim by a blogger. The headline, publishers argue, and the "lead," are "what they sell." That proposition has not been tested in court, but it is not an unreasonable one – as demonstrated by the fact that it is indeed those elements that bloggers are tempted so sorely to "borrow."

Many media outlets are somewhat flummoxed by this problem, because they recognize that many, though of course not all, bloggers link back to the story from which they are excerpting. In fact, failure to do so is considered a serious breach of blogging "Netiquette," and is usually counterproductive for a blogger. That is because the vast majority of blogs do not have the resources and, hence, the credibility of major news outlets, and it is precisely by recourse to the authority of the "MSM" ("Mainstream Media") that blog items borrow that credibility and provide the launching pad for their commentary. The media companies are aware that such links, especially if they come from leading blogs, can be a major source of Internet traffic to their own Web sites.

Defending a Copyright Infringement Claim

One problem that arises from using content from MSM is that the original story emerges, by virtue of what sometimes turns out to be unwelcome attention, criticism or analysis, as incorrect, biased or otherwise problematic for the news service.

This can result in spurious copyright claims, by which "old media" outlets, that is, MSN, threaten the potentially severe sanctions of the copyright law, or invoke the *Digital Millennium Copyright Act*'s ("DMCA") self-executing takedown provisions, to silence or blunt the message of upstart "new media", that is, blogs.

Because the DMCA provides sanctions to victims of bad-faith takedown notices, it is important for a blogger to know if and when the notice he has received advising him that his blog has been taken down based on a copyright infringement is legitimate or an attempt at intimidation based on content. At that juncture, it is usually a good idea to get expert legal assistance. (The Media Bloggers Association provides some free and reduced cost legal advice. It also provides liability insurance for bloggers.)

An important point regarding "comparative infringement" should be noted. What a copyright lawyer will tell an inquiring blogger is that the determination of whether a copyright infringement claim is meritorious is not based on a comparison of whether similar or even identical uses of a work were the subject of a takedown notice. There are many infringing uses, Web sites and blogs online at any given time, and it is never a defense to infringement that others are doing the same thing or that an infringer is being "picked on" merely because the owner of the copyright does not like the message.

Posting Photographs in Blogs

As dicey as excerpting journalistic or other published copyright-protected works, utilizing photographs published by news services can be far more complex. There is little to justify copying and posting an AP or *New York Times* or Getty Images picture to illustrate a blog posting about the subject of the picture. Illustrating a posting is not a purpose covered by fair use, and permission from the copyright holder is necessary for this use.

Is there any situation where reproducing another's photograph on a blog can be defended as a fair use? Consider a blog that posts pictures or video for the purpose of commenting on the photo or video itself: Michael Shaw's BAGNews Notes (www.bagnewsnotes.com/). Each blog posting comments on the journalistic, cultural or semiotic issues raised by a given photograph published by a news source. BAGNews Notes is a rare example using contemporary news photos on a blog that may be defended by the fair use doctrine.

Keeping this in mind, a blogger contemplating reproducing an MSM or other published photo may ask himself, is there anything about this use that could arguably be compared to the use of photos on BAGNews Notes? Or do I just want to have a good picture for my story or comment the way Fox News or the Washington *Post* does?

Conclusion

Although following rules of any sort somewhat contradicts the role of the blogger who is often sharing his stream of consciousness with the world, it is important to be aware that copyright law applies to blog postings and the circumstances in which fair use may be a defense when using text or photographs in a blog.■

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News Brief
UK DISCUSSES A DIGITAL RIGHTS AGENCY

In a recently released discussion paper called Copyright in a digital world: What role for a Digital Rights Agency, the U.K. government sets the stage for a digital rights agency. The paper clearly states that it is the role of the government to examine how it can facilitate a market space for simpler and easier negotiations to take place, and to encourage rights holders to create business and distribution models that meet the needs of consumers. The paper is posed to start the discussion about how a rights agency might work and comments are requested from stakeholders and public discussions forums will be held. See: www.ipo.gov.uk/digitalbritain.pdf.

U.S. COPYRIGHT LEGISLATION IN 2009

By Anthony J. Roda

Introduction to the Obama Administration

President Obama's resounding electoral victory and the significant Democratic majorities in both the U.S. House and Senate provide the new Administration with deep political capital and running room on public policy. In the new President's vision, intellectual property is to the digital age what physical goods were to the industrial age. Given the importance President Obama places on intellectual property, the U.S. may be entering an era of regulatory reform in this area of public policy.

Vice President Joe Biden reinforces the President's interest in intellectual property. The Vice President was a longtime member and leader of the Senate Judiciary Committee, which has jurisdiction over intellectual property matters. In 2002 then–Senator Biden founded and became the co-chair of the Anti-Piracy Caucus. That same year he held the first Congressional hearing at a full committee-level on piracy issues. Vice President Biden is no stranger to the historical battles and deeply held views that copyright holders and technology companies bring to the debates. He will provide the Obama Administration an experienced, honest broker on copyright issues.

Initially the Obama Administration will be faced with implementing the *Prioritizing Resources and Organization for Intellectual Property Act of 2008*, which is commonly known as the *Pro IP Act*[1]. In general, the Act strengthens civil and criminal intellectual property law. It also creates an IP Enforcement Officer ("IPEC"), who will be appointed by the President and confirmed by the Senate. The IPEC will chair an interagency intellectual property enforcement advisory committee and coordinate the development of a joint strategic plan against counterfeiting and infringement. The background and philosophy of President Obama's IPEC nominee will provide an early indication of the direction the new Administration will take on intellectual property issues.

The 111th Congress

In the House of Representatives there has been one major development in the structure of the Judiciary Committee that will bear directly on the development of copyright legislation and law. Earlier this year Judiciary Chairman John Conyers (D-MI) dissolved the Intellectual Property Subcommittee, thereby vesting all jurisdiction over copyright matters in the full committee. Chairman Conyers, who is known as a strong supporter of copyright holders and artists' rights, will now have enormous latitude over the direction of copyright legislation.

If the House Judiciary Committee serves as the core of copyright protection sentiment in the House, then the Energy and Commerce Committee is the bulwark of the technology sector. This is even more the case in this 111th Congress due to the fact that the Commerce Committee's Subcommittee on Communications, Technology and the Internet is chaired by Congressman Rick Boucher (D-VA), who has been on the opposite side of copyright holders in many of the recent legislative skirmishes.

The Senate Judiciary Committee will continue to be chaired by Senator Patrick Leahy (D-VT), who is one of the leading supporters of copyright protection in Congress. Together with his Committee colleagues Senators Orrin Hatch (R-UT) and Dianne Feinstein (D-CA), Chairman Leahy will be an aggressive advocate for copyright holders. Similar to the pro-technology sector position the House Commerce Committee plays, the Senate Commerce Committee is also much more aligned with Silicon Valley than with the copyright industries. However, its role may be limited by tight drafting of copyright legislation, which will ensure its referral to only the Judiciary Committee.

The Agenda

When discussing the Judiciary Committee's time to devote to copyright issues we should first look at the list of other items, including the reauthorization of juvenile justice laws, modifications to the *PATRIOT Act*, and oversight of the Department of Justice and immigration reform. In addition, the Senate Judiciary Committee may have to consider one or more nominations to the Supreme Court.

Reform of U.S. patent law will also compete for the Committee's attention. This issue has been a time drain for each of the last two Congresses with little to show for the effort. A number of judicial decisions have been rendered recently that may vent some of the steam from the drive for statutory patent law changes, but industry and political advocates of reform are gearing up for another attempt. Judiciary Chairman Leahy has already begun marking up legislation on patent reform (in early Spring 2009). Leahy calls patent reform his highest priority in the intellectual property area.

Orphan Works and Performance Rights Legislation

Perhaps top on the list of copyright issues is orphan works legislation, which would attempt to ease access to works that are protected by copyright, but whose copyright holders are difficult to find. The orphan works reform effort was initiated by the U.S. Copyright Office in early 2006. Since then, Congress has gotten close to resolving the issue – most recently in the 110th Congress, with full Senate and House Judiciary Committee passage of reform measures. However, to date, no orphan works legislation has been enacted in the U.S.

The combined efforts of copyright holders in sound recordings, songwriters, artists' rights groups, unions, and their allies in Congress will push the performance rights issue to the top of the copyright legislative agenda. This issue stems from the fact that copyright holders in sound recordings played on over-the-air radio do not receive a royalty. In this situation, only songwriters receive a royalty. The pro-performance rights coalition is impressive and energized. However, it is opposed by an equally impressive array of local broadcasters, who are organized by the National Association of Broadcasters ("NAB"). While the pro-performance rights coalition portrays the legislation as fundamental fairness, the NAB has labeled it a tax and claims it will put countless local broadcasters out of business. This promises to be a hard fought and expensive legislative battle. Senate Judiciary Chairman Leahy and House Chairman Conyers have already introduced bipartisan legislation on performance rights.[2] The legislation includes special treatment – lower rates – for small, noncommercial, educational and religious stations. This will lower some of the opposition to the new royalty.

Some have suggested that either orphan works or performance rights legislation could be added to a bill to reauthorize retransmission consent law, which permits satellite carriers to transmit local television broadcast signals into local markets. The retransmission consent law expires this year, so Congress must take action on reauthorization legislation prior to adjourning. So-called "must-pass" pieces of legislation, such as retransmission consent, present opportunities for Members of Congress to add their priorities, thereby taking advantage of the expedited process. However, it is unclear at this point whether retransmission consent, which will have its own controversial provisions, will be strong enough to carry other copyright legislation.

In the previous 110th Congress, Senator Dianne Feinstein introduced the *Platform Equality and Remedies for Rights Holders in Music Act* (PERFORM Act). This legislation would subject companies offering digital music services, which allow users to create music libraries, to distribution license royalties. By introducing the legislation, Senator Feinstein was seeking to draw a bright line on the question of when does a digital service cross between passive listening or viewing to distribution and reproduction. Although there was no serious action on the legislation during the 110th Congress, Senator Feinstein is expected to reintroduce the bill in 2009. Prospects for the legislation may not be much improved, especially given that other priorities in the intellectual property area are first in the queue.

Likewise, I do not envision a return to the subject of Internet radio or webcasting rules in 2009. The bitterly contested rate-setting process in 2007-08 resulted in enactment of the *Webcaster Settlement Act*[3], which allowed additional time for Internet music broadcasters and the royalty collective SoundExchange to negotiate alternative rates to those initially set by the Copyright Royalty Board. Revised rates and terms are still being negotiated.

(Continued on Page 11)

COPYRIGHT QUIZ 1.0

By Lesley Ellen Harris

From time-to-time, each of us needs to sit back and reflect on what we know and where we need brushing up on, in terms of our copyright knowledge. Below is a quiz which is the first of many quizzes to be posted on the copyright education blog, www.copyrightlawscom.blogspot.com. Copyright 2.0 on international copyright is also posted on the Copyrightlaws.com blog. Each quiz is posted on the blog, with answers set out at the bottom of the quiz. In addition, anyone may post a comment and/or ask a question about the quiz, on the blog.

After completing the true or false quiz below, look at the correct answers provided at the bottom of the quiz. Also, read the explanatory notes on the quiz. Good luck!

True or False?

1. Copyright law protects ideas. T F

2. Copyright law protects all titles of books and movies. T F

3. Content on blogs and Web sites are in the public domain. T F

4. You need permission to summarize the ideas in a newspaper article. T F

5. Copyright is automatic upon the creation and fixation of a work. T F

6. Copyright law is part of a larger area of law called intellectual property. T F

7. If there is no © symbol on a work, then it is not protected by copyright. T F

8. Copyright registration is not mandatory for securing copyright in a work. T F

9. All permissions to use a copyright-protected work must be in writing. T F

10. When you purchase a painting, you own the physical painting however you do not own the copyright in the painting. T F

Answers

The answers are: 1F, 2F, 3F, 4F, 5T, 6T, 7F, 8T, 9F, 10T.

Explanatory Notes

1. Copyright law protects the *expression* of ideas. The law does not protect the ideas themselves, nor does it protect history, facts or news, just the words used to express these things. This is true in all copyright laws. The U.S. *Copyright Act* specifically sets this out in Section 102 (b): "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."

2. The title of a book or movie is not generally protected by copyright. Copyright laws protect an original work of authorship. Trademark law and unfair competition law may provide some legal protection for titles.

3. Content on blogs and Web sites are protected by copyright just as that same content would be protected in a print form or on a DVD.

4. Since ideas are not protected by copyright (see note to question 1., above), you do not need permission to summarize ideas using your own words.

5. The leading copyright convention, the Berne Convention, requires its 164 members (including Canada and the U.S.) to provide automatic copyright protection. Notwithstanding this requirement, there are some advantages to registering a work with a national copyright office and to using the copyright symbol on one's work.

6. Intellectual property consists of patents, trademarks, copyright and confidential information law.

7. A copyright symbol reminds the public that copyright exists in the work, however it is not mandatory for copyright protection.

8. See note to question 5, above.

9. In most countries, a license or permission to use a work need not be in writing. However, in some countries an exclusive license need be in writing, and an assignment of copyright (transfer of ownership) need be in writing. It is always best to put permissions of any nature in writing as it is proof of that permission, whether a license or an assignment.

10. A painting has two legal rights in it. One is in the physical work, the painting itself. The second is in the intangible part of the work, in the intellectual property or copyright in the painting. If you own a painting, you still need permission to reproduce that painting unless you also own the copyright in the painting. ■

News Brief
AGGREGATORS MAY FREELY REPRODUCE CALIFORNIA PUBLIC RECORDS

On February 5th, 2009, the California Court of Appeals for the Sixth Appellate District released its decision in *California first Amendment Coalition* v. *County of Santa Clara*. In this case, the County of Santa Clara tried to enforce copyright in public records and to impose licensing restrictions (resulting in license fees) on commercial vendors. California first Amendment Coalition ("CFAC") sued the county to release the public records. The Court rejected the argument that municipalities could claim copyright in public records or impose license fees. The Court dismissed adverse decisions from other jurisdictions. Now, a copyright claim in a California public record must have an express and specific grant of authority by the legislature. This means that aggregators may freely include California public records in their databases and license them to others. This is unless there is an appeal and reversal by the California Supreme Court or an enactment of legislation.

News Brief
DIGITAL MUSIC REPORT 2009

The International Federation of the Phonographic Industries ("IFPI") recently released its *Digital Music Report 2009*. The report claims that the music industry has transformed its business models, offering consumers an increasing range of new services. The report notes that its biggest challenge remains illegal downloads, which the IFPI claims account for 95% of all music downloads. The 32-page PDF report is at: www.ifpi.org/content/library/DMR2009.pdf.

"NON-COMMERCIAL" AND OTHER DEFINITIONS IN LICENSES

By Lesley Ellen Harris

Countless times I have been asked what does "non-commercial" mean? Is reproducing an article in a university library a non-commercial use? How about making 50 copies of a document for an in-house seminar in a for profit corporation? How about a lawyer doing research on behalf of a client—is this non-commercial? The answer to these questions lie within the context of the phrase. This is true of many phrases used in copyright situations. This article examines defining this phrase as well as definitions in general in license agreements you sign to use the digital content of others. This may be for use of a single item such as a photograph or it may be for a license for the use of digital content from electronic databases to online journals and periodicals.

The Importance of Definitions

All copyright-related licenses include some phrases that could benefit from an explicit definition. Some licenses set out specific sections with definitions whereas in other licenses, you may need to infer the meaning of certain phrases from an overall reading of the entire license.

Although the definitions in a license may seem straightforward when reviewing a license offered to you, or "minor" compared to other clauses in the license, do not underestimate their importance. Definitions can define the parameter of the license.

Take the time to carefully review the wording used to define terms in the license, and when reviewing the license itself, be alert for other terms for which you may need to provide an explicit definition. The way words are defined should meet your needs and expectations. The definitions may affect other parts of the agreement, and you always want to ensure that you are licensing content in the manner that works for you. Keep in mind that if there is a dispute on the interpretation of the license, a third party such as an arbitrator or judge may interpret terms in your license and a clear definition can help ensure that the term is defined in a specific manner as set out in the license.

Choosing Terms to Define

Of course, it is neither necessary nor possible to define each term used in a license, so you need to choose which terms require an explicit definition. One rule of thumb is to ask yourself whether the term is being used as ordinarily defined in the dictionary, or whether it has a "special" definition for purposes of your license. In other words, if the dictionary meaning applies to your use of the term, no need to set out that definition in your license. However, if the term has its own meaning in the context of your license, best to set out that definition so both parties to the license are in agreement over the definition as it applies to your context.

Definitions, like all clauses in a license, may be subject to negotiation. If a vendor offers you a narrow definition of authorized users and you need to more broadly define authorized users, let the vendor know. This term may be part of your negotiations.

If you have more than one license with the same publisher for different content, you may use different definitions in each license, since the definitions may vary vis-à-vis different content, and your uses of that content.

Terminology Often Defined

Terms in a license agreement you should consider defining include:

- Commercial use
- Content (being licensed)
- Interlibrary loan
- Licensed content
- Premises
- Territory
- Not for profit
- Non-commercial
- Educational use

Authorized uses and authorized users may also be specifically defined in your definitions section.

In longer agreements, they are often defined in some detail as their own clauses in the body of the agreement.

Doing some general online searches, I came across a variety of licenses which I will share with you to show how different licenses deal with definitions of terms.

In the LexisNexis Academic & Library Solutions Subscriber License Agreement (http://www.nlc.state.ne.us/netserv/lncontract_rev_20040421.pdf), the definition of terms was found at the beginning of the five page agreement and the following definitions were included:

- Services: LNA&LS Web-based, subscriptions services for academic institutions, public library systems, and other libraries, including all such services currently offered and any which may be offered in the future.
- Subscription: Access to and use of the Services by a single Subscribing Institution under the terms of this Agreement.

Authorized Users and Subscription Period were also defined, but are not included in this article due to space limitations herein.

In the H.W. Wilson General Database License Agreement (http://www.hwwilson.com/abouthw/WilsonDatabaseLicense06.pdf), the definition of terms was found at the end of the seven page agreement where the following 16 terms were defined. Again, due to space limitations, only the wording for certain definitions is set out below.

- Authorized User
- Subject Database. The database or databases owned or licensed by Wilson to which Subscriber has notified Wilson that Subscriber desires access to for its Authorized Users.
- Order Form
- Subscriber. Those persons or entities that have assented to the terms of this agreement concerning the same subject matter, whereby they have been granted access to the Wilson Products.
- Subscriber Fee
- Wilson Products. The WilsonWeb Subscription Site or similar online service, FTP electronic feed, magnetic tape, CD-ROM, or any other electronic data comprising products provided by Wilson as listed on any order or Invoice now existing or hereafter arising between Wilson and the Subscriber.
- WilsonWeb Subscription Site
- Secure Network
- Server
- Course Packs. A collection or compilation of materials assembled by member of staff of the Subscriber for use by students in a class for the purpose of instruction.
- Electronic Reserve. Electronic copies of materials made and stored on the Secure Network by the Licensee for use by students in connection with specific courses of instruction offered by the Subscriber to its students.
- Interlibrary Loan. The process by which a library requests material from, or supplies material to, another library.
- Commercial Use. Use for the purposes of monetary reward (whether by or for the Subscriber or an Authorized User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Licensee from Authorized Users, nor use by the Licensee or by an Authorized User of the Licensed Materials in the course of research funded by a commercial organization, is deemed to be Commercial Use.
- Intellectual Property Rights
- Password
- User Name

To educate yourself in both choosing which terms to define and how to define them, I recommend you take advantage of the variety of licenses available online through your own searches. Also, *Principles for Licensing Electronic Resources* provides a recommended list of terms you may want to define in your licenses. See: www.aallnet.org/committee/reports/LicensingPrinciplesElecResources.pdf.

For information on digital license agreements, visit:

www.licensingdigitalcontent.blogspot.com

Study on "Noncommercial Use"

As mentioned above, terms in negotiable licenses should be defined according to the needs of the parties signing the licenses. In a different situation, with non-negotiable licenses, you have to work within the definition provided in your license. Creative Commons ("CC") (http://creativecommons.org) provides free written licenses to copyright owners (so owners need not write and/or negotiate their own licenses), who want to give the public certain permissions to use their works, in advance and without the need for direct content with the owner. Owners may choose one of the four CC licenses to apply to their content. One is a NC or noncommercial license. Under a NC license, the licensed content may be used by anyone for any purposes that is not "primarily intended for or directed toward commercial advantage or private monetary compensation" provided the use complies with the other terms of the license. On September 18, 2008, CC initiated a study to explore the differences between commercial and noncommercial uses of content, as these terms are used in various communities and with a large variety of content. Research is expected to be completed early in 2009. Since the terms noncommercial and nonprofit are often difficult to define in all license agreements, this study may helpful to all of us negotiating license agreements.

Placement of Definitions

There are no set rules as to where in your license you place your definitions. Placing all of the definitions in a single location in the license can make it easier to consult when coming across various terms in the agreement. Definitions are often set out at the beginning of a license, and sometimes in an appendix to the license. ■

News Brief
SOME YOUTUBE VIDEOS GET DOWNLOAD OPTION

Some U.S. government videos, including Barack Obama's weekly addresses, will now have a "Click to download" option on YouTube. Users can download select videos as MP4 files. The option is available for a select number of YouTube videos, sometimes for a fee.

(Continued from Page 6)

Conclusion

The copyright issues identified in this article, if enacted, will address certain anomalies and high-profile issues of the day. They will also add to the complexity of copyright law. Given this, it would be helpful if the new Obama Administration would take a step back and seek the advice of experts and affected parties – on all sides of the hot button issues of the day – to outline a comprehensive reform of copyright law. As always, the balance in copyright law between owners and users is difficult to achieve in new legislation, as is the balance in what issues should be guided by legislation and which should be left to the marketplace to resolve. ■

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[1] Public Law 110-403.
[2] S. 379 and H.R. 848.
[3] Public Law 110-435.

News Brief
CONVICTION UNDER ANTI-CAMCORDING LAW IN CANADA

Luis Rene Hache was sentenced to 24 months probation and 120 hours of community service for illegally reproducing the film "Dan in Real Life" in a movie theatre in Montreal, Canada.

COPYRIGHT QUESTIONS & ANSWERS

Question: Do all countries have the same copyright duration?

Answer: No. The Berne Convention sets out the minimum duration for copyright protection, which is currently life + 50 — fifty years after the author's death. Many countries (including Canada) still have a life + 50 duration. However, countries are "free" to provide a longer duration and the U.S. and European Union countries now provide a life + 70 duration. Note that this is the "general rule" of copyright duration and specific works such as employment works may have different durations of protection.

Question: What is a copyright policy?

Answer: A Copyright Policy is a written document that sets out copyright information, specifically how it applies to the use of content in your organization. It may set out basic copyright information, global copyright information, questions and answers in your organization, how to apply fair dealing/use in your organization, and the contact person for copyright in your organization. A Policy is also a great document/text for teaching copyright in your organization.

Question: If I want to do a "Where's Waldo" type of book, using a "Where's _____?" (someone else), what copyright issues need I be concerned about?

Answer: There is no copyright protection in ideas, so you can create a similar idea to the Where's Waldo books. Your content should be original and not copied from anywhere else, unless you have permission to include that content in your book.

Post your copyright and licensing questions at: www.copyrightanswers.blogspot.com, where you will also find many other copyright answers.