Libraries and Copyright 2012

The Code, the Siege, and What’s Next

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ASERL Nov. 14, 2012
CODE OF BEST PRACTICES IN FAIR USE FOR ACADEMIC AND RESEARCH LIBRARIES

JANUARY 2012

The Code
Project overview

• Phase 1: Talk to Librarians about fair use problem areas.

• Phase 2: Convene small groups to deliberate on principles; write the Code!

• Phase 3: Spread the good word.
Success Story

Double Exposure Online Exhibit
The Modern Graphic History Museum
Washington U., St. Louis
The Siege
AIME v. UCLA

- AIME (vendor association) + Ambrose (video distributor) sue UCLA over video streaming
- Legal issues initially: fair use + 110
- Policy argument: if we offer a streaming product, you should have to buy it
- **Oops**: turns out every Ambrose video included public performance rights!
Moral(s) of the story

- Know the facts before you sue!
- Don’t sue your best customers
- If you’re suing, you’re not competing
Cambridge UP, et al. v. GSU

- Cambridge UP, Oxford UP, Sage
- Bankrolled by CCC, AAP
- Electronic Reserves
- 5 infringements proved, out of 99 alleged
- **GSU won**, was awarded ~$3mil in att’ys fees
- On appeal to 11th Circuit
Moral(s), so far…

• Don’t cry poverty when your financials are discoverable
• Universities are not copy shops; e-reserves are not coursepacks
• Faculty mostly get it right intuitively
• R.I.P. Classroom Guidelines, “spontaneity”
Authors Guild v. HathiTrust

- Sued over existence of Google scans in HathiTrust Digital Library, plus pilot project for orphan works
- Three purposes: preservation, text mining, accessibility
- Nat’l Fed’n for the Blind intervene as defendants
- “I cannot imagine a definition of fair use that would… require that I terminate this invaluable contribution to the progress of science and cultivation of the arts that at the same time effectuates the ideals espoused by the ADA.”
- On appeal to 2nd Circuit
Morals, so far

• Don’t mess with the blind
• “Transformativeness” and new audiences
• Ratified the Code - principles 3, 5, and 7
• No associational standing in © suits
• 108/107 interaction
• Orphan works a red herring
• Harbinger for Google?
What’s Next?
Kirtsaeng v. Wiley

- SCOTUS hearing appeal
- First sale, § 109, grey markets
- Foreign-made copies: lend, resell?
- Owners’ Rights Initiative
Section 108

- Dated, but is it obsolete?
- Study group gridlock
- Dangers of opening up the Copyright Act
- 108 and Fair Use
- Dividing libraries, dividing media
Orphan Works

• 2008 Report and legislation

• Have we moved on?

• Case law & fair use best practices

• Mass digitization
Access for the Print Disabled

- WIPO negotiation
- Chafee Amendment
- HathiTrust opinion
- ARL Task Force Report

Accessibility for Patrons with Print Disabilities

Print disabilities include visual, physical, perceptual, developmental, cognitive, or learning disabilities that render print inaccessible.

In 2012, ARL’s Joint Task Force on Services to Patrons with Print Disabilities investigated technological, legal, and service challenges for the research library community in providing access for the print disabled.

The final report of the task force (PDF) outlines a framework, identify critical partners, and raise awareness in the community around inclusive design of technology and services.
Thank you!

Feel free to contact me:

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