

CS155b: E-Commerce

Lecture 7: Jan. 30, 2001

A Computer Scientist's View of
Copyright Law

Reading Assignment for this week:
Chapters 4 and 5 of The Digital Dilemma

Optional:

Chapter 4 of Information Rules

Three articles on class webpage by Mark
Stefik (“Shifting the possible,” “Trusted
Systems,” and “Letting Loose the light”)

Revolution in Content-Related Technology

- Computers and digital documents radically change content creation.
- WWW radically changes content publication.
- Internet radically changes content distribution.

Revolution in Content-Related Business?

- Plenty not scarcity?
- Anyone can be a publisher?
- Disintermediation and reintermediation?

Discussion Point: How does this relate to last week's discussion of "online identity"?

Article 1, sec. 8, cl. 8 of US Constitution

Empowers Congress “to promote the progress of science and [the] useful arts by securing to authors and inventors for limited times exclusive rights in their respective writings and discoveries.”

For information on copyright law, see
<http://www.loc.gov/copyright/>

Copyright Owner has *Exclusive Rights* to do or authorize any of:

- To reproduce the copyrighted work or phonorecords
- To prepare derivative works based upon the copyrighted work
- To distribute copies or phonorecords of the copyrighted material to the public by sale or other transfer of ownership, or by rental, lease, or lending
- In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works to perform the copyrighted work publicly

Exclusive Rights, continued

- In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly, and
- In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission

Limitations on Exclusive Rights

(“4 factors” test for “Fair Use”)

- The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes
- The nature of the copyright work
- The amount and substantiality of the portion used in relation to the copyright work as a whole
- The effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

(Excerpt from) First Sale Rule

Notwithstanding [exclusive right #3] the owner of a *particular copy or phonorecord* ..., or any person authorized by such owner, is entitled without the authority of the copyright owner, to sell or otherwise dispose of *that copy or phonorecord*.

(italics added)

Note “Copy-centric” Nature of the Law

Understandable in analog world, where:

- Copying is a good predictor of infringement.
- Control of copying does not imply control of access.

But copy-control is a *means*, not an *end*.

It is *not* in the Constitution!

Discussion Point: Copy-Centric law makes less sense in a digital world

- Copying is done all the time by computers and networks, and copies are often temporary. Not a good predictor of infringement.
- Access, *e.g.*, viewing a web page, entails copying. Should rights holders be able to control *all* access?
- First-sale rule (if implemented digitally in a Stefik-style “trusted system”) would vitiate the essence of digital documents.

Other Relevant Issues

- “Fair Use is a Defense” ??
(Could a good TPS render it moot?)
- “Private-use copying” may be harder to keep private in the digital world.
- “Private-use modification” needs to be considered. For example, do Linux users have the right to view DVDs for which they have paid full price?

Techies' Viewpoint

- Use technology to do what comes naturally to it!
- Create a new business model if one is needed to exploit new technology.
- Internet Challenge: Your business should benefit from widespread copying and distribution!!!

Optional Assignment

- 1- or 2-page description of final project or paper, due Feb 22, 2001.

No grade, just feedback.