Copyright and Fair Use

Exercising Rights, Managing Risk, and an Update from the Courts

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Schedule of Events

- Copyright Basics
- Important Exceptions to Copyright
  - Fair Use
- Recent Cases
- Managing Risk
- Questions
To promote the Progress of Science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries..."
What is protected?

- Original works of authorship

- Fixed in a tangible medium of expression
  - Rights attach upon creation – copyright registration no longer required
To Whom and for How Long?

- Author or creator of the work
  - Works for hire

- Life of the author plus 70 years
What is not protected?

- Facts
  - Although the expression of facts may be

- Ideas

- Works in the public domain
  - U.S. Government
  - Works whose copyrights have expired
  - Works placed in the public domain by creators
Exclusive Rights ~ 17 U.S.C. § 106

- Reproduce the work
- Prepare derivative works
- Distribute the work
- Publically perform the work
  - Includes transmitting the work digitally
- Publically display the work
Exceptions and Limitations
Relevant to Libraries

- Section 107 – Fair Use
- Section 108 – Library Copying
- Section 109 – First-Sale Doctrine
- Section 110 – Displays and Performances
  - Face - to - face Classroom
  - Transmissions and Distance Learning
- Section 121 – Persons with Disabilities
Fair Use
How Fair Use Makes Us Feel
How Fair Use Should Make Us Feel
Four Factors of Fair Use
17 USC §107

- Purpose and character of the use
- Nature of the copyrighted work
- Amount and substantiality of the portion used
- Effect of the use upon the potential market for, or value of, the copyrighted work
A Note on Guidelines
A Note on Best Practices

CODE OF BEST PRACTICES IN FAIR USE FOR ACADEMIC AND RESEARCH LIBRARIES

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Recent Court Decisions
The Georgia State Case

- E-reserves
- Court looked at 75 alleged infringing uses
- Relied on Fair Use Factors
  - Majority of the uses were fair
- On appeal to the 11th Cir.
The HathiTrust Case
The Google Books Case

- Scanning and searching of millions of copyrighted books is a transformative fair use
- On appeal to 2nd Circuit
Managing Risk
Suggestions

- Risk Tolerance Assessment
- Written Policy
  - Based on four fair use factors
- Fair Use Checklists
- Respect Rights of Copyright Owners
- Manage Our Own Copyrights
Can I Use It?

- Is the work protected by copyright?
- Does an exception apply?
- Fair use?
  - If analysis unclear: risk assessment
    - Use it
    - Ask permission
    - Find a substitute
Questions?