

The Balance in Copyright Law

Copyright law, by its nature, is a balancing act evident behind each provision in a country's copyright statute. On the one hand, copyright law provides an exclusive bundle of rights to creators, owners and distributors of copyright-protected materials, and on the other hand, these rights are limited in time and scope.

For example, an author of a book in the U.S. automatically has copyright protection for his entire life plus 70 years after his death. During this time, the author and his heirs have exclusive rights such as the right to publish the book, translate it, and make an adaptation of it into a screenplay or movie. Seventy years after the death of the author, all rights expire and the work is said to be in the public domain. At that time, anyone may freely use the work, adapt it, etc., without obtaining any permissions or paying any royalties.

Scope of Rights

In addition to duration of copyright protection, balance is evident in the scope of rights granted to authors - as many of the exclusive rights of authors are subject to exceptions. In fact, the perspective of librarians and other consumers of copyright-protected materials is often on the "other" side of the balance, the side that ensures consumers have reasonable access, and sometimes access without obtaining permission or paying a fee, to specific copyright-protected materials.

Internationally Speaking

Although inherent in each country's copyright laws, the balance is also set out in the leading international copyright instrument, the Berne Convention (www.wipo.org.) Under the Berne Convention, authors and owners of copyright-protected works have certain exclusive rights regarding reproduction. All Berne Convention countries must provide these rights for at least 50 years after the author's death. Many countries such as the U.S. go further and provide the rights for 70 years after the author's death. In terms of exceptions for libraries and other consumers of copyright-protected materials, each member country of the Berne Convention is permitted to provide exceptions in certain special cases as long as the exceptions meet the requirements of the following test:

- no conflict with a normal exploitation of the work and
- does not unreasonably prejudice the legitimate interests of the author.

Meeting this test may be an exception for library preservation, fair use or fair dealing. Each country may interpret these requirements in a different manner, thus resulting in a variety of exceptions in different country statutes around the world.

In the U.S. Copyright Act, the fair use provision is available to all consumers of copyright-protected materials including librarians. In addition, there are specific exceptions for qualifying libraries and archives for such acts as the archival reproductions of unpublished works, and the replacement of lost, damaged or obsolete copies, under

specified circumstances. Educational institutions also have a number of exceptions available to them.

Moral Rights

An interesting example of how various countries balance the rights in their copyright statutes is in the area of moral rights. Moral rights protect the reputation and honor of authors of works. These rights allow an author to have his name on his book, painting or other work, and to prevent any modifications to that work that may prejudice the honor and reputation of the author/artist. In France, moral rights apply to all copyright-protected works and last forever, even beyond the duration of the protection of economic copyright rights (e.g., reproduction right), and may not be waived. Moral rights are passed onto heirs upon the death of the author. In the U.S., moral rights (which apply only to limited works of visual art), last for the life of the author and may be waived.

Digital Balance

Each time a new copyright amendment bill is passed, we see newspaper headlines discussing the imbalance proposed in that bill. Headlines vary from copyright owners gaining too many new rights, to consumers being locked out of access to digital works. Issues such as private copying, exceptions for libraries, archives, museums, and educational institutions, digital locks on online content, sharing and reproduction of digital content by consumers, continue to raise the ongoing debate of how to achieve balance in the online/global world between the rights of authors and owners, and the communities who access their works.

© 2006-2010 Lesley Ellen Harris. This is reproduced from Copyrightlaws.com.