

WILL COPYRIGHT SURVIVE?

Presentation by James G.Neal,
Dean of University Libraries,
Johns Hopkins University at the 2000 IFLA Conference,
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IS LICENSING A TROJAN HORSE?

COPYRIGHT DEVELOPMENTS

- Federal Legislation
- International Treaties
- Licensing Agreements
- Use Guidelines
- Ownership of Copyright
- Technological Controls

LICENSING ELECTRONIC RESOURCES

- Awareness
- Evaluation
- Consultation
- Selection
- Consortial Relations

LICENSING ELECTRONIC RESOURCES

- Financing
- Negotiation
- Ordering
- License
- Technical Platform

LICENSING ELECTRONIC RESOURCES

- User Access/Presentation
- Hardware Implementation
- Software Implementation
- Cataloging
- User Awareness

LICENSING ELECTRONIC RESOURCES

- Assessment of Use
- Impact on Print Collections
- Preservation
- Updating

STANDARD LICENSE AGREEMENT

- Content of Licensed Materials
- Delivery/Access
- Fees
- Authorized Use
- Restrictions
- Licensor Performance Obligations
- Licensee Performance Obligations

STANDARD LICENSE AGREEMENT

- Term/Renewal/Termination
- Perpetual License
- Warranties/Limitations
- Indemnities
- Governing Law
- Dispute Resolution
- Force Majeure

RECENT COPYRIGHT LEGISLATION IN U.S.

- Copyright Term Extension
- Digital Millennium Copyright Act
- Collections of Information
Antipiracy Act
- Consumer and Investor Access
to Information Act
- Uniform Computer Information
Transactions Act

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA)

- Private Law of Contract
versus
Public Law of Copyright
- Consumer Protection Issues
- Transaction Cost Model
- State-Based Process

UCITA

CORE LIBRARY CONCERNS

- Copyright/Fair Use
- Self-Help
- Mixed Transactions
- Mass Market Definition
- Warranties/Known Defects

UCITA

CORE LIBRARY CONCERNS

- Choice of Law/Forum
- Reverse Engineering
- Privacy/Free Speech
- Cost of Doing Business
- Digital Divide

AUTHORS RIGHTS

LIBRARY LICENSING IMPLICATIONS

- National Writers Union
and
Contentville.com
- Tasini v. New York Times
- Napster and Scour

COPYRIGHT TENSIONS

Natural Property Rights
and
Encouraging Innovation
and

Public Welfare
and
Public Access

Creator/Distributor/Consumer
KEY COPYRIGHT ISSUES FOR
HIGHER EDUCATION COMMUNITY

- International Harmonization
- Reconciling Fair Use with Access Prohibitions
- Maintenance of Public Domain
- Online Service Provider Liability
- Copyright Management
Systems/Anticircumvention
- Distance Learning

COPYRIGHT LEGISLATION
KEY IMPLICATIONS

- More Copyrighted Works Encrypted
- Importance of Contract Negotiations
- LC Access Study/Regulatory Action
- OSP Limitation of Liability/Major
Litigation Arena

COPYRIGHT LEGISLATION
KEY IMPLICATIONS

- Major Battleground - Learning and Internet
- Library Exemptions Sustained
- Term Extension and Definition of
Commercial Exploitation
- Database Protection as New Licensing
Regime for Facts and Data Top Agenda
Item for Content Community

THE GOALS OF THE

EDUCATION COMMUNITY

Develop policies for intellectual property
property management which enable broad
and easy distribution and reuse of materials
by scholars and students and which

Foster a competitive and supportive market
for scholarly communication and creative work

BASIC IP PRINCIPLES

- Copyright law provisions for digital works should maintain a balance between the interests of creators and copyright owners and the public that is equivalent to that embodied in current statute.
- Copyright law should foster the maintenance of a viable economic framework of relations between owners and users of copyrighted works.

BASIC IP PRINCIPLES

- Copyright laws should encourage enhanced ease of compliance rather than increasingly punitive enforcement measures.
- Copyright law should promote the maintenance of a robust public domain for intellectual properties as a necessary condition for maintaining our intellectual and cultural heritage.

BASIC IP PRINCIPLES

- Facts should be treated as belonging to the public domain as they are under current law.
- Copyright law should uphold the principle that liability for infringing activity rests with the infringing party rather than with third parties.

BASIC IP PRINCIPLES

- Educational institutions should foster a climate of institutional respect for intellectual

property rights by providing appropriate information to all members of the community.

- New rights and protections should be created cautiously and only so far as experience proves necessary to meet the Constitutional provision for a limited monopoly to promote the "Progress of Science and useful Arts."

BASIC IP PRINCIPLES

- Copyright enforcement provisions should not hinder research simply because the products of a line of inquiry might be used in support of infringing activity.
- Copyright law should assure that respect for personal privacy is incorporated into access and rights management systems.

BROAD CAMPUS INVOLVEMENT

- Library
- University Counsel
- Information Technology
- Government Relations
- R & D/Technology Transfer
- Purchasing
- Academic Leadership

ROLE OF LIBRARIANS

- Knowledgeable Resources for the Community
- Political and Legislative Advocates for Community Interests
- Education in Community on Respect for Copyright

ROLE OF LIBRARIANS

- Documenters of Impact of Changes in Copyright Laws

- Aggressive Negotiators of License Agreements
- Active Supporters of New Strategies for Ownership of Intellectual Property