



A Copyright Primer - 2

2006

Where We Are Now

Ownership

- Exclusive Rights provided under the Copyright Act are held by the owner
- These rights include: **reproduction, distribution, adaptation and display**
- Limited monopoly over use

Ownership

- Not 'all or nothing'
- May be unbundled
- Usually unbundled by licensing
- Owner controls the license terms

Limitations

- Fair Use Doctrine
- Library Exemptions
- Classroom Exemptions
- Good Faith Fair Use Doctrine

Duration Post 1/1/1978

- NAESB:
- 95 years from publication

Fair Use Doctrine Four Factors

- Purpose and character of use, especially if of a commercial nature
- Nature of the copyrighted work itself
- Amount and substantiality used compared to the whole
- Effect of the use upon the market for or value of the work itself

Factor 1

- Commercial use of the work is almost always a copyright infringement

Factor 2

- Facts and ideas are not protected under normal circumstances
- Creative expressions are normally protected: this includes works that are meant to be consumed – such as NAESB standards

Factor 3

- The more one uses, the less protection there is for doing so under the Fair Use Doctrine
- Even a small amount taken is unprotected if it is the 'heart of the matter'

Factor 4

- If use affects the publisher's market in a negative way, it is likely not fair use
- Purpose of fair use analysis is to determine whether a permission fee is required
- Normally considered the most important factor

Library Exemption

- Work must be lawfully be in the library's possession in the first place
- Copies may be used for no purpose other than “private study, scholarship or research”
- Reproduction is only available if it is determined that a copy cannot be obtained at a fair price

Classroom Exemption

- Face-to-face teaching
- At a non-profit educational institution
- Distance learning has additional restrictions
- Think Shakespeare (if he was alive)

Self help

- Copyright infringement is normally dealt with by the owner
- Rights include: injunction, impoundment, destruction, actual damages, seizure of profits, court costs and attorney's fees, and
- Statutory damages from \$750 to \$150,000 per infringement
- Willful infringement is more punished

NAESB's Concerns

- 1) We want our standards to be distributed by us alone to ensure their integrity and to be certain that the most current standards are used
- 2) NAESB's income, by which we discharge our mission, depends upon revenue from the sale of our standards

NAESB's 2006 Policy

- Members get standards as a part of their membership
- The standards may be used by the member alone, not by its agents, affiliates, partners or subsidiaries
- Non-member third parties may purchase standards or access for their own use
- These restrictions are fully consistent with the Copyright Act

2006 Notes

- More companies are purchasing the standards or web access
- FERC-regulated entities are required to use the standards
- There are 197 such entities on the gas side – 40 are members or have purchased the standards
- Do the math – 20%

2006 cont'd

- FERC monitors compliance with its Regs
- NAESB does not
- NAESB can and will compare the list of authorized users to the list of jurisdictional entities
- NAESB will contact entities that do not appear on our list and encourage them to comply with copyright law

2006 cont'd

- FERC has is aware that NAESB standards are copyrighted
- FERC is aware that we charge for the standards
- FERC has advised us that it has no problem with us doing this and that it considers our policies reasonable and appropriate

The Lesson

- *We are a cheap thrill
but we're not free!*