

Running head: COPYRIGHT ISSUES & EXPLANATIONS

Copyright Issues & Explanations

Gwendolyn Sue Dapper

San Jose State University

### Abstract

In this paper, five scenarios of potential copyright infringement will be examined. The first scenario involves borrowing a copy of software. In the second scenario, a teacher downloads images from the internet. The third scenario has a master's candidate downloading and modifying someone else's code. The fourth scenario involves a software company employing giving out obsolete versions of software to a teacher. Finally, the fifth scenario has an employee downloading images from a company camera. Each of these scenarios show the confusion about digital content and its potential uses, and discusses whether or not the scenario is a violation of copyright law. In addition to the scenarios, "fair use" is discussed in terms of educational use, and the problems with relying on it are examined.

## Copyright Issues & Explanations

Every day students and teachers face copyright issues. Whether its looking on the Internet for photos to use in a school paper, borrowing a piece of software because a teacher needed the functionality for a project or showing a video in a class, copyright infractions are all over the educational arena. Copyright law is sometimes difficult to understand and follow. In addition, with the term of “fair use” in play, copyright issues are often ignored, thinking that the violation in question is not really a problem because the use is educational. In this paper, five scenarios of potential copyright infringement will be examined. The first scenario involves borrowing a copy of software. In the second scenario, a teacher downloads images from the internet. The third scenario has a master’s candidate downloading and modifying someone else’s code. The fourth scenario involves a software company employing giving out obsolete versions of software to a teacher. Finally, the fifth scenario has an employee downloading images from a company camera. Each of these scenarios show the confusion about digital content and it’s potential uses, and discusses whether or not the scenario is a violation of copyright law.

### Case One – Luis Lopez

Edwards High School is like most high schools in the United States. As new software upgrades are released, there is a scramble to find the resources to pay for not only a version for the teacher, but for a version for each computer in the classroom. Microsoft Office 2000 has many upgraded features that are helpful for classroom use. It is on the wish list of most teachers at Edwards. Luis Lopez is fortunate; he planned ahead and budgeted for site license purchase that calendar year. Donna is the teacher across the hall from Luis. She did not plan to purchase

Microsoft Office 2000, and has recently determined it is a necessary software upgrade for her classroom. Donna requested the funding for this software upgrade, but the funds will not be available until the next fiscal year. Because of the lack of funding, Donna asked Luis if she could borrow one of his classroom sets of software to upgrade her classroom computers.

Unfortunately, this is a violation of Title 17, Chapter 1, §109 of the United States Code (Copyright code, 2003). By installing any software the user is subject to the rules of the software license. Most software licenses, including those for Microsoft Office 2000, state that each license is good for one computer (Software piracy, 2007). Installing the same license on two different computers is in essence creating an unauthorized copy. This causes a problem in that the unauthorized copy is not party to the sales contract, and is not bound by the license. In addition, this action deprives the manufacturer, in this case Microsoft, of the cost of the license even though Donna claims she will purchase it in the next fiscal year. If Microsoft took the initiative, they could verify each license and ensure that it matches a singular computer with the same owner that registered the software (Software piracy, 2007). They can file suit against those who do not have a valid, paid license to run their software. Microsoft has an entire website devoted to software piracy, <http://www.microsoft.com/piracy/default.msp>.

### Case Two – Justin Tyme

Justin Tyme is constructing a new Microsoft Powerpoint presentation for his science class. The presentation is about our solar system, and its planets. He spent hours searching on the Internet looking for pictures of Mars. He found a clear picture that was large enough to view clearly in his presentation, and downloaded the picture to his desktop. Eventually, he added this picture to his presentation, and used it in his classroom to teach his students.

Because Justin is using this image in a face to face classroom presentation, it is covered under “fair use”. Section 107 of the Copyright Act explains that there are four factors that help determine if content use can be considered “fair use” (Copyright basics, 2005). Two of the four factors are at play in this issue. First, the image is going to be used for educational purposes. Courts favor the use of content for educational purposes. Secondly, there is no potential market for this work. Justin is not planning on reselling this presentation, nor will he be making money based upon the fact he is using this image. He is clearly able to use this image without issue.

### Case Three – Guy Harold

Guy Harold is interested in motivational games. He is currently writing a Masters Thesis for his Instructional Technology degree at SKSU. He found a mathematics bingo game online that he feels would work well to support his thesis. Guy downloaded the software, and learned how to edit its source code. Guy plans to modify the source code of this game to better meet his needs, and then use it for his thesis research.

Because of the propitiatory nature of software, this would seem to be an easy copyright question. However, it is not as simple as it seems. There are several factors at play. To begin with, the software is being edited to better meet a Masters Thesis needs. Because Guy is changing the software, and thus changing the functionality of the program, it may be exempt from copyright laws. Additionally, this software is going to be used in a face to face classroom setting. When looking at copyright issues, “fair use” favors educational use (Copyright basics, 2005). Finally, the software is also going to be used for educational research. This is also considered a favorable “fair use” (Copyright basics, 2005). Because of these reasons, Guy is not violating copyright law.

## Case Four – John Pickel

Adorbale Software has just introduced Adorbale PhotoEdit 6.0. With this introduction, Adorbale PhotoEdit 5.2 has become obsolete, and all additional copies of the software were sent to the facilities department to be disposed of. One of Adorbale's facilities employees knew a teacher at the local high school. He contacted John Pickel, a teacher at Valley High School, and volunteered to give the teacher a stack of this obsolete software. The Adorbale employee explained that this version was obsolete, and was free of charge.

This case is a difficult case. First, John did not ask for the software, he might consider it a gift. In addition, he will be using the software for educational purposes, and it could be deemed to be "fair use" (Copyright basics, 2005). However, it is unclear if the company, Adorbale, knows of the distribution of this old software. If they do, it is not an infringement of copyright law.

However, if the company does not know about this distribution, this is a problem. Even though the software is considered to be obsolete, does not mean the software has no value. Many companies offer free or low cost upgrades to users with the most recent version of the software. In addition, some older versions of software have features that newer versions do not have. This gives the older version of the software a value. Because of this, if the software was distributed without the company's knowledge, the company stands to lose income now and potential income in the future (Shrink wrap, 2007).

As previously stated, this is a difficult case. However, even with the little knowledge available, it is clear that this is a copyright infringement. Without the clear consent of Adorbale,

this can be perceived as a theft, and the school will be using stolen merchandise. As with the Microsoft case, Adorbale could sue the school for liable if the school uses the software.

#### Case Five – Chao Ting

While on a business trip, Chao Ting visited the city of San Jose, California. During the trip, she took numerous pictures of the city with the company's digital camera for a project she was working on for her position as a designer. After she returned home, she downloaded all the photos she took to her personal computer.

Unfortunately, this case really does not have enough information to make a clear decision on copyright infringement. It is unclear if Chao was visiting San Jose to take pictures for a commercial project, or if she was there for other business reasons. There is no mention of the company's policy for use of their property for personal reasons. When using digital cameras companies often allow employees to take pictures for personal use, and use pictures taken on personal cameras for business use. In addition, it is unclear if Chao is using these pictures for commercial or personal use. If Chao plans on financial gain from the pictures, the use may be restricted by the company, but it could be acceptable if the pictures are purely for personal use (Copyright code, 2003). Due to these reasons, there is no clear answer on copyright infringement.

Copyright infringements are rarely cut and dry. There are grey areas surrounding every aspect of the law. Issues that seem not to be infringements can be, and visa versa. To ensure schools are in compliance, it is important to review the law. Schools can not be dismissive and believe that "fair use" will always save them from lawsuits. It is simply not the case. No one is exempt from copyright law.

## References

- Copyright basics: introduction (2005). In *The Campus Guide to Copyright Compliance*. Retrieved 05:00, March 21 from <http://www.copyright.com/Services/copyrightoncampus/basics/default.asp>
- Copyright infringement of software. (2007, March 21). In *Wikipedia, The Free Encyclopedia*. Retrieved 05:52, March 21, 2007, from [http://en.wikipedia.org/w/index.php?title=Copyright\\_infringement\\_of\\_software&oldid=116780924](http://en.wikipedia.org/w/index.php?title=Copyright_infringement_of_software&oldid=116780924)
- Copyright law (2003, June), In *U.S. Copyright Office, Copyright Law of the United States*. Retrieved 04:00, March 21, 2007, from <http://www.copyright.gov/title17/>
- Shrink wrap contract. (2007, February 21). In *Wikipedia, The Free Encyclopedia*. Retrieved 05:54, March 21, 2007, from [http://en.wikipedia.org/w/index.php?title=Shrink\\_wrap\\_contract&oldid=109691677](http://en.wikipedia.org/w/index.php?title=Shrink_wrap_contract&oldid=109691677)
- Software Piracy Protection (2007). In *Microsoft Software Piracy Protection*. Retrieved 04:30, March 21, 2007, from <http://www.microsoft.com/piracy/default.msp>