Copyright Laws Around the World

A supplement to Copyright Your Dissertation or Thesis:
Ownership, Fair Use, and Your Rights and Responsibilities

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Thanks are due to the many good people at ProQuest who supported this project, and to colleagues around the country who commented on drafts and shared their experiences and insights. Special thanks to Sherri Barnes at the University of California, Santa Barbara; Tim Jewell and Thom Dierdorff at the University of Washington; Peg O'Donnell at The Catholic University of America; and my many supportive colleagues at Columbia University.

Summary 1: "Copyright Laws Around the World"

Authors of scholarly works inevitably work in an environment that crosses national boundaries and is affected by the laws of multiple countries. An American student might conduct research in Japan, then produce a dissertation that is published in the U.S. and distributed to readers in Canada, France, and many other countries. A student may live and study in Italy and do all research in that one country, but later make the dissertation available through ProQuest in the United States, thus likely subject to U.S. law. ProQuest in fact publishes many dissertations from many universities outside the United States and sells them to readers throughout the world.

The growth of the Internet and worldwide communication also means that nearly every scholar is routinely accessing materials from scattered countries, and a dissertation posted to a website is available internationally and possibly subjected to multitudes of legal regimes. Although this manual focuses on American copyright law, it should offer some helpful insights for researchers in the U.S. and around the world. First, American law applies to research, publishing, and other activities conducted inside the U.S. and to the distribution of works inside American borders. A brief guide to American law can relevant to all works, regardless of their country of origin. Second, copyright laws of most countries have been generally "harmonized," so that many fundamental provisions from are somewhat similar around the world. The basic structure of copyright law in the U.S. and in nearly 170 other countries is shaped by the requirements of the Berne Convention, a multinational treaty that sets "harmonized" standards for the law of each member country. As a consequence, some basic principles of American copyright law as described in this manual will hold true under the laws of many other countries. Nevertheless, critical differences remain as will be examined elsewhere.

The manual also makes this general point: When in the U.S., apply U.S. law to the work you are creating or using. Similarly, if you are doing your research outside the U.S., you must apply the law of that jurisdiction. As with many legal issues, you may need to investigate your particular questions more fully and possibly consult with any attorney with expertise in the law of the relevant country.

Summary 2: "Various Copyright Exceptions"

Although international treaties, most notably the Berne Convention, have the effect of generally harmonizing the law of copyright in different countries, national statutes on copyright exceptions remain highly diverse. U.S. law, for example, includes a provision for showing works during classroom teaching and in distance education, but not all countries have addressed those questions in their law, or they have done so on disparate terms and conditions. Educators and researchers in the U.S. often rely on the fair use exception. However, few countries have anything like fair use. For example, Germany's Copyright Act strictly defines permissible quoting under different conditions, and it allows limited reproduction of materials for scholarly study and teaching. The Brazilian Copyright Act does not provide a concept of fair use, but it does have detailed provisions for quotations and copies for education and research. Article 46, for example, allows passages or extracts of works to be reproduced for study, criticism, and related purposes. Japanese law similarly relies on detailed statutory exemptions for quotations, rather than a concept of fair use. U.K. law includes elaborate exemptions for some educational uses or scholarship, but generally quotations are left to the less determinative concept of "fair dealing." Until recently, Canadian law specifically sanctioned the manual transcription of works onto blackboards and flipcharts in the classroom, and even then only under narrow conditions. In only the last few years have the statutes become more flexible. The law of fair dealing in Canada is currently the subject of extensive political debate and judicial action.

Summary 3: "Copyright does not Apply to Everything"

One of the most important effects of the Berne Convention is the requirement that each country must protect works that originate from any of the other member nations. The Berne Convention specifies: "Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention."

Despite this direct effort to create uniformity of the law, many differences among countries remain. For example, Germany is often regarded among European counties as having a high standard of originality; the U.K. has a relatively low standard, generally requiring only that the work originate from the author who claims rights. Consequently, some works may be protectible in the U.K., but not in Germany.

The struggle for protection of databases underscores the differences among fundamental national laws. In the U.S., a 1991 decision from the Supreme Court left many collections of data without any copyright protection whatsoever. Congress has considered (but not passed) legislation to create a new form of legal protection for databases. The European Union, by contrast, issued a directive in 1996 mandating each member country to grant copyright protection for databases "which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation. . . ." The directive also requires E.U. countries to adopt additional legal protection against the extraction or re-utilization of the contents of databases if "there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents" of that database. Thus, a limited form of legal protection may prevent using some collections of data for research in Europe, but some of those same uses may be perfectly legal in the United States.

Summary 4: "Automatic Protection and the Elimination of Formalities"

The elimination of "formalities" as a precondition to copyright protection is a direct result of U.S. entry into the Berne Convention. The treaty requires that member countries grant copyright protection without the prerequisite of formalities, such as registration and notice. Some critics argue that that the U.S. has not fully complied, because American law gives the full range of copyright benefits only if the work in question was registered with the U.S. Copyright Office before the infringement took place. Domestic and foreign copyright owners should seriously consider registering their works early if enforcement in the U.S. is at all necessary, desirable, or even imaginable.

Similarly, copyright notices are not required under the law, but including a notice on your work may be an advantageous practice. You will often see the statement "All Rights Reserved" in connection with a formal copyright notice. This statement grew out of a requirement in the Buenos Aires Convention of 1910, which the U.S. and sixteen other countries in the Western Hemisphere joined. That treaty and its requirements have been effectively superseded as each participating country has more recently acceded to the Berne Convention and its eradication of formalities. Yet statements about reservation of rights continue to appear on numerous new publications for little apparent reason other than intimidation of infringers, ignorance, or legal inertia. In the long run, "All Rights Reserved" has lost any significant meaning under the law, but its presence on a publication likely does no harm.

Summary 5: "Works of Other Governments"

While Section 105 of the U.S. Copyright Act states clearly that works of the U.S. government are not protectible by copyright, not all countries adhere to the same principle. The law of the United Kingdom includes "crown copyright," which generally grants copyright protection for the term of fifty years for published works produced by the British government. Some countries parse the law in specific terms. Sweden exempts statutes, judicial opinions, and other official records from copyright, but it allows protection for maps, musical works, and other more creative products of public employees. Nevertheless, the public is licensed under law to use those materials, but must compensate the author. Japan also itemizes classes of governmental works that are without copyright protection, but generally provides for broad rights to quote from and reprint other materials produced by the government and intended for general dissemination. The Japanese parliament specifically adopted a general rule allowing excerpts in order to alleviate the need to consult with government agencies for common uses. By contrast, Australian law does not include any general exemption for governmental works, leaving most of them with full copyright protection.

Summary 6: "Works that are not Fixed"

The Berne Convention requires member countries to grant protection to original works, but it does not require that the work be fixed in a tangible medium. Under Swiss law, a work is protected whether or not it is "fixed." Therefore, an original, extemporaneous speech in Switzerland may have copyright protection, while a similar speech that is not written in advance, recorded, or transcribed would not be fixed and would not be protected under American law. Among other countries generally not requiring "fixation" of the work are Sweden and Brazil. Such countries often face a dilemma in copyright litigation: A valid copyright may be asserted, but without tangible copies, the evidence of its existence and specific attributes can be difficult to prove. Granting copyright protection without fixation of the work is also highly problematic for works of visual arts, where the image often needs to be embodied and perceived to have any meaning whatsoever. Consequently, Japanese law and the law of many other countries specify that at least paintings, drawings, and cinematographic works must be fixed to have protection.

Summary 7: "Copyright Duration Varies in Different Countries"

In 1998, Congress extended the term of U.S. copyright protection by twenty years as a direct result of international developments. Although the Berne Convention calls for a general term of protection for 50 years after the author's death, several European countries had chosen long ago to grant protection for 70 years after death. Moreover, Germany and many other major countries follow a "rule of the shorter term," whereby protection was granted in those countries to foreign works, but only for the shorter of either the term under German law or under the law of the country of origin. Consequently, an American work was protected in Germany for only 50 years after death of the author, while a German work had protection out to 70 years following the author's death. Faced with this inequality and with pressure from prominent copyright owners who wanted more years of revenue, Congress in 1998 granted the additional 20 years.

In 1993 the European Council issued a directive to member countries requiring them to adopt the general rule of life plus 70 years, and consequently that term has become the norm in the twenty-eight countries of the European Union. It is also followed in some other parts of the world. Brazil uses life plus 70, while Japanese law still follows life plus fifty.

Summary 8: "Few Countries Have a Concept Akin to Fair Use?

The copyright laws of most countries provide various exceptions to or limitations on the basic rights of the copyright owner. Most of these exceptions are highly specific and apply only under a litany of detailed conditions. Many statutory exception in U.S. law follow that model. But U.S. law also includes the highly flexible provision of fair use. It is in many respects similar to fair dealing in the United Kingdom, and both concepts are rooted in common-law traditions that enable judges to make equitable decisions based on the facts of each case. A Canadian statute emphasizes flexibility through its simplicity: "Fair Dealing for the purpose of research or private study does not infringe copyright." The law's specific meaning is left to judicial development, and a series of cases from the Supreme Court of Canada has given detailed meaning to the law. The U.S. statute on fair use similarly provides only a general framework, as described in this manual.

The flexibility and potential breadth of fair use sometimes has been problematic from the perspective of other countries, especially countries that base their laws on the system of civil codes, where statutory language generally defines the scope of permissible activities. Despite the criticism of fair use from other countries, even civil-law nations are finding the need for doctrines that infuse some workable flexibility into copyright law. For example, Germany has a principle of "free utilization" that has allowed borrowing from an existing work for parody and other artistic expressions. Diverse countries are starting to evaluate whether they should adopt fair use. Israel, in 2007, enacted language that reiterates much of the language of the American provision.

Whatever the merits of or problems with American fair use, it is applicable law only within the jurisdictional borders of the United States. Hence, if a researcher is in the U.S., he or she may apply fair use with respect to works that might have originated anywhere in the world. On the other hand, if that same researcher is in France, Japan, or anywhere else, the researcher must comply with the laws of that country, even if the materials in use originated in the U.S.