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U.S. Copyright in the Digital Age: Impacts on Universities, Faculty and Students

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ProQuest

The views expressed here are the personal opinions of the author. The presentation represents only a discussion of legal issues and is not intended as, and should not be construed as, legal advice.
First Modern Western Copyright law: adopted by Great Britain in April 1710
Happy Birthday
Statute of Anne!
Copyright and the World’s Most Popular Song

Robert Brauneis

When Justice Breyer protested Congress’s 20-year extension of the term of copyright in his dissent in Eldred v. Ashcroft, he chose one song to emphasize what was to his mind the already overly generous protection of copyright law: “Happy Birthday to You (melody first published in 1893, song copyrighted after litigation in 1935), [the copyright of which is] still in effect and currently owned by a subsidiary of AOL Time Warner.” The example, even in that brief form, is a powerful one. “Happy Birthday to You” is a simple song that most people have learned by hearing it performed by family and friends, and many probably assume that it is not under copyright at all. 1893 is a long time ago – 106 years before Eldred was decided. And, for those who are unsympathetic to and suspicious of large corporations, AOL Time Warner – now just Time Warner – is one of the largest media and entertainment companies in the world.
Best Practices for Submitting Your ETD

1. Use the ETD Style Guide. We highly recommend use of the GW ETD Style Guide to do your dissertation; it is the easiest way to make sure you have the formatting of your dissertation right and will allow you to focus your energy on content, not format. Other than that:

   - Double space the text.
   - **Acceptable fonts and point sizes** are recommended by Proquest.
     Fonts recommended for good web viewing are: Courier New 10 pt, Georgia 11 pt, Times New Roman 12 pt, Trebuchet MS 10 pt, and Verdana 10 pt.
   - Use a 1 1/2 inch margin on the left to allow for binding, 1 inch margins on the right, top, and bottom.
   - Use tabs rather than the space bar to indent paragraphs or material in tables—it will prevent problems in the PDF file you will be creating.

2. Format Your Bibliographies in the Approved Style for Your Discipline. Make sure that...
you have a specific need to do so: (1) to pursue a patent application, which requires not publicly revealing a discovery until the patent application is safely filed, or (2) to pursue a book contract in a situation in which your publisher does not want the work released to the public as a dissertation. In most cases, any planned book will be so different from the dissertation that distribution of the dissertation through Proquest will not be a problem—see Publishing Issues. Professional journals generally do not care that parts of an article based on your dissertation were previously made available through Proquest’s Dissertation and Theses database.

12. Filing the Copyright. The Proquest website will ask you if you want to pay them to file the copyright for your dissertation with the government. This may be wise if you think that your dissertation has commercial value and envision that you might sometime want to be in position to sue someone for violating your copyright by using your work without permission. Typically, though, it is a waste of money. You already hold the copyright by virtue of being the author. If you later discover that someone has infringed your copyright, you can belatedly file the copyright with the U. S. government to position yourself to sue infringers. See Copyright Issues.
licensing your dissertation under Creative Commons

When I wrote my dissertation, it didn’t dawn on me that using the Creative Commons license might be remotely controversial. There’s a template for dissertations at Berkeley and one of those pages is the copyright page. Initially, I edited the copyright page to match the CC license that Cory Doctorow uses in all of his books on the copyright page. Shortly before I was set to file, I talked to another grad student in my department who had just filed his dissertation. Much to my horror, I learned that he was the first student to file his dissertation at Berkeley under the Creative Commons license and that it had been a disaster. He went through many iterations before they accepted it, complete with the CC license as an Appendix. Not wanting to pick a fight, I copied his approach verbatim. I went to file my dissertation and hit a stumbling block. They told me they had never seen such a thing. I told them that Joe Hall had filed that way only a few months back. They told me that they would need approval from high up and that I’d have to wait a long time to get that approval. Frantic, I started texting and emailing Joe. Luckily, he had all of the emails on hand and forwarded them to me. As it turns out, the person that Joe was trying to file with as the one who filed Joe’s and when I showed her emails that she sent negotiating this process with Joe, she let me file. I suggested she might want to take note since there would be plenty more students like me and Joe.

Today, the Daily Cal ran a story about our adventures in filing. I was pleased to learn that the Dean of the Grad Division committed to making CC licenses available to students in the future. This is truly good news!

But I also want to make a plea to all of you grad students out there who are slaving away on your dissertations... Use Creative Commons. The forms you fill out when you file your diss under ProQuest encourage you to make sure to copyright your dissertation. While theft is part of the framing, it is also framed as being about you profiting off of doing so (and ProQuest brokering the sale of your diss). Realistically, 99% of all grad students are never going to see a dime directly from their dissertation. What’s the advantage of keeping “all rights reserved”? Why not let folks use it for whatever non-commercial purposes they deem fit (like teaching a chapter or two in class)? I mean... I would LOVE it if someone translated my dissertation. Or remixed it. Or turned it into a movie. That ain’t ever gonna happen, but still... why actively prevent it?

And while we’re at it... why not make it freely available? Part way through my dissertation, I realized that I had never read a dissertation. I was surprised to find that very few people make their dissertations easily available. Why? In some senses, the diss is quite embarrassing. It’s imperfect. You’re sick of it. But there are huge advantages to making it available. At the very least, it allows future students to get a sense of what they should expect. (There was nothing more nerve-calming than realizing that my mentors’ dissertations were totally sloppy at points.)

Anyway, if you’re a student out there, consider licensing your dissertation under Creative Commons and making your diss freely available.
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Here’s Ms. Boyd’s author’s page:

Taken Out of Context: American Teen Sociality in Networked Publics

Copyright © 2008, Some Rights Reserved (See: Appendix 3) danah michele boyd

“Appendix 3” is the non-commercial use cc license. She sensibly reserved the right to convert the work into a commercial book or other work.
“… ProQuest/UMI stands to make money from scaring you into paying them to register your copyright. Perpetuating a closed culture is, in some ways, beneficial in the short term to the university…. ”
“Scare” tactics
Copyright registration fees

- The Library of Congress charges $50 for registration of each work in paper form submitted and $35 in digital form.

- ProQuest charges students $55 to handle registration of the copyright and deposit of the work with the Copyright Office of the Library of Congress, including the LoC fees.

- The surcharge covers the costs of the collection, reproduction, delivery, administration and follow-up of these submissions.
Copyright vests whenever an

- Original
- work of authorship
- is fixed
- in a tangible medium
There is a U.S. © in anything in your

- Bookshelf
- Desk Drawer
- Computer
- Institutional Repository

and intellectual property is “nonrivalrous” – that is, you do not lose the knowledge you give me when I read your dissertation. We can all hold it simultaneously.
So if copyright is easy to get, and we can all share it without loss, why ever register ©?

Two (and a half) reasons why one might:

- Cultural
- Legal
- & a bonus ½ reason
Cultural Reasons to Register ©

- The copyright f-bomb
- One of these things is not like the others
- Part of the scholarly corpus
The copyright f-bomb:

**FORMALITIES**
- © claim appearing on work
- Registration
- Renewal

- Signal to the world
- Author’s notice
- Works fall (rise?) into the public domain
- Creative Commons’ attribution and other licenses bringing formalities back

**Hey, this is important!**
Cultural Reasons to Register ©

If everything is special then nothing is.

One of these things is not like the others:
Shopping list

Milk
Apples
Eggs
Rols
Bananas
Bread
here are some other CATS and some TUBCAT things!!

TSHIRTS MICEPADS MUGS OF FLYING TUBCAT!!! CLICK HERE

(PS: there is non money made on any TUBCAT merchandise!!)

TUBCAT IZ NOT MY KITTIE!!!! I AM ONLKY A FAN!!!

I too wish for TUBCAT a big and happy life!!! pls don't say i am cruel i just love this fat puffy kitty!!! okay!!! no more hate mail!

OMG!!! TUBCAT is flying in the clouds!!!! this to JOSH REED!! #1 fan of TUBCAT!!

NEW!!! BRIDE OF TUBCAT!!!
YEARS OF BLOOD, SWEAT AND TEARS:
My Parents Sent Me to This Expensive University and All I Got Was This Really Long Paper

A Dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy Graduate School of Arts and Sciences University of Middle Earth

By Tom Bombur

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GoDaddy has created an idiotic "Copyright Registration" service that provides "expert assistance" in registering your copyright -- something that you have virtually no good earthly reason to do, and something you absolutely don't need any pricey "expert assistance" with. They offer a goony little badge you can put on your work to show that it's really, really, sooper-copyrighted, too ("Display this on your site and show thieves and others that you have federally assured rights to damages and attorneys' fees"). This is about half a step above the Green Card lotto scam and pay-for-book-doctoring "services" that prey on would-be artists' anxieties. Link (Thanks, Devon!)

http://www.boingboing.net/2004/02/06/dumbass_copyright_re.html
Great book!
This is a work of fiction. All of the characters, organizations, and events portrayed in this novel are either products of the author’s imagination or are used fictitiously.

LITTLE BROther

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“Code can, and increasingly will, displace law as the primary defense of intellectual property…”
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Frequently Asked Questions

This is the full extended version of the FAQ. It has a lot of information, and may be difficult to navigate. You may want to first take a look at the abbreviated FAQ, which answers a handful of the most common questions people have about Creative Commons.

Please Note: Creative Commons does not provide legal advice. This FAQ is designed to be helpful in raising awareness about the use of our licenses. It is not a substitute for legal advice. It may not cover important issues that affect you and you may wish to consult with a lawyer.

Questions for people thinking about applying a Creative Commons license to their work

How do I apply a Creative Commons® license to my work?
For online works, you apply a Creative Commons license to a work by selecting the license that suits your preferences. Once you have selected your license, and if you are applying it to an online work, follow the instructions to include the HTML code in your work. This code will automatically generate a license button and a statement that your work is licensed under a Creative Commons license, or a CC0 or public domain button if you choose to dedicate your work to the public domain or certify that a work is in the public domain via one of our public domain tools. These buttons are designed to act as a notice to those who come in contact with your work that your work is licensed under the applicable Creative Commons license. The HTML code will also include the metadata that enables your work to be found via Creative Commons-enabled search engines.

http://wiki.creativecommons.org/Frequently_Asked_Questions
Is applying a Creative Commons license to my work the same or an alternative to registering the copyright to my work?

“No. Applying a Creative Commons license to your work does not give you the same, similar or alternate protection to registering your copyright. Creative Commons licenses apply in addition to and on top of an existing copyright.”

http://wiki.creativecommons.org/Frequently_Asked_Questions#Is_applying_a_Creative_Commons_license_to_my_work_the_same_or_an_alternative_to_registering_the_copyright_to_my_work.3F
Do I need to register my copyright?

“In most jurisdictions, registration is not required. However, for creators in the United States registration can be obtained and is advisable so that you can enforce your copyright in court. For US-based creators, you should check out the U.S. Copyright Office’s ‘Copyright Basics’ page, which explains more about copyright registration.”

http://wiki.creativecommons.org/Frequently_Asked_Questions#Do_I_need_to_register_my_copyright.3F
With the Scholarly Publishing and Academic Resources Coalition (www.arl.org/sparc/), Creative Commons developed a Scholar’s Copyright Addendum Engine in support of the self-archiving route to Open Access at scholars.sciencecommons.org/

The addendum engine generates an addendum that reserves certain rights to the author, such as the right to post to institutional repositories.

Whitepaper: “Opening the Door”

http://wiki.creativecommons.org/Frequently_Asked_Questions#Do_I_need_to_register_my_copyright.3F
Copyright registration is not the enemy of dissemination, it is its ally.

By registering, authors add their contribution to the intellectual history of the United States.

Registered works are centrally indexed by the Library of Congress, and

Permanently stored both digitally and physically.
So if copyright is easy to get, and we can all share it without loss, why ever register ©?

Two (and a half) reasons why one might

- Cultural
- Legal
- (& compliance with mandatory deposit)
Legal Reasons

- Commercial protection
- Disparate treatment of unregistered works
Legal Reasons: Commercial protection

These are the grounds people are often considering when they write registration off as ‘typically a waste of money’:

• Clear statement of work’s value
• Claims accrue immediately
• Money damages don’t have to be proven
Legal Reasons: Disparate treatment of unregistered works

Not all copyrights are created equal:
- Different damages in class action cases
- Different protections in copyright reviews
SYNOPSIS

The Copyright Act (Act) generally requires copyright holders to register their works before suing for copyright infringement. 17 U.S.C.A. § 411(a). The complaint in this consolidated, class-action copyright infringement suit alleged that the named plaintiffs each own at least one copyright, typically in a freelance article written for a newspaper or magazine, that they had registered in accordance with § 411(a). The class, however, included both authors who had registered their works and authors who had not. The parties moved the District Court to certify a settlement class and approve a settlement agreement. The District Court did so over the objections of some freelance authors. On appeal, the Second Circuit sua sponte raised the question whether § 411(a) deprives federal courts of subject-matter juris-
Legal Reasons: Disparate treatment of unregistered works

Different treatment in class action cases:


- Court allowed settlement of claim involving both registered and unregistered works of freelancers who had not expressly granted digital rights

- **BUT**, Authors who did not register will receive less money than those who did
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

The Authors Guild, Inc., Association of American
Publishers, Inc., et al.,

Plaintiffs,

v.

Google Inc.,

Defendant.

PROPOSED ORDER GRANTING PRELIMINARY APPROVAL
OF AMENDED SETTLEMENT AGREEMENT

This matter is before the Court pursuant to the motion of Plaintiffs in the above-captioned
class action (the “Action”) for preliminary approval of an Amended Settlement Agreement

Case No. 05 CV 8136 (DC)
Legal Reasons: Disparate treatment of unregistered works

Google Book Settlement:

Dissertations are not included in the body of the GBS settlement document, but your students’ works are swept up at the bottom of the first page of Attachment ‘J’ of the official Notice (“‘Books’ includes in copyright written works, such as novels, textbooks, dissertations, and other writings….”)
Legal Reasons: Disparate treatment of unregistered works

Google Book Settlement:

- Registered works are expressly included in the proposed settlement
- Unregistered works are expressly excluded
Legal Reasons: Disparate treatment of unregistered works

Regardless of whether we view the proposed GBS as creating a modern Library of Alexandria or the trampling of 300 years of settled copyright law, there is no escaping that works are to be treated differently depending on whether authors registered their copyrights.
So if copyright is easy to get, and we can all share it without loss, why ever register ©?

Two (and a half) reasons why one might

- Cultural
- Legal
- (& compliance with mandatory deposit)
**Bonus** ½ reason to consider registering copyrights in dissertations and theses:

Mandatory Deposit

- Even if copyright is not registered, 17 U.S.C.§407 requires the owner to deposit 2 copies within 3 months of publication.

- Is inclusion in an open web institutional repository “publication” governed by this statute? Since the rules are evolving, we don’t know for sure yet…. But it certainly seems public.

- Only ½ because it isn’t really © rule, but since registration fulfills the requirement it solves the problem.
Paraphrasing what they say about gravity,

*Copyright’s not just the law…it’s a good idea.*
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