



*Copyright
in a
Global Information
Economy*

Fourth Edition

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For Andrew and Eli.

—J.E.C.

*For Mom and Dad, thanks for keeping me sane . . . and
a little crazy.*

—L.P.L.

*For Tade, Francis, Aaron and Anna my “good and perfect”
gifts from the Lord.*

—R.L.O.

For James, always and forever.

—M.A.O.



Preface

As this casebook moves into its fourth edition, the relentless pace of technological innovation, particularly with respect to digital communication technologies, continues to challenge well-settled copyright doctrines, creating new opportunities to contest the nature and scope of the various interests implicated by copyright. This edition therefore continues to emphasize the evolving nature of copyright law, and the copyright system more generally, in response to technological change and the pressures of globalization. We provide students with not only a firm foundation in the traditional precepts of copyright law, but also a strong theoretical background with which to evaluate the public policy implications of the ongoing changes. Each chapter includes material carefully selected and arranged to help students appreciate how the law has evolved over time and the complexities introduced by new technologies and/or new theoretical approaches.

As is expected of a new edition, we have updated all the chapters to reflect new legislation and case law, including materials reflecting international trends. Our website at www.coolcopyright.com contains background materials (including additional pictures) for the cases in the book, as well as some alternative cases, including some that appeared in the third edition but have now been replaced. We trust that students and teachers will find these materials useful to augment the text or to provide resources for deeper study of a particular topic.

The fourth edition differs from the third in several important respects. Most notably, we have reorganized the material into six parts: (1) Introduction to Copyright Law, (2) The Subject Matter of Copyright, (3) The Statutory Rights of Copyright Owners, (4) Indirect Infringement and Lawful Use, (5) Practical

Considerations in Licensing and Enforcing Copyrights, and (6) New Enforcement Strategies and Public Policy Limits. This structure introduces students to the exclusive rights of copyright owners earlier in the course, and enables them to study the materials on formalities and duration in the context of an integrated unit on copyright due diligence, licensing, and enforcement.

The fourth edition also has some new features to help both teachers and students navigate the material. Recognizing the ever-increasing complexity of copyright law, we have used the terminology “Diving Deeper” to flag sections addressing detailed provisions of the law that not all teachers may wish to cover. We have included text boxes for greater ease of reading and to help students link various themes that may appear across different chapters. The boxes highlight practice tips; remind students of what they have read in past chapters or sections and highlight what is to come; provide comparative perspectives; explain technological concepts; and give information on the later history of some of the excerpted cases. Perhaps most important, we have added “Problems” and “Practice Exercises” to give students a sense of the types of issues they may face in practice. “Problems” generally ask the students to apply statutory sections directly, while “Practice Exercises” ask them to think about how to advise a client, develop and argue a case, or draft a legal document.

We continue to believe that understanding the role of copyright law in the information economy requires more than a study of the Copyright Act and copyright case law. To understand why copyright law is the way it is, and to develop an appreciation for what it might become, one must consider the history and evolution of technologies for creating and distributing copyrighted works; the structure and political influence of the major copyright industries and user groups; and the availability of other legal regimes (such as contract law) to supplement or even supplant copyright protection. We include introductory materials on these topics and then give substantial consideration throughout the book to the historical, technological, political, and legal contexts within which copyright law operates.

We have retained the use of secondary source materials that offer insights about the evolution of copyright and contemporary information policy. However, in response to feedback from students and teachers, we have streamlined the use of secondary materials and asked questions designed to facilitate a firmer understanding of the ways that theory and practice converge. We have condensed the Notes and Questions in service of those goals. Suggestions for additional reading on various topics can be found on our website, www.coolcopyright.com.

In addition, we continue to emphasize the importance of international developments for U.S. copyright law and policy. We integrate both international and comparative materials throughout the text, rather than leaving those materials until the end of the book or treating them as advanced topics. Throughout the book, we discuss relevant treaty provisions and, in many instances, ask students to compare specific domestic copyright rules with the corresponding rules of other countries.

Our hope is that students who use this book and our supporting website will come to understand and appreciate the copyright system as a work-in-progress, and recognize that copyright is not simply a regime of private law, but rather one

that implicates both private and public interests. We believe that we offer students a unique text that will help them develop the skills necessary to identify and think critically about both contested issues in particular cases and larger patterns of change within the copyright system as a whole. Our expectation is that students will emerge from this process of exploration well-informed and better equipped to practice copyright law in a world in which continual change is the norm.

Julie E. Cohen

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