

Answers to Practice Questions for Exam 1 (Copyright)

Answer 1-Copyright:

a) Fair uses of a copyright work are those that do not require explicit permission of the copyright owner. More precisely, from reading assignment **Digital Dilemma**, Chapter 4: “Fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

b) Correct answers include but are not limited to:

- Digital copies are perfect.
- Digital copies can be made at zero cost.
- Digital copying is not necessarily a good proxy for infringement.
- No TPS can be perfect in today's computers. General purpose PCs are programmable, and hence TPSs are circumventable (at least by experts).

Answer 2-Copyright:

a) See Slide 5 in Lecture 2 (Sept 3, 2013).

b) First sale makes sense for physically embodied works (especially paper books), where “buying a copy” entails taking physical possession of an object that cannot be reproduced at zero marginal cost. When the buyer subsequently lends or resells the copy, he must relinquish possession of it; only one person at a time can use the copy. Thus, allowing buyers to lend or resell (but, importantly, *not* to make additional copies) does not threaten the copyright owner's ability to sell more copies. In the digital world, where “buying a copy” does not entail taking possession of an object, and additional copies can be made at zero cost, a buyer could give or sell a copy to someone else *without* having to relinquish his own copy. Thus,

technically speaking anyway, he could in fact threaten the copyright owner's ability to sell more copies.

Publishers and makers of e-readers have dealt with this by either disabling lending and resale altogether or at least making a "loaned" copy of a digital work unusable on the lender's machine while it is in use on the borrower's machine.

Answer 3-Copyright:

According to most copyright lawyers, Fair Use is a "defense," not a "right," in the US. Under this interpretation, for the Fair-Use Doctrine to be relevant, the following sequence of events has to take place: A copyrighted work has to be used; the copyright owner has to sue the user for infringement; both parties have to go to court; and the user has to defend himself by saying that his actions pass the Four Factors test of the Fair-Use Doctrine. Until a specific use is made and the user charged with infringement, "fair use" does not come into play. Thus, under this interpretation, if a copyright owner can use a TPS to prevent a specific use, no one has a "right" to make this use.

Answer 4-Copyright:

See slides 8, 10, and 11 in Lecture 2 (Sept 3, 2013).