

Open Education Rising Podcast (www.openeducationrising.net)

Hosted by Deepak Shenoy

Transcript of Episode 6: Seven Questions About Copyright

Hello, and welcome to Open Education Rising, a podcast about growing and improving open education. I'm your host, Deepak Shenoy.

Much of the open education community runs on Creative Commons licenses, and those licenses themselves are based on copyright law. So if you've been using Creative Commons licenses, you've been taking advantage of copyright law. This episode is a basic primer on copyright laws. I answer 7 common questions that seem to come up.

1. What's a copyright?
2. Do you need to file papers to gain a copyright?
3. How are copyrights different than patents?
4. How are copyrights different than trademarks?
5. What can you copyright?
6. How does something copyrighted get in the public domain?
7. What exemptions are there to copyright law?

Before I answer these, I wanted to cover a few preliminaries.

First, I'm sharing my understanding of basic ideas that I think would be helpful to many open education advocates. However, I'm not a lawyer, and please do not take any of this as legal advice.

Second, copyright law varies from country to country. There are certain treaties that make some things largely universal, but there is a lot of local variation. I understand the American context the best, and I'm speaking from that perspective. If I hear from you all that you have an interest in hearing from an expert or about countries outside the US, I'll try to book future guests who can help us.

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Okay let's get started!

Question 1: What is a copyright?

Copyrights apply to original creative works. My mind immediately goes to a textbook or novel, but this also applies to songs, videos, and movies! What rights does a copyright provide? The word itself makes it sound like there's control about the "right" to "copy" the work, and that's certainly the case. However, copyrights cover many more things than literal copying. They also apply to distribution, translations, adaptations, and performances of the work. Do you want to have your book published in another language, or not? Do you want your song to appear on a streaming service, or not? If you have the rights to that book or song, the copyright law gives you those choices.

Question 2: Do you need to file papers to get protection?

No! A creator does not need to register a work with a government to gain copyright protection. When you create it, you get it. I didn't realize all those times I was writing in my diary in middle school, I was a copyrighted author! My 13 year old self would have said "radical, man." That's just how we talked back then.

Seriously, though, the right in most countries is automatic at creation. That said, there can be additional advantages to filing a copyright with a government. For example, in some places, in order to bring a legal action for a copyright violation, you have to have filed a copyright with the government first.

A moment ago, I talked about the creator getting the copyright. That's generally true, but not always. In the US, for example, there's the concept of a work for hire. If I'm working for an employer and I write a paper as part of my job, typically the employer would own the copyright, not me. A contractor who is hired to work on something doesn't typically own the copyright, either. In much of this episode, I'll be talking about the creator and the rights holder synonymously for convenience, but please remember in the real world, those aren't always the same entity.

Question 3: How are copyrights different than patents?

They apply to fundamentally different things. I remember this one by thinking of a patent sticker on the side of a large machine. Patents apply to inventions. Typically, they are awarded for machines and processes that have a practical use. The script that I wrote for this podcast is original, so it gained a copyright when I wrote it, but it's not something I could receive a patent for.

Question 4: How are copyrights different than trademarks?

Copyrights and trademarks apply to fundamentally different things. The way I remember this one is to break the word up into "mark" and "trade." A mark is what in contemporary language we would typically call a symbol or logo. And what used to be called trade is now what we call business. So a trademark is a symbol for the purpose of business, usually used for a brand identity. For example, the Nike Swoosh on a sneaker and the Target Bullseye on the side of a Target shopping bag are trademarks. Trademark is similar to copyright in that they both are a form of protection of intellectual property, but the trademark is for a much narrower purpose than copyright.

Question 5: What can you copyright?

You copyright the expression of an idea—that means what's written down or recorded. But you can't copyright the idea itself. For example, let's pick a topic I like, musical improvisation. There have been many books written about musical improvisation. That does not prevent me from writing a new book on improvisation. If I write a new explanation of improvisation—using a new sentences and

paragraphs—that’s a new expression of the idea. I gain the copyright to my expression of that idea, but again, I cannot get the copyright to the idea of musical improvisation itself.

There are also some categories of things that can’t ever gain a copyright. General facts cannot be copyrighted. The texts of bills and laws typically cannot be copyrighted. It’s pretty easy to understand why allowing those things to be copyrighted would be a bad idea. They should general things the public has a right to.

Question 6: How do works get in the public domain?

The public domain is a term for works that belong to the public, without any limitations. How does something get into the public domain, exactly?

One path is if creators release creations into the public domain with no restrictions, intentionally. This does happen—people sometimes produce things with the intention of just sharing it with the world.

But the path most people usually think about, and causes controversy, is the path where copyrights expire and then creations pass into the public domain. In the United States, it used to be that 50 years after the creator’s death, a work would pass into the public domain. But in 1998, the Sonny Bono Act was passed, extending the freeze out period from 50 to 70 years after the creator’s death. Think about that—if someone writes something when they’re 30, and they live until they’re 80, that means it will be 120 years before it’s in the public domain. You may have seen different celebrations of 2019 and the public domain—that’s because works that were on the verge of being in the public domain in 1998 in the United States are now freely accessible.

Question 7: What are exemptions to copyrights?

There’s a broad set of exemptions called fair use and fair dealing. I’m based in the US, and so I’m most familiar with fair use, so I’ll focus on that. From the standpoint of educators, researchers, and reviewers, fair use is helpful. For example, it’d be very hard to write a research paper and quote from other literature if you had to get the permission of each author you quoted. The development of knowledge would slow down. So fair use is pretty handy.

Fair use is a fascinating area of the law, and it’s not as clear-cut as it may sound. In the US, there are four criteria for fair use. Each one is ambiguous enough that you have to look at court decisions for interpretations, known as case law. The courts take into account the purpose and character of the use, the nature of the work, the percentage of the work used, and the effects of the use on the value of the work. The courts treat a lot of these nuances differently, and how they treat things can vary by the kind of work.

This wraps up our 7 basic questions about copyright law. I’ve made an effort to describe copyright law as it is. In a future episode I’ll get into the ideas behind copyright law, and how it can be made better.

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This podcast is produced by Savannah Smetlzer. I composed and perform the music. I'm supporting this podcast from my consulting practice, which you can visit at deep-consulting.net. Until next time, take care.