open.michigan

Unless otherwise noted, the content of this course material is licensed under a Creative Commons Attribution 3.0 License.
http://creativecommons.org/licenses/by/3.0/.

Copyright 2008, Bryce Pilz.

UNIVERSITY OF MICHIGAN

Open Dissemination and Access to Information

Class 8 – October 24, 2008

SI 519 / PubPol 688

Bryce Pilz

Fall 2008

Schedule

- 2:10 – Intro; Announcements
- 2:20 – Exercise
- 2:30 – Questions / Current Events
- 2:40 – Student Presentation: Cybersquatting
- 2:50 – Student Presentation: Creative Commons
- 3:00 – Open Content Licensing
- 3:25 – Jacobsen Case
- 3:45 – Break
- 4:00 – Student Presentation: Government Docs
- 4:10 – Student Presentation: MIT Open Courseware
- 4:20 – Open Access

Intro

Plagiarism v. Copyright

- These are different concepts
- Attribution?
- Is copyright infringement always plagiarism?
- Is plagiarism always copyright infringement?
- Who enforces?
- Other differences?

	Copyright	Plagiarism
Enforcer	Courts	School / Employer / Peers
Penalty	Damages; injunction	Institutional penalty; public censure
Attribution	Not a defense	Defense
Changing some words	Derivative work – still infringing	Paraphrasing – still plagiarism without credit
Use of public domain work	Not © infringement	Plagiarism without credit

Next Week

Exercise

Questions / Current Events

TM Fair Use – 2 kinds

- Nominative Fair Use
  - Using TM to describe TM owner's product (when only practical way to talk about product is to use TM)
    - Ex) For use in "Canon"
  - Confusion <u>not</u> addressed

- Classic Fair Use
  - Using TM to describe your own product
  - Until 2004, courts split on whether confusion mattered

KP Permanent Make-up
v. Lasting Impression (2004)

KP: Microcolor Case

JUSTICE SCALIA: In other words, if you choose to use a descriptive term as your logo, you take your chances.
MS. MILLETT: Exactly.
JUSTICE SCALIA: -- that that descriptive term will be used fairly and in good faith by somebody else and cause confusion.
MS. MILLETT: Exactly.
JUSTICE SCALIA: And if you don't want confusion, pick a term that isn't descriptive.

- You can call your store Best Buy, but others may fairly say their store provides the best buy

- This can be a fair use, even if there is some confusion

- But, confusion can be a factor in determining fair use

Obama CTO

- Push broadband
- Manage $50B VC fund for green technologies
- Cybersecurity
- Jeff Bezos, Vint Cert, Steve Balmer, Ed Felton

Mongols trademark

- Previously owned by motorcycle gang
- Trademark ownership turned over to the government
- The government can now seize people got wearing the logo
- How will the government maintain the trademark?

Presentations

- Cybersquatting
- Creative Commons

"Public Licenses"

- Open source software

- Open content

- Next?

Background

- Concept is old – collaborating by disseminating material in an open fashion
  - Storytellers in Peshawar
  - Oxford English Dictionary
  - Disney
  - ARPANET – "Request for comments" (1969)
  - Unix (1974)
  - doujinshi

Need for "Public Licenses"

- Copyright expansion – term; scope (derivatives); DMCA; lack of clarity for fair use
- In general – it's hard to just give stuff away
  - Others may use it improperly
  - Liability
  - Transaction costs (due to © formalities)
    - Hard to find you
    - Need to find you
- Goal: Make protected materials more accessible and more negotiable

Stallman

- 1984 – Trying to share software
  - But users couldn't share the software of others

GNU Manifesto (1985)

"Why I Must Write GNU: I consider that the golden rule requires that if I like a program I must share it with other people who like it. Software sellers want to divide the users and conquer them, making each user agree not to share with others. I refuse to break solidarity with other users in this way. I cannot in good conscience sign a nondisclosure agreement or a software license agreement."
Richard Stallman

Commentary

- "Stallman's vision is laid out in the GNU Manifesto. This manifesto is either a profoundly important document or the mimeographed ravings of some guy in the city park. I've never been entirely sure which." Eric Kidd (2000)

Free Software

- 1984: Set up Free Software Foundation and started writing software

- Free (as in free speech, not free beer) to:
  - 1) run the software for any purpose;
  - 2) study how the software works and to adapt it to your needs;
  - 3) redistribute copies of the software
  - 4) improve the software and distribute your improvements to the public

From "free" to "open"

- 1991: Linus Torvalds comes along
  - Writes Linux Kernel; using much GNU software
  - Linux grew from a hobby to the third most used operating system in the world

BY: -= Treviño =- (flickr)
http://creativecommons.org/licenses/by-nc-sa/2.0/deed.en

Netscape Release

- 1998 – Browser Wars
- January 1998 – Netscape release its browser as "open source"
  - Worried that Microsoft could make the web proprietary if servers only able to interact with IE
- Firefox, Safari, Konquerer all based off of Netscape's code

Open Source Principles (Rosen)

- 1) Free to use OSS for any purpose whatsoever

- 2) Free to make copies of OSS and to distribute them

- 3) Free to create and distribute derivative works

- 4) Free to access the source code

- 5) Free to combine open source and other software

Source: Rosen, Lawrence. "Chapter 1: Freedom and Open Source" in *Open Source Licensing: Software Freedom and Intellectual Property Law.* Prentice Hall PTR, 2004.

Creative Commons

- http://www.youtube.com/watch?v=io3BrAQl3so
- http://www.youtube.com/watch?v=VMZ2mUXZEA8

Open Access

- http://www.youtube.com/watch?v=g2JT23E1bRE
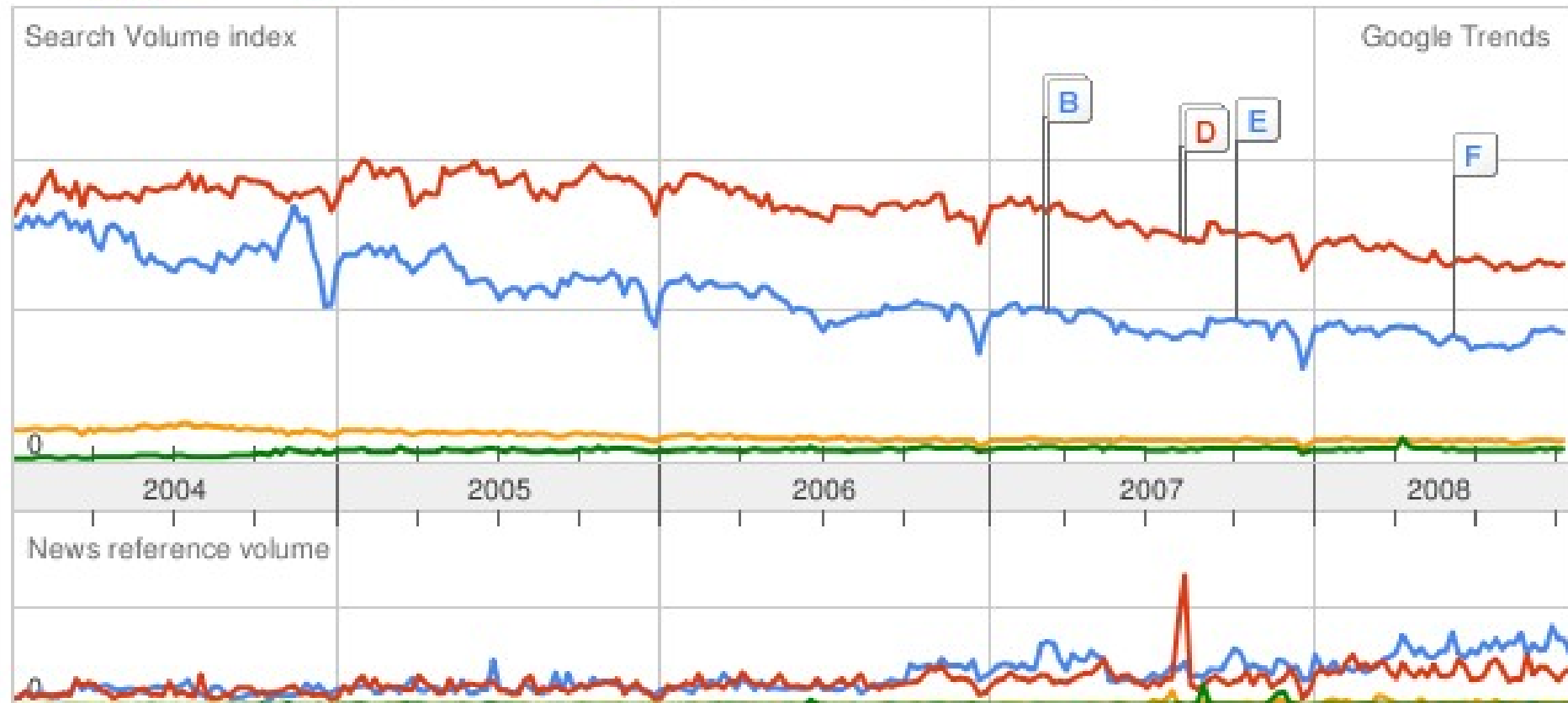
NIH Open Access

- Author must post articles reporting NIH funded research
  - NIH repository on PubMed Central

- Author therefore must retain sufficient public access rights when granting publication rights to others

Source: http://www.google.com/trends?q=copyright, open source, open access, creative commons

Encyclopedia	Edition	Articles (thousands)	Words (millions)	Est. characters (millions)	Average words per article
Wikipedia	English	>1,000	320	>1,752	320
Encyclopedia Universal Illustrada Europeo-Americana	–	>1,000*	200	1,000	–
Nationalencyklopedin	–	183†	–	–	–
Encyclopaedia Britannica	2002	85	44	300	650
	Online	120	55	300	370
Great Soviet Encyclopedia	1978	100	21†	200	500
Encyclopédia	1751-1780	72	20	–	278
Microsoft Encarta	Encarta Deluxe 2002	70‡	40	200	600
	Encarta Deluxe 2005**	63	40	200	200
	2002 Encarta Encyclopedia	40	25	200	200
Encyclopedia Americana	2004	45	25	–	556
Grolier Multimedia Encyclopedia Online	–	39	11	70	280
Columbia Encyclopedia	Sixth	51	6.5	40	130

* Kenneth F. Kister, *Kister's best encyclopedias: a comparative guide to general and specialized encyclopedias*, (1994) p. 450. [Article count is for the 82-volume edition, rather than the 119-volume one].

** Includes 10,000 historical archives.

† Number of encyclopedic articles. The *Nationalencyklopedin* contains a total of 356,000 entries.

‡ Kister, op. cit., p. 365.

§ Advertised as containing "over 63,000 articles, with 36,000-plus map locations and over 29,000 editor-approved website links." The 2006 Premium CD-ROM had 68,000 articles.

Public License Legal Issues

- 1) Scope of License – other than Jacobson, no U.S. cases construing these licenses

- 2) Automatic Termination – easy to accrue large infringement damages using OSS

- 3)Conflicting Licenses – 58 OSI- approved licenses; but at least 600 "open source" licenses exist
  - Even the top 8 OS licenses may be incompatible (ex: GPL and Mozilla Public License)

- 4)Need for OS Policy – concern from investors

Jacobsen

- Difference between contract law and copyright/ IP law

Jacobsen Ruling

- P. 12 – "Copyright holders who engage in open source licensing have the right to control the modification and distribution of copyrighted material."

- P.12-13 – "The choice to exact consideration in the form of compliance with the open source requirements of disclosure and explanation of changes, rather than as a dollar-denominated fee, is entitled to no less legal recognition."

Source: Jacobsen v. Katzer (N.D. Cal. 8/17/2007)

Class Questions

Problem 1

- UM Library adopts CC license
  - Whether to use "noncommercial" restriction
- Boss wants no restrictions other than attribution – everything should be free and open
- Concerned about public perception of giving things away for others to make money
- Student has question about sponsored research

Problem 2

- FSF Lawyer

- Question about code that was not created with any OSS, and distributed by itself

- But, it "calls" a spell-checker program that was released under the GPL v2 and is available online.

- Does your software need to be released under GPLv2?

Problem 3

- Play online licensed under CC – share alike

- Software licensed under:

Ann Arbor Commons License

By using this software, you agree to the following:

1) you may make derivative works of this software provided that you only release any such derivative work under this Ann Arbor Commons License or under a similar license with terms consistent to those in this license;

2) you may include this software as part of a compilation of other works as long as the compilation is released under this Ann Arbor Commons License or under a similar license with terms consistent to those in this license

3) you may freely share this software with others, as long as you release this software under this Ann Arbor Commons License or under a similar license with terms consistent to those in this license.

4) A license is a "similar license" under this agreement and has "terms consistent to those in this license" as long as it allows the free distribution of derivative works and does not restrict the future use of this software on the basis of whether such use is commercial or noncommercial.

- Which license can be used to release software version of play?

Problem 4

- How to make money with software written using GPLv2 components?

Problem 5

- Licensed song under CC – Attribution, Noncommercial, No Derivatives
- You'd like to make slideshow using that music as background and show it to the class
- Can you?

Background Materials

Open Access:
the NIH Policy

See slides 14 – 35 of Elaine Brock's presentation at
http://www.research.umich.edu/policies/federal/