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SI 521

Copyright Basics

January 29, 2008

Ripping a CD/DVD Legal?

- Do you think it is legal to sell a book that you bought? To rent it? To xerox it for your use at your cottage up north?
- Do you think it is legal to make a digital copy of a CD you own and place it on your MP3 player?
- Do you think it is legal to make a digital copy of a DVD you own and place the movie on your computer for your viewing?

Compliance and Convenience

Re: Is it legal to backup my own dvd's?

The law in the US is curious. Strictly speaking, your "fair use" rights permit you to make a personal back-up copy but do not permit you to strip digital encryption (with AnyDVD or any other program for that matter) to do so. As a result, in strict legal terms, your "fair use" rights are useless since 99% + of all commercial dvds have CSS encryption.

That said, whilst technically breaching the law by stripping the digital encryption (though not by making a back-up copy), I am not aware of any case where someone has been prosecuted or sued for making a back-up copy of a dvd that they actually own (whether in the US or anywhere else for that matter).

Re: Is it legal to backup my own dvd's?

Is it illegal to do that in Canada? I might go and look it up on Google... but I don't really feel like it. Since it's for my personal use only I will probably risk it... and hope not to be caught.

<http://club.cdfreaks.com/f1/legal-backup-my-own-dvds-215398/>

Common Sense and Copyright Law

Re: Is it legal to backup my own dvd's?

Yo-

Having both AnyDVD and DVD Fab Gold - I would say that the DVD Fab Gold is slightly better - mainly because you can do a one click copy-

As others have said - backing up for your own use is one thing - but backing up and sharing with friends and family or on the Internet or selling the copy is clearly illegal-

Use good common sense and y'all should be OK-eh!

[Not! - JH]

Making Citations Illegal

- Are hypertext links like citations?
- Can we think of an example where citations in hardcopy are illegal?
- Recent rulings have shut down referral sites of links to cd-copying or DVD-ripping software, or discussions of such tools and activities

Why Copyright?

- Why do we have copyright? - progress in science and the useful arts
- Framers of the Constitution saw value for whole society in encouraging creation of science and useful arts
- Purpose of the system is to benefit society at large
- Why then do we have restrictive copyright holders' rights?
- What is the deal, the balance?
- How it can go wrong - Why Copyright Laws Hurt Culture - <http://www.wired.com/culture/lifestyle/news/2001/11/48625>



<http://www.flickr.com/photos/thorne-enterprises/498309798/sizes/m> CC-BY-SA/

Article I, Section 8, Clause 8 of the United States Constitution, known as the Copyright Clause, empowers the United States Congress:

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Changing Deal - Litman

Changing ways of thinking about copyright;
changing metaphors

- Quid pro quo - creators and public
- Compensation - some return to incentivize creators, though these are strongly balanced by public values of robust commons
- Incentives - economic model - always some incentive at margin, so usefulness suspect
- Control - access, encryption, rules against trying to break encryption - access barriers impede fair use

Copyright

- Different in different countries - these notes are for USA
- A work is copyrighted automatically, as soon as it is expressed in a tangible form - “all rights reserved” - this wasn’t always so
- Author/creator is not always copyright holder - “work for hire”
- You as students hold copyright on all your work done in school - unless as an employee
- Permissions to use copyrighted materials are conferred through licenses - copyright holder determines what is permitted use in license
- The law also stipulates restrictions on the copyright holder’s rights - fair use is one set of these restrictions
- Copyright law is “case law” - determined through cases tried in court, hence on judges’ and juries’ rulings - as well as “statue law” - like the Digital Millennium Copyright Act (DMCA)
- This means copyright law changes as decisions go one way or another in trials and their decisions, or as new law written

Copyright Law & DRM

- Copyright law has changed as technologies have changed - eg, player pianos, records, movies, radio, video recorders, computers, networks
- Recently, due to concerns over widespread copying and downloading of copyrighted material, the DMCA was passed that made tampering with encryption illegal
- This restricts access, not just use, and adds a new layer to copyright questions
- The RIAA, famous for suing users of P2P music sharing systems, also feels previous fair use rights should be restricted by DRM, as does the MPAA
- Hence the restriction on breaking the CSS encryption on DVDs

RIAA

Jammie Thomas (born 1977) is a Native American single mother of two from Brainerd, Minnesota, and works on a reservation near that town. Thomas was sued by the RIAA for copyright infringement, by illegal sharing of songs, in Duluth, Minnesota. She was represented by Minneapolis attorney Brian Toder.[1]



On October 4, 2007, the final day of her trial, presided over by U.S. District Court Judge Michael J. Davis, the jury returned a verdict against her in the amount of \$222,000, which came to \$9,250 per song file, deciding that Thomas willfully violated the copyright of 24 music files consisting of such bands as Aerosmith, Green Day, and Guns N' Roses on Kazaa, under the user name of tereastarr@KaZaA.[2][3]

According to Billboard, Jammie Thomas shared a total of 1,702 tracks online. The RIAA however focused on only 24 of these. In addition, the RIAA first warned Thomas with a cease-and-desist letter. Thomas refused and the RIAA then asked for a (comparatively small) settlement.[citation needed] Thomas again refused and the case went to court.

<http://blog.wired.com/27bstroke6/2008/09/not-for-publica.html>

Thomas' legal defense was to claim that she had not shared the files. Juror Michael Hegg later commented, "She's a liar." [4]

A hard drive containing the copyrighted songs was never presented at the trial. Thomas turned over to the RIAA attorneys a hard drive that contained neither Kazaa nor the infringing files.[5] There was no evidence showing that the Kazaa account had allowed others to effectively download the files,[1] but jury instruction number 15 instructed the jurors that merely "making available" sufficed to constitute an infringement of the plaintiffs' distribution rights, even without proof of any actual distribution.[6][7] http://en.wikipedia.org/wiki/Capitol_v._Thomas

RIAA Update

- 30,000 sued since September 2003
- Today, the RIAA -- the lobbying group for the world's big four music companies, Sony BMG, Universal Music, EMI and Warner Music -- admits that the lawsuits are largely a public relations effort, aimed at striking fear into the hearts of would-be downloaders. Spokeswoman Cara Duckworth of the RIAA says the lawsuits have spawned a "general sense of awareness" that file sharing copyrighted music without authorization is "illegal."
- If sued, cost is ~\$750/song -(
<http://blog.wired.com/27bstroke6/2008/09/proving-file-sh.html#previouspost>)
- In only jury settlement (under retrial - Capitol v Thomas) jury set cost at \$9,250/song - \$222,000 for 24 tracks

RIAA and Michigan

- Now Recording Industry vs The People is wondering if the fact seven students at the University of Michigan, “can breathe a little easier because the RIAA’s ‘John Doe’ case, LaFace Records v Does 1-7, has been dropped — without any subpoenas or ex parte discovery order being granted — may be linked to three investigations, with MediaSentry as the target, before Michigan’s Department of Labor and Economic Growth.
<http://www.p2pnet.net/story/18229>

RIAA stops suing students?

Tracy Mitrano: Why the Recording Industry Stopped Suing Students [or at least most students ...]

When the Recording Industry Association of America decided in December to stop filing bulk lawsuits against college students, several students in my “Culture, Law, and Politics of the Internet” course asked me to comment on the strategy. Here is what I said:

Over all, the [recording industry’ s] approach was increasingly losing steam, both as a public-relations tactic and financially. More important, if the RIAA had any hope of creating tension between students and administrators, it ultimately backfired.....

<http://chronicle.com/wiredcampus/index.php?id=3575>

[http://recordingindustryvspeople.blogspot.com/
2009_01_01_archive.html#5075811668577055031](http://recordingindustryvspeople.blogspot.com/2009_01_01_archive.html#5075811668577055031)

<http://chronicle.com/news/article/?id=5707>

<http://online.wsj.com/article/SB122966038836021137.html>

Anti-Downloading Laws

November 12, 2008

RIAA CEO Joins Tenn. Governor and State Music Leaders in Welcoming Enactment of First-Ever Campus Downloading Bill

NASHVILLE -- Tennessee Gov. Phil Bredesen signed into law today a bill aimed at curbing the disproportionate amount of music theft occurring on state campus networks via peer-to-peer (p2p) services. Recording Industry Association of America (RIAA) Chairman & CEO Mitch Bainwol, along with several other members of the music community, participated in the signing ceremony and welcomed the enactment of the legislation, SB 3794, which passed the state legislature earlier this year.

“It's fitting that on the day the world focuses on Nashville and country music that Tennessee would take the lead in protecting the creativity that this state so uniquely inspires,” said Bainwol. “We have all seen the effects illegal downloading has had on Music Row – too many record stores have been shuttered and too many songwriters are out of the business of writing songs. This bill, the first of its kind in the nation, addresses the issue of campus music theft in a state where the impact is felt more harshly than most.”

http://www.riaa.com/newsitem.php?news_month_filter=&news_year_filter=&resultpage=&id=72240403-D51A-209F-142F-98DC98F7AE18

DVD backups and Fair Use (Advice?)

Fair Use? How to Back Up DVD Movies

This week, we explore a bit of a legal conundrum. According to the US Constitution, the purpose of copyright is to protect any original expression, in any medium, so that the copyright holder can be compensated for his or her work. However, there's also the legal concept of fair use, which says that you can copy or distribute copyrighted works for personal or educational use—with certain limitations. For example, it's generally accepted that you can "tape" a song from an audio CD and listen to that tape on your car stereo. However, you can't legally make several copies of that CD and distribute them to individuals who didn't purchase the original CD.

Simple scenario, right?

But complicating matters is the Digital Millennium Copyright Act (DMCA), which exists to address industry concerns about PC-based media copying. This little beauty prevents anyone from offering technology that circumvents copy protection. So far, the most famous case surrounding the DMCA involves DeCSS, a bit of software that circumvents the encryption that most DVD movies use. DeCSS was written solely so that Linux users could watch DVD movies. That sounds like fair use to me. However, because the software circumvents copy protection, it violates the DMCA and is technically illegal.

Critics have argued—successfully, I believe—that the DMCA is ill considered and in conflict with existing copyright laws. However, it's still on the books. And if you're interested in backing up your DVD movies (a fair use if there ever was one), you're going to have to reconcile the DMCA with pre-existing copyright laws. And you're going to have to find a solution that works.

<http://www.connectedhomemag.com/HomeTheater/Articles/Index.cfm?ArticleID=47021>

Backups and Fair Use

RIAA et al. says CD ripping, backups not fair use

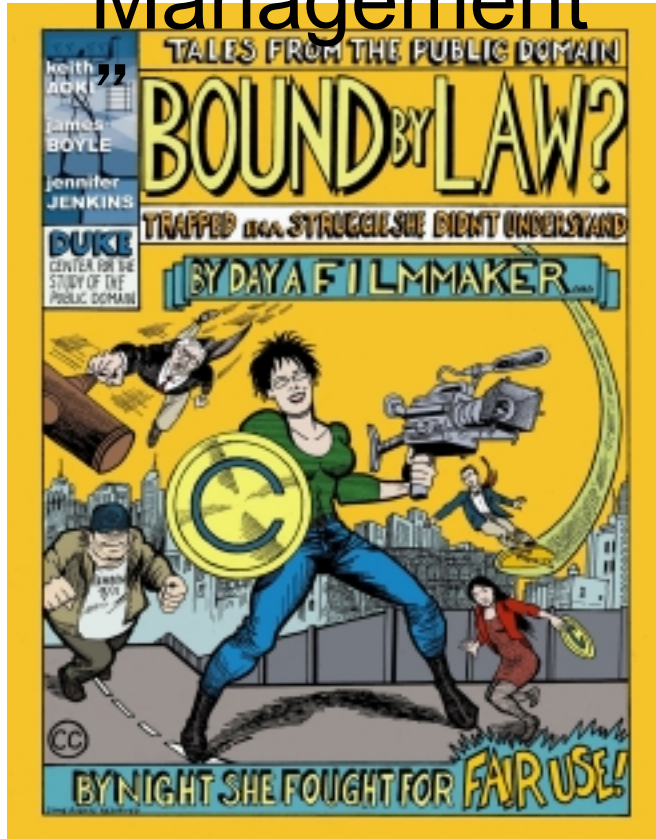
<http://arstechnica.com/old/content/2006/02/6190.ars>

The RIAA and other industry representatives have argued that making backups of CDs and DVDs is not fair use, and that even ripping CDs is infringement.

By Ken Fisher | Last updated February 15, 2006 3:17

“If anyone has any doubts about the content industry's resolve to destroy fair use and usher in new ways of charging you for uses that were previously both free and fair, look no further. As part of the triennial review of the effectiveness of the DMCA, a number of content-related industries have filed a joint reply (PDF) with the government on the effectiveness of the DMCA and the challenges that lay ahead for copyright. As you might expect, the document is a celebration of the DMCA, and the industries are pushing for even more egregious abuses of technology to fatten up their bottom lines.”

“Digital Rights Management”



The [British Library] manifesto goes on to attack what they describe as the “real, technical threat” of Digital Rights Management, or DRM. For those of you who aren’t familiar with this concept, try one of these experiments:

- * Download a song from Apple’s iTunes and try to upload it to any MP3 player besides an iPod.
- * Stick a DVD in your computer and try to make a copy of it.

Fair Use

- Fair use is the right, in some circumstances, to quote copyrighted material without asking permission or paying for it. It is a crucial feature of copyright law and what keeps copyright from being censorship. You can invoke fair use when the value to the public of what you are saying outweighs the cost to the private owner of the copyright.

Fair Use

One of the **rights accorded to the owner of copyright** is the right to reproduce or to authorize others to reproduce the work in copies or phonorecords. **This right is subject to certain limitations** found in sections 107 through 118 of the Copyright Act (title 17, U. S. Code). One of the more important limitations is the doctrine of “fair use.” Although fair use was not mentioned in the previous copyright law, the doctrine has developed through a substantial number of court decisions over the years. This doctrine has been codified in section 107 of the copyright law.

Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered “fair,” such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair:

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

The distinction between “fair use” and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.

Acknowledging the source of the copyrighted material does not substitute for obtaining permission.

<http://www.copyright.gov/fls/fl102.html> (very good to check original sources on these questions, as well as sites such as the Duke or Stanford sites, that translate legalese)

Fair Use

The 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law cites examples of activities that courts have regarded as fair use: “quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.”

Copyright protects the particular way an author has expressed himself; it does not extend to any ideas, systems, or factual information conveyed in the work.

<http://www.copyright.gov/fls/fl102.html>

1) Advancing Knowledge - Transformative

Purpose and character

The first factor is about whether the use in question helps fulfill the intention of copyright law to stimulate creativity for the enrichment of the general public, or whether it aims to only "supersede the objects" of the original for reasons of personal profit. To justify the use as fair, one must demonstrate how it either advances knowledge or the progress of the arts through the addition of something new. A key consideration is the extent to which the use is interpreted as transformative, as opposed to merely derivative.

Has the material you have taken from the original work been transformed by adding new expression or meaning?

Was value added to the original by creating new information, new aesthetics, new insights and understandings?

http://en.wikipedia.org/wiki/Fair_use

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-b.html

2) Public Value

Although the Supreme Court of the United States has ruled that the availability of copyright protection should not depend on the artistic quality or merit of a work, fair use analyses consider certain aspects of the work to be relevant, such as whether it is fictional or non-fictional.

To prevent the private ownership of work that rightfully belongs in the public domain, facts and ideas are separate from copyright—only their particular expression or fixation merits such protection

Because the dissemination of facts or information benefits the public, you have more leeway to copy from factual works such as biographies than you do from fictional works such as plays or novels.

The Zapruder film of the assassination of President Kennedy, for example, was purchased and copyrighted by Time magazine. Yet their copyright was not upheld, in the name of the public interest, when they tried to enjoin the reproduction of stills from the film

http://en.wikipedia.org/wiki/Fair_use

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-b.html

3) Substantiality-Amount

The third factor assesses the quantity or percentage of the original copyrighted work that has been imported into the new work. In general, the less that is used in relation to the whole, e.g., a few sentences of a text for a book review, the more likely that the sample will be considered fair use.

Yet see *Sony Corp. v. Universal City Studios* for a case in which substantial copying—entire programs for private viewing—was upheld as fair use. And opened the market for video recorders.

http://en.wikipedia.org/wiki/Fair_use

4) Commercial Effect

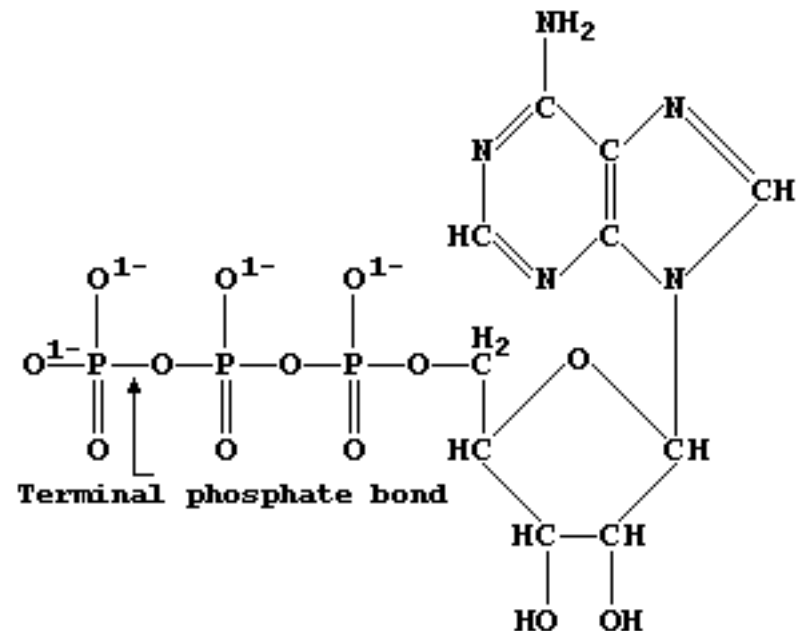
The fourth factor measures the effect that the allegedly infringing use has had on the copyright owner's ability to exploit his original work. The court not only investigates whether the defendant's specific use of the work has significantly harmed the copyright owner's market, but also whether such uses in general, if widespread, would harm the potential market of the original. The burden of proof here rests on the defendant for commercial uses, but on the copyright owner for noncommercial uses.

http://en.wikipedia.org/wiki/Fair_use

“Un-Copyrightability”

Some things simply cannot be copyrighted
They've been deemed to be outside the bounds
of “creative expression”

Examples (chemical
formulas, process
models, graphs,
data...)



Copyrightability and Community Practices

Copyrights, eg, do not protect ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries: they only protect physical representations. 17 U.S.C. ? 102(b).

What is considered “common, accepted practice” within a community concerning representations?

These weigh in decisions of courts on boundaries of copyrightability - result of “case law”

The more common, widespread, a practice is, like chemical formulas, the more likely to be deemed not a case of creative expression (everyone trying to express this would do it this way)

Hence, the resulting product would not be copyrightable.

Community practices can change, and hence the law.

Fair Use and Community Practices

Community can, to some extent, help define the law

Examples - Comic from Duke Center, Best Practices Guides for online video, documentary film, medial literacy education, working on OER

Fair use and professional communities

Courts when deciding fair use cases, in addition to looking at context, amount and value of the use, also look to the standards and practices of the professional communities where the case comes from.[citation needed]

Documentary filmmakers organized and created the Documentary Filmmakers' Statement of Best Practices in Fair Use, which has had a dramatic effect on fair use practice in documentary film. Since the release of the Statement in 2005, PBS, ITVS and IFC use it. Furthermore, four out of seven of the national errors and omissions insurers now issue fair use coverage routinely. Several documentary films have also used it, allowing both theatrical and television releases. Other professional communities are beginning to plan their own best practices standards in fair use as well.

http://www.centerforsocialmedia.org/resources/publications/statement_of_best_practices_in_fair_use

Electronic Frontier Foundation

Chilling Effects

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Sending a C&D Notice | Search the Database | Topics

Monitoring the legal climate for Internet activity



[Chilling Effects Clearinghouse](#) > Home

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Clearinghouse Topics:

- [Copyright and DMCA](#)
- [Fan Fiction](#)
- [John Doe Anonymity](#)
- [Linking](#)
- [Patent](#)
- [Protest, Parody and Criticism](#)
- [Trade Secret](#)
- [Trademark](#)



Chilling Effects Clearinghouse

A joint project of the Electronic Frontier Foundation and Harvard, Stanford, Berkeley, University of San Francisco, University of Maine, George Washington School of Law, and Santa Clara University School of Law clinics.

Do you know your online rights? Have you received a letter asking you to remove information from a Web site or to stop engaging in an activity? Are you concerned about liability for information that someone else posted to your online forum? If so, this site is for you.

Chilling Effects aims to help you understand the protections that the First Amendment and intellectual property laws give to your online activities. We are excited about the new opportunities the Internet offers individuals to express their views, parody politicians, celebrate their favorite movie stars, or criticize businesses. But we've noticed that not everyone feels the same way. Anecdotal evidence suggests that some individuals and corporations are using intellectual property and other laws to silence other online users. Chilling Effects encourages respect for intellectual property law, while frowning on its misuse to "chill" legitimate activity.

The website offers background material and explanations of the law for people whose websites deal with topics such as [Fan Fiction](#), [Copyright](#), [Domain Names and Trademarks](#), [Anonymous Speech](#), and [Defamation](#).

In addition, we want your help. We are gathering a [searchable database](#) of Cease and Desist notices sent to Internet users like you. We invite you to [input](#) Cease and Desist letters that you've received into our database, to document the chill. We will respond by linking the legalese in the letters to FAQs that explain the allegations in plain English.

Periodically, we issue "weather reports" assessing the climate for Internet activity based on the letters we receive and news reports. What areas (topics, legal categories, jurisdictions) are coolest to online conduct? What activities risk being frozen out altogether? What conduct gets the warmest reception?

Getting Started:

The Chilling Effects Clearinghouse contains multiple topic areas. [Choose a topic area](#) to view its introduction, Frequently Asked Questions, and

Recently Linked Cease & Desists

- [Crafter complains to Digg of copied photo, The Dammit Doll Store](#)
- [Copyright Claims Swirl Around "Electric Mist", Image Entertainment Inc.](#), December 30, 2008
- [iFroggy Complains to Digg, iFroggy Network](#), December 2, 2008
- [Cozy Kittens Complains of Complaint, Cozy Kittens](#), October 29, 2008
- [HBO After "True Blood", SafeNet DMCA](#), October 27, 2008
- [BayTSP claims Guitar Hero torrents, Activision](#), October 27, 2008
- [Individual complains of photo use in video, \[Individual\]](#), October 1, 2008

[more](#)

Weather Reports

- [DMCA "Repeat Infringers": Scientology Critic's Account Reinstated after Counter-Notification](#), Wendy Seltzer, June 6, 2008
- [Blue Jeans Cable Not Cowed by Monster's Roar](#), Wendy Seltzer, April 15, 2008
- [Air Force DMCA-Bombs YouTube](#), Wendy Seltzer, from a report at *Wired's Threat Level*, March 7, 2008
- [Here Comes Another Takedown](#), Wendy

<http://ChillingEffects.Org>

<http://www.chillingeffects.org/copyright/faq.cgi#QID737>

Why Not Avoid These Problems?

- And tell people right off that they can use your materials?
- Place some restrictions, if you like
- The restrictions will affect downstream use, ability to remix, re-use, redistribute
- This is what Creative Commons is all about
- Working within the current copyright regime
- Making it possible/maybe easy to build the commons back up

Copyright

All Rights
Reserved



No Rights
Reserved

licensing

step 1: choose conditions



Attribution



Share Alike



Non-Commercial



No Derivative Works





Open?

- Ctools vs OCW - what can be done on the list of benefits? Student preview? Faculty exposure? Student in class said he could see the Ctools approach; need to emphasize what benefits can be done there and what not...and how VLEs really lock things in, and have become a drag on opening things up...