Legally Speaking-Publishing the Law: The Origins of Legal Publishing

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The public's interest in the free flow of information is protected by there being no copyright protection for facts. It would serve no purpose to allow piracy of a work simply because it was of public importance. Harper & Row, Publishers, Inc. v. Nation Enter., 471 U.S. 539, 558 (1985).

And here's a curious thought in our loud-mouth global media age.

"Moreover, freedom of thought and expression 'includes both the right to speak freely and the right to refrain from speaking at all.'" Id. at 559 (quoting Wooley v. Maynard, 430 U.S. 705, 714 (1977)).

Remember, Worldwide wants Mystery out of circulation. Philly thinks people need to read the book, and no one is printing it.

The Copyright Act seeks to encourage the dissemination of creative works. A balance is sought between author and public's rights. The author can exploit the work during the term of copyright, but the term is limited so the public will ultimately get its hands on the work.

"But nothing in the copyright statute would prevent an author from hoarding all of his works during the term of the copyright." Stewart v. Abend, 495 U.S. 207, 228-229 (1990).

**Dissent**

The dissent took up this right to not speak issue. It argued that the whole fair use doctrine turns on the potential commercial impact of a copied product on the original. In this case, however, Worldwide has not reprinted Mystery since 1988 and shows no evidence of intending to reprint it.

Worldwide considers the book "racist" while Philly feels it is divinely inspired. It's hard to impossible to abstract-filter fact from expression in a religious work.

But the end result is Philly is inhibited from "access to ideas without any countervailing benefit." Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 450-451 (1984).

Remember Sony was about home videocopying of t.v. shows and viewing them at a different time. Assuming there was something important on t.v. (!?), the public was benefited by time-shifting to be able to watch the shows and not having them obliterated.

The right to refrain from speaking does not "suggest that this right not to speak would sanction an abuse of the copyright owner's monopoly as an instrument to suppress facts." Harper & Row, 471 U.S. at 559

Hmmm. Kind of a thought-provoker.

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**Legally Speaking — Publishing The Law: The Origins of Legal Publishing**

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The Beginning in Mesopotamia

In the history of humankind, there have been three major developments. Each one has had an immediate impact, changing the very fabric of our society. These three developments are the creation of writing, the invention of the printing press, and the development of the Internet. Writing began in ancient Mesopotamia, an area which consists of modern-day Iraq, Syria, and Turkey. Mesopotamian writing in pictographs began ca. 4000 B.C., and the Sumerian Cuneiform script developed ca. 3600 B.C. By 3000 B.C., a cuneiform alphabet of 400 signs was in common use.4

Although there is no copy in existence, the earliest known code of laws was Urukagina's Code of ca. 2350 B.C. Urukagina's Code is "mentioned in other documentation as a collection of existing 'ordinances' or laws laid down by Mesopotamian kings. An administrative reform document was discovered which showed that citizens were allowed to know why certain actions were punished."5

The most ancient law code that is still in existence is Ur-Namun's Code from ca. 2050 B.C. "Archaeological evidence shows that it was supported by an advanced legal system which included specialized judges, the giving of testimony under oath, the proper form of judicial decisions and the ability of the judges to order that damages be paid to a victim by the guilty party. The Code allowed for the dismissal of corrupt men, protection for the poor and a punishment system where the punishment is proportionate to the crime. Although it is called 'Ur-Namun's Code,' historians generally agree that it was written by his son Shulgi."6 Only five articles of the code have been deciphered.7

Another code that exists only in fragments is the Laws of Eshnunna, from ca. 2000 B.C. Many of the principles that are contained in this code are familiar to us. For example, "if the boatman is negligent and causes the sinking of the boat, he shall pay in full for everything the sinking of which he caused."8

The most ancient code that we have in its entirety is the Code of Hammurabi, completed ca. 1750-1700 B.C. According to the Prologue, "When Marduk sent me to rule over men, to give the protection of right to the land, I did right and righteousness... and brought about the well-being of the oppressed."9 This was a complete code, containing 282 clauses. The clauses covered "a vast array of obligations, professions and rights including commerce, slavery, marriage, theft and debt."10 In addition to the Code of Hammurabi, "[E]very city had its inheritance of law, founded largely on decisions of the courts and corresponding more or less to our common law, and these were either incorporated by Hammurabi or not superseded by him; thus in deciding a legal case the judges of his time could give as their ruling that "the law of the citizens of Sippar shall be the law applied to the parties."11

Hammurabi's code even contained provisions of judicial procedure. For example, "if a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge's bench, and never again shall he sit there to render judgement."12 From that provision, it appears that decisions were regularly rendered in writing. Although the punishments appear extremely harsh by 14th Century standards, we can still celebrate the attempt to provide fair and consistent justice to the people of Babylon.

There are a number of other ancient codes that are significant, including the Code of the Nesilim, written by the Hitittites ca. 1650-1500 B.C.,13 and the Laws of Manu, written in India between 1280 and 880 B.C. The Laws of Manu formed the basis of the caste system in India. "The Laws of Manu used punishment sparingly and only as a last resort... The members of the higher castes were punished more severely than those of the lower castes."14

The Biblical tradition of law began when the Ten Commandments were handed down ca. 1300 B.C. The Old and New Testament both contain numerous statements of law and justice, as do other Jewish and Christian documents. Justice was a basic principle of the Bible. "Justice, Justice shall you pursue, that you may thrive in the land which the Lord your God gives you."15 The Talmud also contains a great deal of church law. Other sources of church law include St. Augustine, St. Thomas, and Canon Law. The Biblical and Church Law tradition was well-known to the Romans and to Justinian.16

Greek and Roman Law

Greek law codes started with Draco's Law in 624 B.C. Draco "was called upon to set down his [ordinances and decisions] in writing, and thus to invest them essentially with a character of... generosity...."17 Draco took the existing laws and put them in writing "so that they might be 'shown publicly' and known beforehand."18 These laws were so harsh that we derive the word "draconian" from this code. Between 594 and 592 B.C.,19 during the golden age of Greek democracy, Solon reformulated the laws of Draco. His reforms were substantial, and gave rights to those who were not members of the noble classes. "Rights and freedom to hold office were in proportion to income, but even the poorest had access to the assembly of the people..."20

In Rome, one of the most important developments occurred with the creation of the Twelve Tables. In ca. 455-450 B.C.E., a commission of ten citizens gathered to create a system of laws that would be accepted and binding upon both the privileged class (Patricians) and the unprivileged class (Plebeians). The commission initially wrote ten tablets, but then added two supplements. (This seems to be the beginning of our fondness for supplementation.) The Twelve Tables consisted of the following: Procedure for courts and trials; Debt; Rights of fathers (paterfamilies) over the family; Legal guardianship and inheritance laws; Acquisition and possession; Land rights; Torts and delicts (Laws of injury); Public law; and Sacred law.21

At some time between 110 C.E. and 179 C.E., the Institutes of Gaius were written. This is a complete code of law and procedure, and is very important both in Roman legal history and in the development of modern law. According to Gaius, "All people who are governed by laws and customs use law which is partly theirs alone and partly shared by all mankind. The law which each people makes for itself is special to itself. It is called 'state law,' the law peculiar to that state. But the law which natural reason makes for all mankind is applied in the same way everywhere. It is called 'the law of all peoples' because it is common to every nation. The law of the Roman people is also partly its own and partly common to all mankind."22

The Justinian Code

One of the strongest influences on modern law was the Corpus Iuris Civilis, which was compiled under the direction of the Emperor Justinian. In A.D. 533, Justinian convened a commission to study and "compact" the Roman law library.23 This great body of law was itself built on the past, with the claim "to look back over fourteen hundred years of legal history."24

The Corpus Iuris Civilis contains four parts. These four parts are the Novels, the Codex, the Digest, and the Institutes. The Novels were pronouncements of the emperor, similar to our Presidential Proclamations, and contained items that came out after the completion of the Codex. The Novels are sometimes considered to be the beginning of Byzantine law, and are of much less importance than the other parts of the Corpus Iuris Civilis.25

The Codex consists of Imperial orders from Justinian and his predecessors, and is sometimes mistakenly compared to a modern law code.26 In fact, it would be more like the modern Restatement of Laws than anything else. The Digest contains excerpts of classical jurisprudence; each entry contains the name of its author and where it came from, much in the same way that a modern digest contains excerpts of cases and their citations. The Institutes consist of a narrative format containing legal principles, and is most similar to the official commentary that accompanies certain modern codes such as the Uniform Commercial Code.

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The importance of Justian’s *Corpus Iuris Civilis* is that the people had the law accessible to them in a way that could be understood. Justian’s “code” was in many ways not like a modern code. Instead, it was a compilation of the laws.30

After the fall of the Roman Empire, chaos reigned in Europe. In the period known as the Dark Ages, libraries were burned, literacy was practically non-existent, and government consisted mostly of small clans and warlords. The only places where libraries survived were in Ireland, the Byzantine Empire, and the Moslem world.31 Not until the days of Charlemagne (786-814) did the concept of written law revive.32

If the beginning of writing was the beginning of our law, the invention of printing was the second most important event in our legal development. The printing press allowed books and documents to be copied easily. It made publication and book ownership inexpensive, and led to mass dissemination of knowledge. Prior to this time, the written law was kept in regional or provincial centers. The small villages did not have access to the written law. With Gutenberg’s invention, law codes could be distributed much more widely. “The spread of printing . . . ripped apart the social and structural fabric of . . . Western Europe and reconnected it in ways that gave shape to modern patterns. The availability of printed materials made possible social, cultural, familial, and industrial changes facilitating the Renaissance, the Reformation, and the scientific revolution.”33

2. ibid.
4. ibid.
6. ibid.
7. ibid.
18. ibid.
27. ibid.
30. Harris, p. 67.
Questions & Answers
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SECTION 110(1) of the teacher case
certainly may show the film in its entirety or
just a short portion as long as the copy of
the videotape used is a legitimate copy. Clip
capturing, however, makes a copy of the
work, and that may be problematic even in
the educational institution setting. On the
other hand, outside of education, showing the
short film clip (not copying it, i.e.,
copying it) still might be fair use. A court
would look at the four fair use factors to make
a determination and these include how much
is used (a very short portion), to whom is the
clip shown and whether a copy made.

**QUESTION:** Is it necessary for schol-
sars who are writing historical works about
a region of the country to obtain permis-
sion to quote three stanzas from relevant
old songs?

**ANSWER:** This question is somewhat
complicated based on how old the song is.
First consult the chart I created concerning
when works pass into the public domain.
http://www.unc.edu/~uncleg/public-d.htm
Assuming that the work is still protected
by copyright, then one would do a fair use
analysis. Three stanzas sounds like a fairly
significant portion of the work, and seek-
ing permission likely is required. Contact
the music publisher and not the recording
company. However, sometimes record
companies will direct users to the proper
publisher or other owner of the copyright
in the musical composition which most of-
ten includes the words.

Legally Speaking
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Our look at legal publishing will con-
tinue up to the present in the next column
of “Legally Speaking.” I will discuss such
milestones as the National Reporter Sys-
tem and the coming of the Internet. We
have seen so many changes just in the last
few years in legal publishing that it makes
sense to look back to where it all began.

Regardless of the format, it is impera-
tive that law be published. Without legal
publishers, many of our freedoms would
disappear. As Sir William Blackstone wrote
over two centuries ago, the law “may lastly
be notified by writing, printing, or the like;
which is the general course taken with all
our acts of Parliament. Yet, whatever way is
made use of, it is incumbent on the pro-
mulgators to do it in the most public and
perspicuous manner; not like Caligula, who
(according to Dio Cassius) wrote his laws
in a very small character, and hung them
upon high pillars, the more effectually
to ensnare the people.”

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And They Were There
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sources toward the educational role, part-
nering with colleagues in other librar-
ies, promulgating key principles on cam-
pus, thinking of ourselves as educators
who are faculty partners, creating an as-
essment mentality, and treating the cur-
rent environment as an opportunity.

With twenty presentations, five discus-
sion forums, and thirteen poster ses-
sions, it was impossible to attend every
event. It was, however, possible to see
three themes emerge from a close read-
ing of the program, conversations with
attendees, and a presence at various ses-
sions: forming partnerships, reaching
specific learners, and effective in-
struction.

A key element in successful library in-
struction programs is forging partner-
ships with the campus community. Some of
the more fruitful collaborations described
by presenters involved teaming up with
faculty and academic programs, becom-
ing part of campus learning communities,
and working with high schools. At
Millersville University, librarians serve
as academic advisors. Information lit-
eracy initiatives require that librarians
work in partnership with everyone on
campus who is involved in the design of
the curriculum.

A related theme was the effort to reach
specific learners. Various presenters
spoke of their experiences of working
with diverse students, including the
risk and transitional students, the high
achieving and honors students, and spe-
cific populations such as athletes, stu-
dents in biology or the health professions,
and distance learners. Reaching these
students often required forging partner-
ships. Presenters also described market-
ing programs that were designed to reach
students in general.

Librarians shared effective strategies
for library instruction. Some of the high
impact strategies included critical think-
ing and problem-based learning, use of
handouts, and assessment. Several pre-
senters focused entirely on technology,
especially the use of Web pages and tu-
itorials for orientation and first year in-
struction. One study found that tutorials
and face-to-face instruction were equally
effective. If there was an underlying mes-
gage, it was a plea to make library instruc-
tion interesting and fun.

For the complete program, see the
28th National LOEX Conference Web
page at http://wvwww.emich.edu/public/
LOEX/CONFERENCE/home.htm. The Web
page includes a list of presenters with
abstracts of their presentations written
before the conference.

Themes from other presentation and
poster sessions

#1 — Information literacy, evaluation and
critical thinking; Student athletes; Outreach
(distance education at National University);
At-risk; Collaboration (with Honors).

**Poster Sessions**

Staff doing orientation; T.A.’s designing
and teaching library instruction; Urban
diverse community; Large scale in-
struction (eg lots of students); Librarian
as academic advisor; University studies
course; Using a syllabus to guide orienta-
tion; Library modules; Face-to-face
interaction to reduce library anxiety;
Transitional students; Tailored Web
pages (to individual classes); Handouts
as a teaching tool.

#2 — Making BI interesting, dramatic,
and important; Cyber assignments (Web-
based to reach 10,000 freshmen); Infor-
mation seeking (for health profession stu-
dents); Elite students (Swarthmore, Haverford, Bryn Mawr).

#3 — Training faculty; Problem-based
learning; Talking story (story telling, Gen
X and Gen Y, technology); Infotainment; Required course.

**Discussion**

Library instruction role in information
literacy; Marketing to 1st year (who are
they, how do you reach them); Collabora-
tion/strategies for orientation; Assess-
ing library’s role in student learning;
Keeping BI stress free and stimulating.

#4 — History of a BI program (to
share experience); Efficacy of tutorials
vs. face-to-face instruction; First Year
Experience librarian!; Marketing; Learning communities.

Winthrop's Libraries in Cyber Age Conference
Winthrop University Library, Rock Hill, South Carolina

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The Winthrop University Library in
Rock Hill, South Carolina, and the South
Carolina Council for the Humanities are
sponsoring a conference this Fall that ex-
amines the momentous impact cyberspace
is having on libraries and the humanities.
Titled "Libraries in the Cyber Age: The
Future of the Humanities and the Impact
on Society," the event recognizes that librar-

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<http://www.against-the-grain.com>