

Using Primary and Secondary Sources

Both primary and secondary sources are helpful for understanding the meaning and context of copyright law and determining how to apply it.

BY LESLEY ELLEN HARRIS

Information about copyright law has never been so plentiful, or so readily available. With so much information at your fingertips, you may wonder whether you should begin with primary or secondary sources if you want a general education on copyright law or are searching for a specific answer to a copyright question.

Primary sources for copyright research are the U.S. Constitution, the

take when researching copyright, each with its own advantages. If you begin with the copyright statute itself, you are starting at the most formal level and working your way out from there. You will have the law in its purest form, but it may be difficult to understand the reasoning behind the Copyright Act and its application and methodology.

The Constitution provides a “bigger picture,” but its usefulness is limited to

Often it is helpful to switch back and forth between primary and secondary sources as you weave your way through the copyright jungle.

U.S. Copyright Act, international conventions such as the Berne Convention and various World Intellectual Property Organization (WIPO) treaties, and judicial opinions by the courts. Secondary sources are all other resources not considered primary sources, such as articles and books that explain, discuss and analyze copyright law.

There are multiple routes you can

understanding where the power to create copyright law comes from and the legality of the law in its general application. International conventions, treaties and trade agreements provide some context for copyright law and illuminate the global copyright picture; they also reveal the extent to which the U.S. government has made commitments with other governments and international

bodies with respect to finding a common ground on copyright principles.

Judicial opinions can offer summaries of case law and also interpret the Copyright Act as it applies to specific situations, but they may be too difficult to understand if you are not a lawyer—after all, they are written by legal minds for legal minds. The legislative history behind the provisions in the Copyright Act provides context for the rationale underlying certain provisions and language chosen by legislators.

Secondary sources such as scholarly journals, articles and books explain the application of the law. More and more, I am seeing articles and blogs about copyright issues that are written for non-lawyers. These articles and blogs are intended to be helpful, “plain English” resources.

If you choose to start your research with these or other secondary sources, you will find that the authors will interpret copyright issues from their own perspective and may take an active opinion on the subject. You must “tease out” the actual legal points and then use the author’s interpretations to understand the law. The primary sources can guide you in this process, as they enable you to see what the actual law is and help you separate fact from opinion.

So, which approach is preferable—beginning with primary sources, or with secondary sources? Either route works, as long as you identify what is law and what is opinion. Often it is helpful to switch back and forth between primary and secondary sources as you weave



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your way through the copyright jungle.

Reading the U.S. Copyright Act

If you have never done so (or have not done so for a long time), consider reading the U.S. Copyright Act. Make sure you have an up-to-date version of the act. It is available online at www.copyright.gov/title17/.

Before you start, be aware that few people can sit down and read the Copyright Act from beginning to end and understand it. I recommend you begin with the preface—which, in the Copyright Act, is the Constitutional provision respecting copyright. The preface in all statutes is intended to set out a basic understanding of the goal of the lawmakers.

Read the definition sections for simple applications and explanations. Be prepared to read the relevant sections or the entire act at least three times. To

avoid getting overwhelmed, focus on definitions and the basics of copyright and especially on sections relevant to you.

All words and punctuation are chosen intentionally by legislators. *And* means all elements stated are necessary; *or* means that one of the listed elements is necessary. *Includes* means that the listed items are examples and that the list is not exhaustive. *May* means you are allowed to do something, whereas *shall* means you are required to do that thing.

Look up words you do not understand, both in a “regular” dictionary as well as in a legal dictionary. Try to find the logic or meaning in each section in a statute. Although the language may seem absurd at first, there is a reason why each section is in the act. Many sections are dependent upon other sections in the act, so you’ll need to read

these sections together to understand their meaning.

As difficult as it may be, you should read the entire act as a whole. This will help you think about the spirit of the law, what the law is trying to achieve, and how each piece fits into that goal. You can then cement your understanding of the provisions you read with secondary sources. **SLA**

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