



PROSKAUER ROSE LLP

How The Publishers Saved Copyright

---And Why It Still Matters

Presented by:

Jon Baumgarten

jbaumgarten@proskauer.com

202.416.6810

The Legacy Of Photocopying Litigation

- Mechanical duplication is proscribed copying
- Section 107 preamble uses (criticism, comment, educational use, news reporting, etc) are not *per se* exempt; full factorial analysis is always required
- Adverse effect of actual and *real* potential licensing income is cognizable harm under fair use analysis
- *Cumulative* impact from many individual uses, not just that of the defendant, is focus
- Private or internal use is *not exempt*
- Good or socially productive use does *not* mean fair use
- Character of customer or end user's use does *not determine* lawfulness of a provider's use
- Copyright and First Amendment are *not* antithetical
- *Publisher* effort and investment in dissemination is critical and worthy of protection
- Science *publishing* is an essential part of the scientific *process* itself
- Copyright "*celebrates the profit motive*" and is the engine that "drives the progress of science"
- Change in technology may fundamentally alter its impact; analysis must supplant faulty analogy