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Copyright Law Basics

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Copyright History

- ◆ The Constitution authorizes Congress to protect copyrights...
 - “Congress shall have the power...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors...the exclusive Right to their...Writings...” [Art. 1, Sec. 8, clause 8]
- ◆ ...and Congress has done so
 - Codified in the “Copyright Act of 1976”
 - Congress has preempted virtually all state-based copyright laws [17 USC 301]
 - First Amendment does not apply to copyright infringement



Copyright Defined

- ◆ Copyright protection applies to “original works of authorship fixed in any tangible medium of expression” [17 USC 102]
 - Fixed = embodied so that it may be perceived, copied or communicated for more than transitory duration
 - Original work of authorship
 - ◆ Work must be created by author
 - ◆ Only applies to expression of ideas or facts, not the underlying ideas or facts themselves (the “idea/expression dichotomy”) [17 USC 102(b)]
 - ◆ Expression needs minimal level of creativity



Copyright Defined

Potentially Copyrightable

- Books, articles, plays, movies, music
- Photos, sculptures, paintings, choreographed dances
- Architectural plans
- Factual compilations
- Software
- Emails and web pages
- Inter-office memos?

Not Copyrightable (Usually)

- Facts
- Ideas
- Systems, devices, methods
- Slogans/titles
- Off-the-cuff speeches
- Telephone calls
- Spontaneous dances



Formalities

◆ Registration [17 USC 408-412]

- Copyright protection commences on fixation
- However, registration is prerequisite to suing [17 USC 411]
- Benefits to registering prior to 3 months after publication [17 USC 412]
 - ◆ Statutory damages of up to \$150,000
 - ◆ Attorney's fees
- Simple form, \$30 to file

◆ Notices [17 USC 401-406]

- Not required for new works, of negligible benefit



Ownership

- ◆ Copyright vests in author [17 USC 201(a)]
- ◆ But works prepared by employee within employment scope (“works for hire”) automatically vest in employer [17 USC 201(b)]
- ◆ Statute of Frauds [17 USC 204]
 - Ownership transfers (except from employee to employer as work for hire) and exclusive licenses must be in writing



Main Rights Conferred

- ◆ Copyright owner can prevent the following unauthorized activities [17 USC 106]:
 - Reproduce
 - Distribute
 - Prepare derivative works
 - Publicly perform (specific categories)
 - Publicly display (specific categories)
 - Digitally perform (sound recordings)
- ◆ Copyright owner does not have exclusive right to “use” the work
- ◆ Copyright infringement is strict liability tort



Other Rights Conferred

- ◆ Rights of attribution and integrity [“moral rights”] for certain limited edition works of visual art [17 USC 106A]
- ◆ Protection for mask works [17 USC 901-914]
- ◆ Limits on digital audio technology (“Audio Home Recording Act”) [17 USC 1001-1010]
- ◆ Anti-bootlegging restrictions [17 USC 1101]
- ◆ Protection for vessel hull designs [17 USC 1301-1332]



Other Rights Conferred

- ◆ Digital Millennium Copyright Act (“DMCA”)
 - Prohibition against circumventing technological protection measures [17 USC 1201(a)(1)]
 - Prohibition against disseminating certain devices that circumvent technological protection measures [17 USC 1201(a)(2) and 1201(b)]
 - Protection for “copyright management information” [17 USC 1202]



Limits on Rights

- ◆ Statutory exceptions to Sec. 106 [17 USC 108-122]. Examples:
 - Libraries [108]
 - First sale defense to distribution of lawfully acquired tangible media [109]
 - Jukeboxes [116]
 - Copying for blind people [121]



Limits on Rights

- ◆ Duration for works created since 1/1/78 [17 USC 302]:
 - Default: Life of author + 70 years
 - Joint works: Life of last surviving author + 70 yrs
 - Works for hire and anonymous/pseudonymous works. Shorter of:
 - ◆ 95 years from first publication
 - ◆ 120 years from creation date
- ◆ For other works, see 17 USC 303-304
 - Works first published 12/31/22 or before are in public domain



Limits on Rights

- ◆ Fair use [17 USC 107]. Four factor test:
 - Purpose and character of the use
 - ◆ Educational v. commercial
 - ◆ Transformative
 - Nature of the copyrighted work
 - ◆ Published v. unpublished
 - ◆ Fact v. fiction
 - Amount and substantiality of portion taken
 - Effect on potential market for or value of the work



Limits on Rights

◆ Key points about fair use:

- Multi-factor test subject to manipulation and circular reasoning
- Impossible to reliably predict in advance
- Be very wary about relying on fair use!



Want More Info?

- ◆ Copyright Act
 - <http://www.copyright.gov/title17/>
- ◆ Copyright Office
 - <http://www.copyright.gov/>
- ◆ Copyright Office NewsNet Email Newsletter
 - <http://www.copyright.gov/newsnet/>
- ◆ CNI-Copyright Email List
 - <http://www.cni.org/Hforums/cni-copyright/>
- ◆ Copyright Disputes and Tutorial
 - <http://www.benedict.com/>