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/