Online Copyright: What You Need to Know

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## IP Overview

<table>
<thead>
<tr>
<th>IP</th>
<th>Protectable Matter</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Secrets</td>
<td>information that derives value due to secrecy</td>
<td>![Glass blower image]</td>
</tr>
<tr>
<td>Patents (utility)</td>
<td>novel, useful, nonobvious ideas</td>
<td>![Patent clip image]</td>
</tr>
<tr>
<td>Copyrights</td>
<td>original works of authorship fixed in tangible medium of expression</td>
<td>![Pink Floyd album cover]</td>
</tr>
<tr>
<td>Trademarks</td>
<td>words/symbols that distinguish the source of marketplace offerings</td>
<td>![Mercedes-Benz logo]</td>
</tr>
</tbody>
</table>
Sources of Copyright Law

- **US Constitution**
  - Art. 1, Sec. 8, clause 8: “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...”
  - First Amendment doesn’t apply

- **Copyright Act of 1976**

- **State copyright law for unfixed works**

- **International treaties. Ex: Berne Convention**
What’s Copyrightable?

- **Statutory requirements**
  - Fixation
  - Work of authorship (expression vs. facts/ideas)
  - Originality

- **Notice and registration not required**
  - Prompt registration = eligibility for statutory damages + attorneys’ fees

**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
Copyright Ownership

- **Default: author owns copyright**
  - Exception: employee-produced works

- **Assignments/exclusive licenses require written contracts**
  - Author can terminate all assignments/licenses 35-40 years after transfer made except for “works for hire.” NOT WAIVABLE

- **US government-created works = public domain**
Benefits of Copyright Ownership

- **Exclusive rights (106)**
  - Reproduce
  - Distribute
  - Create derivative works
  - Publicly perform
  - Publicly display
  - Digitally perform

- **Infringement = strict liability + no notice required**

- **Other copyright rights (selected)**
  - Moral rights for “works of visual art”
  - Maskwork rights
  - Importation right
  - Anti-circumvention
  - Protection for “copyright management information”
Limits on Copyright

**Duration**
- Default: Life of author + 70 years
- Works for hire and anonymous/pseudonymous works. Shorter of:
  - 95 years from first publication
  - 120 years from creation date
- Works first published before Jan 1, 1923 = public domain

**Statutory limits in 108-122. Examples:**
- 108: exceptions for libraries
- 109: First Sale doctrine
- 114: “cover” licenses
- 116: jukebox licenses
- 121: copying for the blind
Limits on Copyright: Fair Use

- **Multi-factor test:**
  - Nature of use
  - Nature of work
  - Amount/substantiality portion taken
  - Effect on market for work

- Fair use is equitable defense = hard to predict
512(c): no damages for storing files at users’ direction if hosts expeditiously remove file after getting proper takedown notice
- 512(g): hosts may provide “putback” rights
- Hosts must terminate “repeat infringers” to retain 512(c) eligibility
  - “Graduated response”
- 512(f): liability for sending bogus takedown notice

Hosts may protect users less than 512(c) requires. Ex:
- Filtering
- One-strike rule
Common Questions

- Can I rip my CDs and put the files onto my computer?
- Can I then post those files into a cloud storage locker?
- Can I download a music file using P2P software?
- Can I forward someone else’s joke email to lots of my friends?
- Do I infringe when I post a family video that has music in the background?
- Do I infringe when I “pin” a third party copyrighted item to Pinterest?
- If a work has a Creative Commons license, can I do whatever I want with it?
- Can I incorporate clip art into my online brochure?
- Can I write my own fan fiction and post to a fanzine website?