

COPYRIGHT PRIMER



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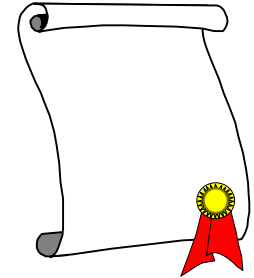
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Copyright Primer



- Represents an “overview.”
- Not an all inclusive review.
- Does not intend to cover all aspects of each question presented.
- Is not intended as an in-depth legal analysis of each question presented.

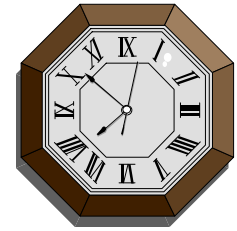
Copyright



■ *Where does Congress obtain the power to enact intellectual property laws?*

- Article I, Section 8 of the United States Constitution empowers Congress “..To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

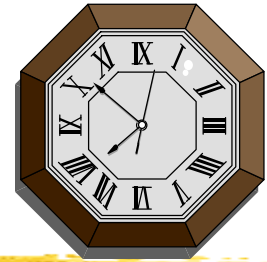
Term of Copyright



■ *How long does a copyright last?*

- For works created on or after 1/1/78
 - life of the author + 70 years
 - If it a joint work, life of the longest surviving author + 70 years
 - If it is an anonymous work, a work made for hire or the author uses a pseudonym: (1) 95 years from the year of first publication **or** 120 years from creation, which ever expires first.
- For works created before 1/1/78:
 - 28 years plus an extended renewal term of 67 years.

Term of Copyright - continued



- | If a work was created between 1964 and 1977, the copyright will automatically be extended for an additional term of 67 years, for a total of 95 years.
- | **If a work is “made for hire” who owns the copyright and how long does the copyright last?**
- | The employer is considered the author. The copyright term is 95 years from the date the work was published **or** 120 years from the date it was created, whichever is shorter.

Copyright -- Work For Hire



■ ***What is needed in order for a work to be considered a work for hire?***

- The work had to be created by an employee within the scope of his/her employment; or
- The work was specially commissioned in one of several specific categories (such as part of an audiovisual work or motion picture) *and* there must be a written agreement between the parties specifying that the work is a work made for hire.

Copyright

- ***What is covered by copyright protection?***

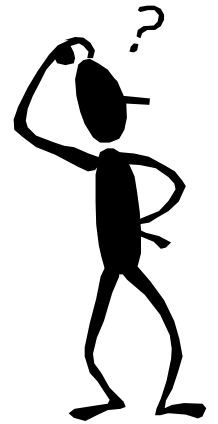
- Original works of authorship fixed in any tangible medium of expression, from which the work can be perceived, reproduced, or otherwise communicated.



Copyright

■ ***What kind of works are covered?***

- Literary works
- Musical works (including lyrics)
- dramatic works (including accompanying music)
- sound recordings (records, cd's etc.).
- photographs, motion pictures, graphic and sculptural works, architectural drawings
- pantomimes and choreographic works



Copyright

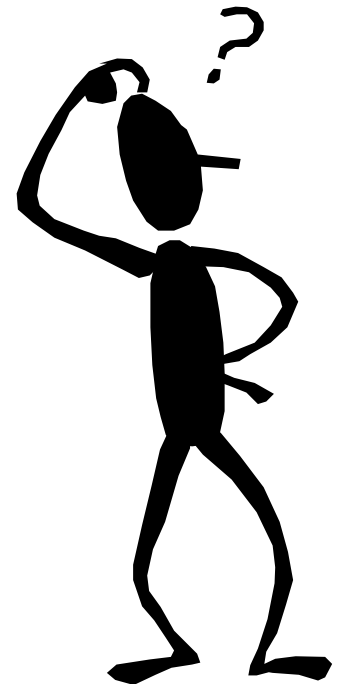
- ***Can a computer program (which is a set of statements or instructions to be used by a computer) be copyrighted?***
- Yes, a computer program is considered to be a literary work.



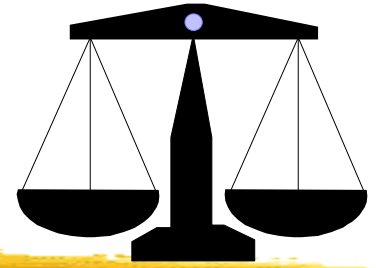
Copyright

■ ***Does copyright protection for an original work of authorship extend to:***

- an idea? -- No
- a procedure? -- No
- concept? -- No
- discovery? -- No
- a title to a song? -- No



Copyright



- ***Since 1/1/78, how is a work copyrighted?***

- A work is automatically copyrighted at the moment of creation and when it is “fixed” in a copy or recording for the first time.

- ***Since 1978, will a copyright be lost if a copyright notice is not placed on copies of the work?***

- No.

Copyright Notice



- ***If I want to put a copyright notice on my published work, what must be included in the notice?***
 - (1) the ***letter C in a circle*** or the word “Copyright” or the abbreviation “Copr.” ; and
 - (2) the ***year of first publication*** of the work. If the work is a compilation, the year of first publication of the compilation; and
 - (3) the ***name*** of the copyright owner.

Copyright Notice - continued



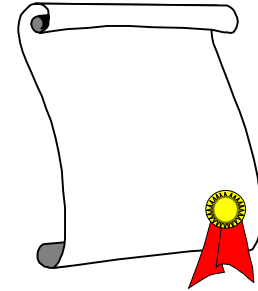
- ***Where should the copyright notice be put?***
 - It should be located in a manner to give reasonable notice of the claim of copyright.
- ***Is there a benefit to using a copyright notice?***
 - Yes. In a suit for copyright infringement, a court may give no weight to a defendant's defense of innocent infringement.

Copyright Notice - Recordings



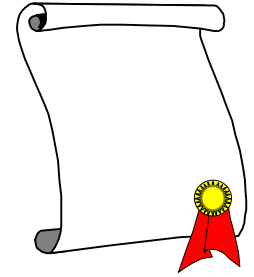
- ***If I want to put a copyright notice on my recording, what is needed?***
 - (1) the **letter P** in a circle; and
 - (2) the ***year of first publication*** of the sound recording (can be different than that specific phonorecord); and
 - (3) the **name** of the copyright owner of the sound recording (usually the record company).

Registration with the Copyright Office



- ***In order to have a copyright in my work, do I have to register the work with the U.S. Copyright Office?***
 - Not any more.
- ***Are there benefits to register?***
 - Usually necessary to bring an action for copyright infringement.
 - Can obtain statutory damages & attorney's fees in an action for copyright infringement.
 - Prima facie evidence as to time of creation.

Copyright Registration

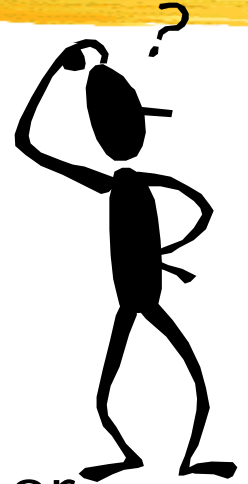


- ***If I want to register my works with the copyright office, what do I have to do?***
 - For musical works a registration form PA must be completed and filed along with one copy of an unpublished work, or two copies of a published work.

Copyright

■ ***What is a compilation? Can it be copyrighted?***

- A compilation is a work formed by the collection and assembling of preexisting materials that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.
- Yes. Only to the material contributed by the author of the compilation -- not to the preexisting material.





Copyright

- ***Is copyright protection available to works of the government?***
 - No.
- ***Can the government be a copyright owner?***
 - Yes. The government may become a copyright owner as a result of an assignment, bequest, etc.

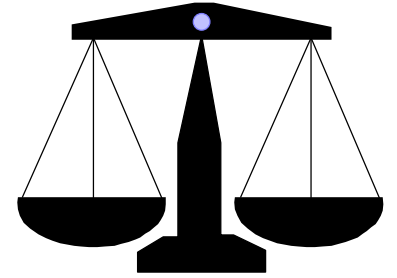
Copyright

■ *What is publication of a work?*

- It is the distribution of copies or records of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
- **Note:** a public performance or display of a work does not of itself constitute publication.



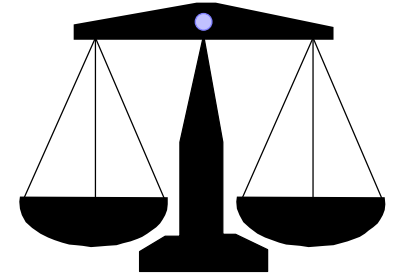
Copyright -- Six Rights



■ *What are the 6 exclusive rights granted to an author in Section 106 of the Copyright Law?*

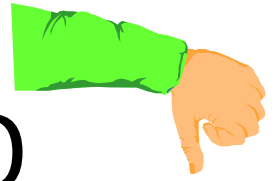
- To **reproduce** the work in copies (sheet music) or records (cd's)
- To prepare **derivative** works based upon the copyrighted work.
- To **distribute** copies of records to the public by sale, rental, lease or lending.

Six Rights Continued



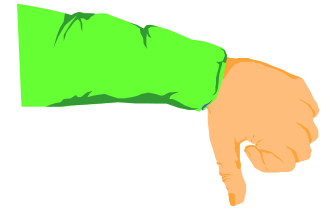
- To ***publicly perform*** the work in the case of literary, musical, dramatic, choreographic works, motion pictures and other audiovisual works.
- To ***display*** the work publicly in the case of sculpture, individual images of a motion picture or other audio visual works.
- To ***publicly perform a sound recording*** by means of a digital audio transmission.

Some restrictions to the 6 exclusive rights -- Sec. 110



- Performances of a work during face-to-face teaching activities -- nonprofit educational institution.
- Performances of a work of a religious nature in the course of services **at** a place of worship.
- Performances by a governmental body or a nonprofit agricultural or horticultural fair -- not to concessionaires etc.

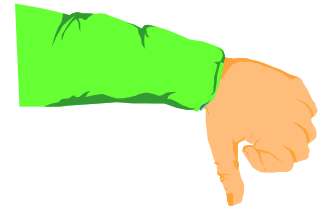
Some restrictions to the exclusive rights (Cont'd)



■ Performances via radio/TV reception if:

- Restaurant, bar or grill with less than 3,750 gross square feet.
- Non-food service and beverage establishment (i.e., retail store), with less than 2,000 gross square feet.
- Any establishment with greater than above space requirements, if:
 - audio use is via 6 or fewer speakers with no more than 4 in any one room, or
 - TV use is via not more than 4 TVs, of which no more than 1 is in any one room, and no TV has a diagonal screen size greater than 55 inches, and above speaker requirements met.

Some restrictions to the exclusive rights (Cont'd)



- **Performances by record stores or stores selling devices to play records**
-- if sole purpose is to promote the sale of records or devices on which they're playing.

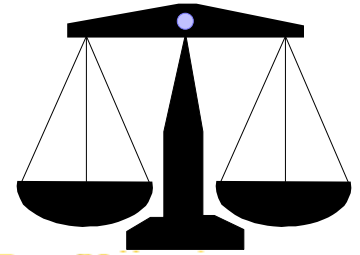
Copyright -- Fair Use



■ *What is fair use?*

- It is a limitation of the exclusive rights of the copyright owner.
- No permission to use the work is necessary if the use of the work is "fair use."
- Generally -- uses include criticism, comment, news reporting, teaching, scholarship, research.
- Fair use is what a court says fair use is.

Copyright - Fair use continued.



- Courts look to 4 factors:
 - **purpose & character of the use** - is the use of a commercial nature or nonprofit educational purpose?
 - The **nature** of the copyrighted work.
 - The **amount used** in relation to the copyrighted works as a whole
 - The **effect** of the use upon the potential market for or value of the copyrighted work.

Copyright - Compulsory Licenses



- ***What is a compulsory license? Does the copyright office provide for such licenses?***
 - It is an “automatic” license. The user can’t be denied a license by the copyright owner.
 - Fees are paid to the copyright office. Claims are made by copyright owners to funds collected by the copyright office.
 - Examples: Cable & satellite transmission of broadcast signals; mechanical licenses; public broadcasting (unless negotiated).

Copyright - Compulsory Licenses



■ ***How are license fees determined for compulsory licenses?***

- If the the copyright owners can't negotiate royalty rates with the beneficiaries of the compulsory license, a Copyright Arbitration Royalty Panel (CARP) is convened to determine appropriate royalty rates.
- The Copyright Office appoints 3 arbitrators from a panel of arbitrators. The cost of the proceeding is borne by the parties.

Compulsory Licenses - continued



- The Librarian of Congress must review the decision of the CARP. He/she may affirm or alter the CARP's decision. His/her decision can be appealed to the Federal Courts.
- The CARP process is cumbersome and expensive. In a cable proceeding a couple of years ago, the arbitrators were paid \$750,000.

Copyright - Sound Recordings



- ***Is there a copyright in a sound recording (tape, phonograph record, CD etc.) which is separate from the copyright in the musical work itself?***
- Yes.

Copyright - Sound Recordings -- Section 114



- *Is there a performing right in a sound recording which is separate and distinct from the performing right in the musical work?*
 - Yes. The right is limited to **digital** transmissions of the sound recording.
 - For the most part radio broadcasters are exempt for their non-subscription or interactive digital broadcasts.

Copyright in Music vs. Record



- ***Does the copyright in a record protect the copyright in the musical work embodied in the record?***
 - No. They are separate and distinct copyright rights and therefore must be protected separately.

Ownership Of Copyright



- ***If I own the material object in which a work is embodied (e.g. - a film), do I automatically own the work itself (e.g. -- a musical work)?***
- No. All of the copyright rights are separate and distinct.

Selling Of A Copyright



■ *If I am a copyright owner can I sell my copyright?*

- Yes. When you own a copyright, you own a piece of property. You keep it for your own use, you can sell it, you can lease it, you can lend it (etc.).
- However, when you transfer copyright ownership, you must do so **in writing**, and the writing must be **signed by the owner** or his/her agent.

Public Domain (PD)



■ ***How does a work “fall” into PD in the U.S.?***

- For works created after 1978 -- after the copyright term expires.
- For works created before 1978
 - No copyright notice on works distributed to public
 - Term of 56 years expired or the copyright was not renewed for its second term of 28 years.

■ ***Can a PD work ever be revived?***

- *Not a work of a U.S. author.*

Public Domain - continued

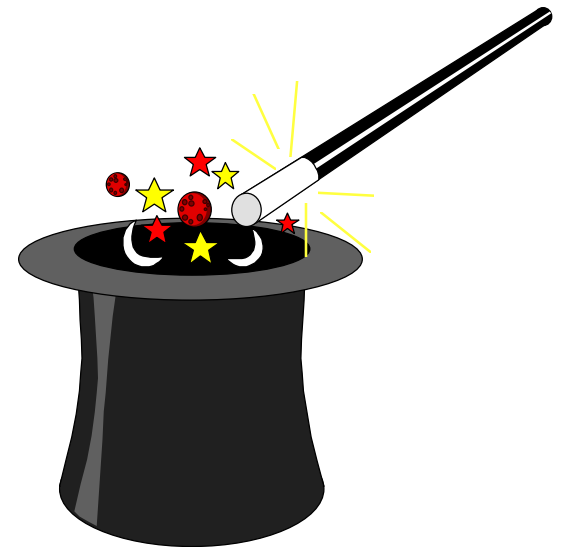
■ *If a work is PD, can I use it without obtaining permission?*

- Yes. But beware! Arrangements of a musical work may be copyrighted, therefore, while the original work may be in the public domain, the arrangement may not be.
- Also, some works which you think are “old” are not as old as you think they are.



Public Domain - continued

- ***Can a US work which has fallen into the public domain be protected by copyright in another country?***
 - *Yes. Some countries have longer periods of protection than the U.S.*



Copyright - Remedies



■ *What happens if someone uses my work without permission?*

- Unless such a use is permitted by the copyright law the copyright owner may obtain:
 - An injunction
 - Impounding and destruction of infringing articles
 - Actual damages and profits **or** statutory damages (\$750 - \$ 150,000)
 - Attorneys fees and court costs

Copyright - Remedies continued



■ ***Is copyright infringement a criminal offense?***

- It can be -- it is up to the federal government to prosecute.
- Placing of a fraudulent copyright notice.
- Fraudulent removal of a copyright notice.
- Knowingly making a false misrepresentation of a material fact in the application for copyright registration.

Liability for Copyright Infringement



■ *Can one person be liable for the infringing acts of another person?*

■ Yes.

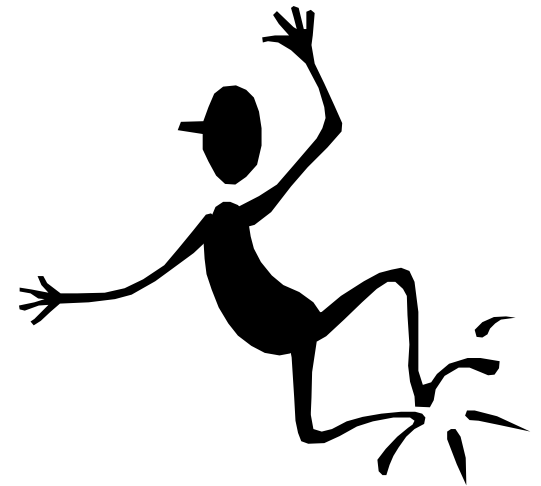
■ ***Vicarious Liability.*** To be held vicariously liable, one must have the ability to control the infringer and receive direct financial benefit from the infringing acts.

■ ***Contributory Infringement.*** One must provide material assistance with knowledge of the act of infringement.

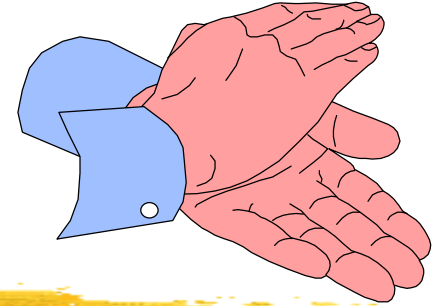
PUBLIC PERFORMING RIGHTS -- Sec. 106(4)

■ ***What is the public performing right?***

- *The public performing right enables the copyright owner/author to receive payment when his/her song is publicly performed, whether the performances are live or recorded.*



PERFORMING RIGHT - Continued



■ *What is a public performance?*

- To perform a work publicly, means to perform it at a place open to the public or at a place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; **or**
- To transmit or otherwise communicate a performance to the public by means of any device or process.

GRAND RIGHTS



■ *What is a Grand Right?*

- The public performance of a musical work in a dramatic manner, such as accompanying the performance with costumes, scenery, plot, acting out the lyrics of the song.
- If the musical work was written specifically for a musical show, performing the song in conjunction with all or part of the scripted show.

EPHEMERAL RIGHTS



■ ***What is an ephemeral right?***

- There is a special exemption for broadcasters which are licensed to publicly perform a work which entitles them to make no more than one copy of a phonorecord of a particular transmission of a program for certain limited purposes (archival; used only by station for its own broadcasts).
- If used for station broadcasts, the recording must be destroyed within 6 months of first broadcast.

MECHANICAL RIGHTS

■ *What is a mechanical right?*

- It is the right to make and distribute sound recordings of musical compositions. It covers the right to reproduce a piece of music onto records or tapes and sell the records.

■ *Who pays for mechanical rights?*

- Record companies.



SYNCHRONIZATION RIGHT (Synch right)



■ ***What is a synch right?***

- It is the right to reproduce a musical work in timed relation to an audiovisual work such as a film or TV show.
- The license the TV show or film producer needs to obtain is referred to as a “synch” license.

■ ***Who pays for synch rights?***

- Generally, the producer of the film or the producer of TV programming.

Audio Home Recording Act of 1992 (DART)



■ ***Do composers and publishers receive royalties from the digital audio recording fees paid to the Copyright Office?***

■ DART created a home taping royalty levy on sales of certain digital audio recording devices and media.

The law divides the royalties as follows:

- 2/3 for sound recording owners (record co); and
- 1/3 for owners of musical works (authors & publishers)

The Berne Convention



■ ***What is the Berne Convention?***

- It is the Convention (agreement) for the Protection of Literary and Artistic Works signed at Berne, Switzerland, on September 9, 1886.
- It sets certain minimum standards of copyright protection for those nations that adhere to Berne.

■ ***Is the U.S. a signatory to Berne?***

- Yes.