

Copyright 101 Agenda

- Copyright Law Overview
- What Copyright Law Is and Isn't
- Copyright Subject Matter
- The Scope of Copyright Protection

Copyright Law Overview

- Nebulous, complicated, and based on overwrought, outdated statute
- Applies to many aspects of daily and professional life, especially in academia
- Often misunderstood
- Purpose: to protect creative works from copying or other misuse by people other than the author or owner of the rights to the work.
- Balance: provide protections for creative works to incentivize creators – but to encourage a rich, open public domain of information, those protections have a limited duration.

What Copyright Law Is

- Purpose: Protect creative works from copying or misuse by third parties
- Covers creative works of original authorship, expressed and fixed in a tangible medium
 - Literary works
 - Musical works
 - Dramatic works
 - Choreography
 - Motion pictures and audiovisual works
 - Sound recordings
 - Architectural works
 - Video games
 - Etc.
- Provides a bundle of exclusive rights to the owner

What Copyright Law Isn't

- Patent Law
 - Utility patents essentially protect utilitarian products (inventions) and processes (methods)
 - Design patents protect purely ornamental design features of a product
- Trademark Law
 - Protects words, symbols, phrases, etc., that serve as branding devices or source-identifiers of a product or service

Copyright Subject Matter

- Original works of authorship . . .
 - To be original to the author, the author must have taken some individual action requiring a minimal degree of creative choice
 - Low threshold
 - Non-original works: titles, names, short phrases, slogans, familiar symbols/tropes, facts, mere listing of ingredients or contents, works created by others with your equipment but not at your direction
- . . . fixed in a tangible medium of expression
 - A work must be “fixed” in a medium (written, recorded, etc.) that is sufficiently permanent to be communicated, perceived, reproduced, conveyed, transmitted, etc., for more than a brief period.
 - Fixation requirement highlights key distinction between ideas (not protected) and expressions of ideas (protected)

Copyright Protection

- Copyright law provides owners a bundle of exclusive rights:
 - Reproduction right – the right to make copies of the work
 - Derivative work right – the right to make adaptations, translations, sequels, etc.
 - Distribution right
 - Display rights
 - Performance rights
 - Transmission rights (audio works)
 - Among others

Copyright Authorship and Ownership

- Ownership of copyright is distinct from ownership of a physical article
- Ownership of copyright vests in author or creator of work (the person who created a fixed, original expression)
- Exceptions:
 - Jointly created works
 - “Works made for hire”
 - Scope of Employment
 - Written agreement
- Ownership can be transferred by written assignment

Copyright Duration and the Public Domain

- Due to many changes in the law, the duration of copyright protection varies depending on when a work was created or published.
- Always check for older works
- For new works:
 - Life of the author plus 70 years
 - If corporate authorship, 95 years from publication, or 120 years from creation, whichever expires first
- Subject to change...
- Public Domain – works no longer protected by copyright law
 - Pre-1923 works, older works not renewed, older works published without notice, etc.
 - Always check!

Copyright Registration and Notice

- Registration is not a condition for copyright protection
- An author's rights are secured upon creation
- Why register?
 - Required for filing suit
 - Statutory damages (if registered prior to infringement, or within 3 months of publication)
- Copyright notice is not required (any more) but is highly recommended for the following reasons:
 - Informs the public that the work is protected
 - Prevents a party from claiming to be an “innocent infringer”
 - Identifies copyright owners and year of first publication so third parties will know who to contact for a license to the work
- Examples of notice:
 - © 2008 XYZ Corporation
 - Unpublished Work © 2008 XYZ Corporation

Use of Others' Copyrighted Works

- Using another's copyrighted work is infringement unless it falls into an exception
- Some exceptions are amorphous, vague, and unclear (Fair Use)
- Others are more clearly applicable (Statutory exemptions, TEACH Act, Creative Commons works)
- A third party work is not “fair game” if they do not include a copyright notice
- Attribution does not protect you from a claim of infringement
- Best to try to get clearance (permission, license) unless use is clearly within an exception

DMCA

- Digital Millennium Copyright Act (1998)
- Prohibits circumvention of digital rights management
- Heightens penalties for online copyright infringement and clarifies liability to online service providers (websites, or internet service providers like a university internet network)
- Important for universities to comply with the requirements for safe harbor protection
- Most universities have a DMCA/Copyright policy posted on their website