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Copyright Basics

James R. Weaver

Missouri University of Science and Technology, weaverjr@mst.edu

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Missouri University of Science and Technology

Copyright Basics

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Copyright Basics

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Copyright Basics

Introduction

- Copyright law in the United States is rooted in the desire to capture and leverage expressions of new ideas.
- Copyright law recognizes that the impetus to create is based on the ability to access already existing expressions of intellectual creativity and use them as platforms upon which we create anew.
- Copyright law provides mechanisms that allow us to use existing expressions of ideas to voice opinion, criticism, and dissent.

"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."

(Article I, Section 8, Clause 8 of the United States Constitution)

What is Copyright?

Copyright Protects Expression Never Ideas

- It is a common misconception that copyright indicates ownership, it does not.
- Copyright provides protection to the creators of original works of authorship
- To receive copyright protection a work must be:
 - Original work of authorship
 - Fixed in a tangible medium of expression
 - Contain a minimal degree of creativity

Works are original when they are independently created by a human author and have a minimal degree of creativity.

Independent creation simply means that you create it yourself, without copying

The Supreme Court has said that, to be creative, a work must have a “spark” and “modicum” of creativity.

A work is fixed when it is captured (either by or under the authority of an author) in a sufficiently permanent medium such that the work can be perceived, reproduced, or communicated for more than a short time. For example, a work is fixed when you write it down or record it.

What Does Copyright Protect?

Examples of What Copyright Protects Include:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings, which are works that result from the fixation of a series of musical, spoken, or other sounds
- Architectural works

These categories should be viewed broadly. For example, computer programs and certain “compilations” are considered as “literary works”; maps and technical drawings are considered as “pictorial, graphic, and sculptural works.”

What is Not Protected by Copyright?

Examples of What Copyright Does Not Protect:

- Ideas, procedures, methods, systems, processes, concepts, principles, or discoveries
- Works that are not fixed in a tangible form (such as a choreographic work that has not been notated or recorded or an improvisational speech that has not been written down)
- Titles, names, short phrases, and slogans
- Familiar symbols or designs
- Mere variations of typographic ornamentation, lettering, or coloring
- Mere listings of ingredients or contents
- Works of the U.S. Government

What Rights does Copyright Provide?

Copyright Owners Have these Exclusive Rights

- Reproduce the work in copies or phonorecords.
- Prepare derivative works based upon the work.
- Distribute copies or phonorecords of the work to the public by sale or other transfer of ownership or by rental, lease, or lending.
- Perform the work publicly if it is a literary, musical, dramatic, or choreographic work; a pantomime; or a motion picture or other audiovisual work.
- Display the work publicly if it is a literary, musical, dramatic, or choreographic work; a pantomime; or a pictorial, graphic, or sculptural work. This right also applies to the individual images of a motion picture or other audiovisual work.
- Perform the work publicly by means of a digital audio transmission if the work is a sound recording.
- Copyright ownership can also come from contracts like assignments or from other types of transfers like wills and bequests.

Copyright also provides the owner of copyright the right to authorize others to exercise these exclusive rights, subject to certain statutory limitations.

How Long does Copyright Protection Last?

The Length of Copyright Depends on When the Work was Created

- Works created on or after January 1, 1978, have a copyright term of life of the author plus seventy years after the author's death.
- If the work is a joint work, the term lasts for seventy years after the last surviving author's death.
- For works made for hire and anonymous or pseudonymous works, copyright protection is 95 years from publication or 120 years from creation, whichever is shorter.



Who Can Claim Copyright?

Copyright initially belongs to the author(s) who created that work.

- When two or more authors create a single work with the intent of merging their contributions into inseparable or interdependent parts of a unitary whole, the authors are considered joint authors and have an indivisible interest in the work as a whole.
- By contrast, if multiple authors contribute to a collective work, each author's individual contribution is separate and distinct from the copyright ownership in the collective work as a whole.
- “Works made for hire” are an important exception to the general rule for claiming copyright. When a work is made for hire, the author is not the individual who actually created the work. Instead, the party that hired the individual is considered the author and the copyright owner of the work.

Who Can Claim Copyright?

“Works made for hire”

- Whether a work is made for hire is determined by the facts that exist at the time the work is created.
- There are two situations in which a work may be made for hire:
- When the work is created by an employee as part of the employee’s regular duties, or
- When an individual and the hiring party enter into an express written agreement that the work is to be considered a “work made for hire” and the work is specially ordered or commissioned for use.

Who Can Claim Copyright?

“Works made for hire”

- The concept of work made for hire can be complicated and has serious consequences for both the individual who creates the work and the hiring party who is considered to be the author and copyright owner of the work.

Mere ownership of a copy or phonorecord that embodies a work does not give the owner of that copy or phonorecord the ownership of the copyright in the work.

Can Copyright Ownership be Transferred?

Any or all of the copyright owner's exclusive rights can be transferred.

- Any or all of the copyright owner's exclusive rights, or parts of those rights, can be transferred.
- The transfer, however, generally must be made in writing and signed by the owner of the rights conveyed or the owner's authorized agent.
- Transferring a right on a nonexclusive basis does not require a written agreement.

Can Copyright Ownership be Transferred?

Any or all of the copyright owner's exclusive rights can be transferred.

- It can also be conveyed by operation of law.
- You can “record” a transfer of copyright ownership with the Copyright Office through its Office of Public Records and Repositories.
- Although recordation is not required to make a valid transfer between parties, it does provide certain legal advantages.

Can a Copyright Transfer Agreement be Terminated?

Under certain circumstances, authors or their heirs can terminate an agreement.

- Under certain circumstances, the Copyright Act allows authors or their heirs to terminate an agreement that transferred or licensed the author's copyright to a third party after thirty-five years.
- To terminate a grant, the author or the author's heirs must serve an advance written "notice of termination" on the grantee or the grantee's successor-in-interest and must record a copy of that notice with the Copyright Office and pay the required filing fee.
- A notice of termination must be recorded before the effective date of termination specified in the notice.
- If a notice of termination is not recorded in a timely manner, the notice will be invalid, and the author or the author's heirs will not be able to terminate the agreement.

How Can I Protect My Work?

- Copyright exists automatically in an original work of authorship once it is fixed in a tangible medium, but a copyright owner can take steps to enhance the protections of copyright, the most important of which is registering the work.
- Although registering a work is not mandatory, for U.S. works, registration (or refusal) is necessary to enforce the exclusive rights of copyright through litigation.
- Applying a copyright notice to a work has not been required since March 1, 1989, but may still provide practical and legal benefits.
 - Notice typically consists of the copyright symbol or the word “Copyright,” the name of the copyright owner, and the year of first publication.
 - Placing a copyright notice on a work is not a substitute for registration.

What are the Benefits of Registering Copyright?

Registration establishes a claim to copyright with the Copyright Office.

- In addition to establishing a public record of a copyright claim, registration offers several other statutory advantages:
 - Before an infringement suit may be filed in court, registration (or refusal) is necessary for U.S. works.
 - Registration establishes prima facie evidence of the validity of the copyright and facts stated in the certificate when registration is made before or within five years of publication.
 - When registration is made prior to infringement or within three months after publication of a work, a copyright owner is eligible for statutory damages, attorneys' fees, and costs.
 - Registration permits a copyright owner to establish a record with the U.S. Customs and Border Protection (CBP) for protection against the importation of infringing copies.

Registration can be made at any time within the life of the copyright. If you register before publication, you do not have to re-register when the work is published, although you can register the published edition, if desired.

Do I Need to Apply a Copyright Notice to my Work?

Applying a copyright notice is not required, but provides practical and legal benefits.

- Using a copyright notice is optional for unpublished works, non-U.S. works, and works published on or after March 1, 1989. However, notice conveys the following benefits:
 - It puts potential users on notice that copyright is claimed in the work.
 - For published works, notice may prevent a defendant from attempting to limit liability for damages or injunctive relief based on an “innocent infringement” defense.
 - It identifies the copyright owner at the time of first publication for parties seeking permission to use the work.
 - It identifies the year of first publication, which can be used to determine the term of copyright for anonymous or pseudonymous works or works made for hire.
 - It may prevent the work from becoming an “orphan” by identifying the copyright owner or specifying the term of copyright. Orphan works are original works of authorship for which prospective users cannot identify or locate copyright owners to request permission.

Notice was required for works published in the United States before March 1, 1989. Works published without notice before that date may have entered the public domain in this country. For more information, see Copyright Notice (Circular 3).

How Can I Use A copyrighted Work?

Agreements, Exceptions, and Limitation



*“We are all
copyright users”*



*“We are all
copyright owners”*

- When deciding to use a work protected by copyright, the general rule is to seek permission from the copyright owner.
- Under the copyright law, a copyright owner may authorize activities that fall under the exclusive rights of copyright. For more information on seeking permission to use a copyrighted work.
- Sections 107 to 122 of the copyright law contain provisions that establish limitations on the exclusive rights of the copyright owner.
 - The provisions make certain uses of copyrighted works permissible without first obtaining permission of the copyright owner.
 - One of the most discussed of these statutory provisions is known as fair use, a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances.

What is Publication and Why is it Important?

Under copyright law, publication is the distribution of copies or phonorecords of a work to the public.

- Under copyright law, publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending.
- Offering to distribute copies or phonorecords to a group of people for purposes of further distribution, public performance, or public display also constitutes publication.
- Whether a work is published has important implications, including:
 - The year of publication may determine the length of the copyright term for a work made for hire or an anonymous or pseudonymous work.
 - The year of publication may determine the length of the copyright term if the work was created before January 1, 1978, and was published or registered before that date.
 - The year of publication may determine the length of the copyright term if the work was created before January 1, 1978, and was first published between January 1, 1978, and December 31, 2002.

What is Publication and Why is it Important?

Under copyright law, publication is the distribution of copies or phonorecords of a work to the public.

- Whether a work is published has important implications, including: (continued)
 - The date and nation of first publication may determine if a non-U.S. work is eligible for copyright protection in the United States.
 - A certificate of registration creates certain legal presumptions if the work is registered before or within five years after the work was first published.
 - A copyright owner may be entitled to claim statutory damages and attorneys' fees in an infringement lawsuit if the work was registered before the infringement began or within three months after the first publication of that work.
 - Many of the exceptions and limitations on the copyright owner's exclusive rights vary depending on whether the work is published or unpublished.
 - As a general rule, works published before March 1, 1989, must be published with a valid copyright notice.
 - The deposit requirements for registering a published work differ from the requirements for registering an unpublished work.
 - Works published in the United States may be subject to mandatory deposit with the Library of Congress.

Copyright Questions

