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Online Copyright: What You Need to Know

Prof. Eric Goldman

Director, High Tech Law Institute

http://www.ericgoldman.org • http://hightechlaw.scu.edu

egoldman@gmail.com

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IP Overview

IP	Protectable Matter	Example
Trade Secrets	information that derives value due to secrecy	
Patents (utility)	novel, useful, nonobvious ideas	
Copyrights	original works of authorship fixed in tangible medium of expression	
Trademarks	words/symbols that distinguish the source of marketplace offerings	

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

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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"

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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

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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**

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Limits on Copyright: Notice-and-Takedown

- 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?