

COPYRIGHT LAW – SOME BASICS

What Copyright Protects

- An **“original” work of authorship that is fixed in a tangible medium of expression** (e.g., literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, audiovisual, and architectural works) – requires a minimal degree of creativity; no quality requirement
- Embodiment is sufficiently permanent to permit it to be perceived for a period of more than transitory duration (e.g., e-mails are protected)
- **Ideas** themselves are not protected (unrecorded oral expression is not protected)
- **Facts** are not protected, but compilations may be
- U.S. government documents are not protected
- Protection from the moment of creation: Notice, registration with the U.S. Copyright Office, and publication are not required for copyright protection (but are helpful in the event of litigation)
- Works on the Internet are protected by copyright to the same extent as other works

Ownership

- The creator is the owner (two or more creators may be joint owners with joint rights)
- “Works for hire” – works created by employees within the scope of their employment generally belong to the employer
- Copyright ownership and credit are not the same – credit may always be given to participants in a project, even if someone else holds the copyright

Duration and Extent of Protection

- For current works, copyright protection lasts for life of the author + 70 years (the default assumption is that someone has copyright to the work, even if it is available on the Internet)
- “Works for hire” are protected for 95 years after first publication or 120 years after creation of the work, whichever expires first
- Works no longer protected by copyright are in the **“public domain”**

- If you need to make an informed decision about whether a work is still protected by copyright, *see, e.g.*, Peter B. Hirtle, “Copyright Term and the Public Domain in the United States,” http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm (last updated January 6, 2006).

Exclusive Rights of Copyright Owners

- Reproduction of the work in whole or in part
- Preparation of derivative works (e.g., translations, musical arrangements, dramatizations, sound recordings, and second editions)
- Distribution of copies of the work to the public by sale, gift, rental, loan, or other transfer (with exception of “first sale doctrine”)
- Public performance of the work
- Public display of the work
- These rights can be divided up among various parties using **contracts**

Fair Use of Works by Others – an exception to the monopoly of rights held by the copyright owner. Factors that are taken into account on a case-by-case basis (*see also, e.g.*, Copyright Management Center, IUPUI, “Checklist for Fair Use,” <http://copyright.iupui.edu/checklist.htm>):

- Purpose and character of the use (e.g., personal, educational, transformative, commercial)
- Nature of the work being used (e.g., factual, creative)
- Amount and substantiality of the portion used in relation to the whole (both quantitative and qualitative)
- Effect on the market for the original (for the particular type of use)

Other Forms of Intellectual Property

- **Patents** – Inventions that are non-obvious, novel, useful, and fully disclosed through the U.S. Patent and Trademark Office.
- **Trademarks** – Words, names, symbols, devices, or any combination thereof, used to distinguish goods from those manufactured by others, and to indicate their source. (Service marks are the same as trademarks except that they identify and distinguish services rather than products.)

- **Trade Secrets** – Formulas, patterns, devices or compilations of information used in business that provide a competitive advantage over others who do not know or use them.

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