

Copyright 101

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Constitutional and Statutory Basis

- **U.S. Constitution Art 1, Sect. 8 Cl. 8**
 - “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”
- **U.S. Copyright Act, 17 U.S.C. §§ 101 - 810**

§102(a) Subject Matter

- Copyright protection subsists, in accordance with this title, in **original works of authorship fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Original Works

- **To Qualify as Original:**
 - The work must not be copied.
 - The work must have at least a minimum level of creativity.

§101 Definitions - Fixed in Tangible Medium

- “A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.”

§102(a) Categories of Works

- 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
- Architectural works

§102(b) Ineligible Subject Matter

- Ideas
- Titles
- Processes
- Works prepared by the federal government
- Works that are in the public domain

Ineligible Subject Matter

- **Useful Article Doctrine**

- Some copyright eligible subject matter may also be patentable as useful inventions.

- **Conceptual Separability**

- If the creative component of a work cannot be separated from its functional component, it is considered an industrial design and cannot be copyrighted.

- **Example:** *Brandir Intl. v. Cascade Pacific Lumber*, 834 F.2d 1142 (2d Cir. 1987)

- Brandir Ribbon bicycle rack, which adopted an artistic design quite different from previous bicycle racks. Because the creativity of the design was inseparable from its functionality, the rack was deemed protectable only through patent law.

Conceptual Separability

- **Brandir Intl. v. Cascade Pacific Lumber, 834 F.2d 1142 (2d Cir. 1987)**
 - Brandir Ribbon bicycle rack utilized an artistic design different from previous bicycle racks. The creativity of the design was found to be inseparable from the design's functionality (note: found to be protectable only through patent law).



§106 Copyright Owner Rights

- Right to reproduce the work
- Right to prepare derivative works
- Right to distribute copies by sale, rental, lease, or lending
- Right to perform works publicly (e.g., audiovisual works)
- Right to display works publicly (e.g., musical and artistic works)

Derivative Works

- **Definition:** work based on or derived from one or more already existing works.
- **General Examples:** translations, musical arrangements, motion picture versions of literary material or plays, art reproductions, abridgments, and condensations of preexisting works.
- **Specific Examples:** translation of an novel written in English into another language, revision of a previously published book, sculpture based on a drawing, drawing based on a photograph, musical arrangement of a preexisting musical work, new version of an existing computer program, adaptation of a dramatic work, revision of a website

Derivative Works

- **Ownership:** only the owner of the copyright in a work has the right to prepare, or to authorize someone else to create, an adaptation of that work.
- **Protection:** the copyright in a derivative work covers only the additions, changes, or other new material appearing for the first time in the work. Protection does not extend to any preexisting material (i.e., previously published or previously registered works or works in the public domain or owned by a third party).
- **Eligibility:** to be copyrightable, a derivative work must incorporate some or all of a preexisting “work” and add new original copyrightable authorship to that work.

Copyright Duration

- **Individuals (works not made for hire):**
 - Life of author plus 70 years (after 1978).
- **Works Made for Hire:**
 - 95 years after publication or 120 years after creation, whichever is shorter (after 1978).
- Works published before 1978 and after 1923 are protected for 95 years.

Public Domain

- Everything in the public domain is useable.
- Everything published before 1923 is in the public domain.
- US federal works are in the public domain.
- Authors can choose to put work in the public domain (e.g., by including a notice that the item is in the public domain).

Copyright Notice

- Before March 1, 1989, use of a copyright notice was mandatory on all published works.
- Since March 1, 1989 copyright notices have been made optional on published works.

Copyright Limitations – Fair Use

- **Fair Use:**
 - Broad exception that allows people to use a copyrighted work without permission in certain circumstances
 - When appropriate, can be used for criticism, comment, news reporting, teaching, scholarship, and/or research.

Fair Use Factors

- **Factors:**

- **Purpose:** What is the character or purpose of the use?
 - Examples: used for profit
- **Nature:** What is the nature of the material being used?
 - Examples: creative material
- **Amount and Substantiality:** How much of the work is being used?
 - Example: the entirety of the work
- **Effect on Original:** What effect will this use have on the market for the original material?
 - Example: material impact on sales or reputation

Fair Use Examples

- **Acceptable Fair Use:**

- Using excerpts from a book to write a review of the book.
- Screening a movie in a film class without payment.

- **Unacceptable Fair Use:**

- Reproduce whole chapters of a book for reviewing purposes without permission.
- Charging admission to students or non-students to attend the screening.

Digital Millennium Copyright Act (DMCA)

- Criminalizes production and dissemination of technology, devices, or services intended to circumvent measures (e.g., digital rights management (DRM)) that control access to copyrighted works.
- Heightens penalties for copyright infringement on the internet.

Software Copyrights

- May be used by software developers to prevent unauthorized copy of software.
- Considered to be “literary works” under the Copyright statute.
- Free licenses, open source licenses, copyleft licenses, creative commons licenses, and so forth, all use portions of copyright law for protection.
- Behavior of the software is not protected (protected by patents).

Structure, Sequence, and Organization

- Basis for comparing one software work with another to determine whether infringement has occurred, even when direct copying has not occurred.
- Defined as, “data input formats, file structures, design, organization and flow of the code, screen outputs or user interfaces, and the flow and sequencing of the screens...” *Scott, Michael D. (2006). Scott on Outsourcing: Law And Practice. Aspen Publishers Online. ISBN 0735561788.*
- May be used for both “code” and “look-and-feel”

Oracle v. Google:

- **Oracle alleged infringement of 37 API's**
- **Federal Circuit:**
 - **Original**: Assessed whether the expression was original to the programmer (i.e., Oracle)
 - **Creative**: Assessed whether the overall structure of the API's was creative.
 - Remanded for reconsideration of Fair Use
- **Fair Use**
 - On remand jury found Google's use to be Fair Use

Obtaining a Copyright

- All work fixed in a tangible medium is automatically copyrighted
- Can federally register a work online at <http://www.copyright.gov/eco/>

Copyright Registration Benefits

- Establishes a public record of the copyright holder's ownership.
- Enables copyright holders to sue infringers in federal court.
- If made before or within 5 years of publication, establishes sufficient evidence in court concerning the validity of the copyright and the facts stated in the copyright certificate.
- If registration is made within 3 months of publication of the work or at any time prior to an infringement of the work, the copyright owner is entitled to seek statutory damages and attorney's fees in federal court. Without registration, only an award of actual damages and profits will be available, and these can be quite difficult to prove.
- Allows the copyright owner to record the registration with U.S. Customs to protect against the importation of infringing copies into the US.