

Copyrights

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With thanks to:

Howard Zaharoff

Copyrights

- ❑ Federal Law: 17 U.S. Code § 101 et seq.
- ❑ Subject Matter: *Original* literary, pictorial, musical, audiovisual, and other *works of authorship*, including computer programs, fixed in tangible form
 - ❑ “Original” = not copied from other source (minimal creativity)
 - ❑ Lower standard than patents “novel and non-obvious”

“Only one thing is impossible for God: To find any sense in any copyright law on the planet.”

Mark Twain

Copyrights

- ❑ Examples of protected works in software industry:
 - ❑ Software: code; detailed structure, sequence and organization
 - ❑ Multimedia works: code, images, structure and sequence
 - ❑ Documentation: Manual, notes, flowcharts
 - ❑ Databases
 - ❑ Other, including:
 - ❑ Original marketing and promotional materials; ad copy
 - ❑ White papers and research reports
 - ❑ Notebooks, memos, correspondence and contract forms

Copyrights

❑ Scope of Protection:

- ❑ Right to copy, adapt, distribute, publicly perform and publicly display work, also --
- ❑ Rights of attribution and integrity for visual art
- ❑ Rights of digital audio transmission for sound recordings
- ❑ Rights to prevent (i) circumvention of technological access-controls or (ii) removal/alteration of copyright management information (*DMCA*)

❑ Limitations:

- ❑ Copyright protects *original expression*, not ideas, facts or principles
- ❑ Built-in limits: *public* performance, *first* sale
- ❑ No protection for common features (“scenes a faire”)
- ❑ *Fair use* by third parties

Copyrights - Fair Use



- ❑ Leibovitz v. Paramount Pictures (2d. Cir. 1998)
- ❑ “Leibovitz is entitled to protection for such artistic elements as the particular lighting, the resulting skin tone of the subject, and the camera angle that she selected.”

Copyrights - Fair Use



- ❑ “...but a parodist’s copying of more of an original than is necessary to conjure it up will not necessarily tip ... against fair use.”

Copyrights

Ownership:

- ❑ Author / artist owns, not the employer, unless
 1. Within scope of employment or
 2. Written work-made-for-hire or assignment agreement
 - ❑ Technically, a “work-made-for-hire” must be one of 9 identified types of works
 - ❑ For other works, employer will own the copyright only by *written assignment*
 - ❑ Assignments can be terminated in 36th-40th year

Copyrights

Term:

- ❑ Life of author plus 70 years
- ❑ 95 years from publication / 120 years from creation for pseudonymous and anonymous works and *works made for hire* (mainly corporate works)

Filings:

- ❑ Registration is voluntary, but:
 - ❑ Registration/deposit is precondition to suit and provides:
 - ❑ Statutory damages (\$30K / \$150K) and attorneys fees for post-registration infringements
 - ❑ Prima facie evidence of validity and stated facts
 - ❑ Formal record of transfers, assignments and security interests

Copyrights

Cost:

- ❑ Copyright is automatic (= fixation+\$0)
- ❑ Registration costs \$45

Notice:

- ❑ Copyright, Copr. or ©, year, and name, e.g.:
 - ❑ “Copyright © 2005-2018 Ashley J. Stevens. All rights reserved. Do not modify or copy”

International Copyright Treaties

- ❑ Berne Convention
 - ❑ First signed in 1886
 - ❑ Effective 1887
 - ❑ Last revision 1971
 - ❑ Pre-digital era
 - ❑ Currently 177 signatories
 - ❑ U.S. ratified in 1989
 - ❑ Administered by WIPO
- ❑ Term of Protection:
 - ❑ Minimum of 50 years after author's death
 - ❑ Minimum of 25 years after a photograph is created
 - ❑ Minimum of 50 years after first showing for cinematography

Technologies that can be used to infringe copyright

- ❑ Movie and TV industries were very concerned about VCR's
- ❑ Sued
 - ❑ *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984)
 - ❑ Claimed Sony liable for copyright infringement by buyers – contributory infringement
- ❑ District Court found:
 - ❑ Recording of individual TV shows for personal use was “*fair use*”
 - ❑ No contributory infringement if substantial non-infringing uses
- ❑ Finished up in the Supreme Court
 - ❑ District Court decision upheld 5-4

In the Digital Age

- ❑ Napster found not to have substantial non-infringing uses
 - ❑ Injunction
 - ❑ Shut down
- ❑ Trivia:
 - ❑ Where did Napsters' technology finish up?

Enforcing Copyrights

- ❑ In the Analogue Era, enforcement was retroactive, through the Courts
- ❑ In the Digital Era, enforcement is proactive, through Digital Rights Management systems
- ❑ Have become a form of proprietary protection
 - ❑ iTunes
- ❑ Can be a competitive liability
 - ❑ Sony

Open Source

- ❑ Generally applies to software
- ❑ At least 56 license formats
 - ❑ GNU GPL very popular
 - ❑ Originally written by Richard Stallman, MIT in 1989
 - ❑ Current version V3.0 released in 2007
- ❑ Allows user to modify and distribute
 - ❑ Normally prohibited under copyright law
 - ❑ “Copyleft”
 - ❑ Rights carry through to derivatives
 - ❑ Viral
 - ❑ Everything that incorporates the smallest amount becomes Open Source
 - ❑ Verify, verify, verify
- ❑ MIT and Mozilla licenses very popular
- ❑ More commercial leeway

Open Source

- ❑ So how do you make money if something is Open Source?
- ❑ If someone else wrote the copyrighted material and made it Open Source:
 - ❑ Sell services
 - ❑ E.g, RedHat / Linux
- ❑ If you wrote the copyrighted material
 - ❑ Make a basic model and make it Open Source to create demand
 - ❑ Sell a value added version

Some Open Source Products

- ❑ SMGTools
- ❑ Linux kernel - operating system based on Unix
- ❑ Eclipse - software framework for "rich-client applications"
- ❑ Apache - HTTP web server
- ❑ Tomcat web server - web container
- ❑ Blender - 3D graphics application
- ❑ Moodle - course management system
- ❑ Mozilla Firefox - web browser
- ❑ Mozilla Thunderbird - e-mail client
- ❑ OpenOffice.org - office suite
- ❑ OpenSolaris - Unix Operating System from Sun Microsystems