

# Copyright Basics

## Registration, Licensing, and Infringement

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*24 January 2012*

# What is a Copyright?

- A bundle of six different rights
  - Right to reproduce
  - Right to make derivative works
  - Right to distribute copies
  - Right to publicly display
  - Right to publicly perform
  - Right to perform via digital audio transmission

# What Can You Copyright?

- “Original works of authorship”
  - Original: some creativity was required
    - Ideas may not be copyrighted
    - Your version of an idea may be copyrighted
  - Authorship: includes literature and text, visual art, dramatic works, musical works, and architecture

# Who Owns a Copyright?

- “The artist/artists”
  - Individual artist
  - Joint work
- The contract holder
  - Any or all of your rights can be transferred by contract or will
- “Work made for hire”
  - Works made in an employment relationship or by contract
  - Commissions are NOT automatically works for hire

# Joint Works

- “Each contribution must be:
  - Intended to be part of a joint work
    - Even if you did not create them at the same time, i.e. music created without a lyricist in mind
  - Independently copyrightable
    - Each piece must be original enough to be subject to copyright on its own, i.e. music and lyrics

# Using Joint Works

- Each contributor may issue non-exclusive licenses, so long as they pay the other contributors their share.
  - Contributors may not object to any use; however, some licensees may want to obtain permission from all parties
- If you reuse your portion of a joint work, you still owe the other contributors their share, even if you are not using their contributions.
  - This is because you are creating a derivative work.

# Works Made for Hire

- When is a work considered a work for hire?
  - In the Scope of employment
  - If you sign a contract prior to creating the work
- Why does this matter?
  - You have no ownership rights in the work
  - You may or may not be given credit

# When is a Work Copyrighted?

- As soon as it is “fixed in a tangible medium”
  - You own the copyright as soon as you paint, sculpt, write, or record something subject to protection
  - Just write “copyright 2011 (your name)”, or use the © symbol.
  - Mailing it to yourself doesn’t count

# Then Why Should I Register?

- You cannot make an infringement claim without a certificate.
  - If someone uses your work and you have registered it properly, you are entitled to statutory damages.
- Someone wishing to use your work will be able to find you
  - This could mean more money for you
- It is the easiest form of intellectual property to protect.
  - Compared to patents and trademarks, copyrights are cheap, easy to obtain, and last much longer.

# How do I register?

- Register online at [www.copyright.gov](http://www.copyright.gov)
- Filing fees are \$35 per application
  - You can register more than one work on the same application
- If you have any doubts, call an entertainment or copyright attorney

# What Can I Include on an Application?

- What can I include on an application?

# How Long does a Copyright Last??

- A copyright now lasts the life of the author plus 70 years
  - Copyrights may be passed down to heirs in a will
- A work-made-for-hire lasts 95 years
- This is pursuant to the 1976 copyright act; earlier works have different protection periods.

# Using Someone Else's Work

- Can be used for free if:
  - The work is in the public domain
  - It falls under the Fair Use exception
- Otherwise, you need permission
  - This can be accomplished through a license
  - The cost of the license will vary based on your use and your relationship with the copyright owner

# Derivative Works

- Definition: “a derivative work is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, motion picture version...art reproduction...or any other form in which a work may be recast, transformed, or adapted.”

# Derivative Works

- Your copyright in a derivative work extends only to the material you added
  - Your addition must be different enough from the original, or contain a substantial amount of new material
  - Your derivative work does not affect the copyright for the underlying work
  - *Lee case*: a store owner cut up a greeting card and mounted it on a coaster. Not a derivative work because there was no original contribution. Protected by first sale doctrine.

# First Sale Doctrine

- You can do what you want with a lawfully obtained copy of a work
  - i.e. resell a book or CD
  - This does not mean you can make copies

# Fair Use

- Four factors used
  - Purpose and character of the use (commercial v. educational/nonprofit)
  - The nature of the copyrighted work
  - The amount of the copyrighted work used
  - The effect of the use on the market for the original work

# Fair Use

- Some examples of uses considered Fair Use include:
  - Quotes/excerpts used in a review
  - Parody
  - Reproduction of a part of a work by a teacher or student for use in a lesson
  - Incidental reproduction; i.e. artwork in the background on a news report

# Licensing

- Make a serious, good faith effort to locate the owner
  - Try the copyright office website
- Draft a licensing agreement explaining how you will use their work
- Each individual right in the bundle of rights may be granted individually (i.e., just license the right to display)

# Orphan Works

- Would limit damages for users who made a diligent search to find the copyright owner before using a work
- Last came up in 2008; passed the Senate but did not make it through the House before the Congressional session ended
- Expected to come up again this year or in 2012

# What if someone is using my work without permission?

- Infringement
  - You must have registered your work to bring an infringement claim
  - You must show two things:
    - Access
    - Substantial Similarity
  - If you can prove your case, you can choose actual or statutory damages
    - Actual: prove the amount of use and be compensated for what you should have received
    - Statutory damages do not require any proof of actual damage

# Statutory Damages

- \$750 to \$30,000 per infringement
- If infringement was “willful,” damages may be increased to \$150,000
- If infringer can show he did not know he was infringing and no reason to know, can be reduced to \$200
- Reasonable reliance on Fair Use can reduce damages

# Infringement – Registration Requirements

- In order to recover for infringement, you must have registered:
  - Prior to the infringement, and
  - Within three months of publication
    - Someone else's infringing use of your work does NOT constitute publication.

# Recovering for Infringement

- Draft a cease-and-desist letter
  - If the use is online, send a take-down notice to the owner of the site displaying the work.
  - Send letters via certified mail and keep copies
- If there is no response or settlement, file a lawsuit in federal court
  - Most lawsuits settle

# Other Intellectual Property Protection

- Trademark or Servicemark – a name or logo used in commerce
- Patent – inventions or processes
- Trade dress – the general look and feel of a business or product

# Trademark

- Federal registration: \$275 per trademark class.
  - Lasts as long as you continue to use the mark and register proof of continued use every ten years
- Texas registration: \$50 per trademark class.
- Protects the use of your business name or logo in commerce
- A band name may be trademarked

# Creative Commons

- Visit [www.creativecommons.org](http://www.creativecommons.org)
- Not an alternative to copyright
  - You still need to register; CC licenses alone will not protect your work
- Narrows the scope of your copyright
- You can choose “some rights reserved” (license) or “no rights reserved” (direct to public domain)
  - For use on any creative work
    - For software, use open source instead

# Four CC license factors

- Attribution
  - Credit to the author
- Commercial
  - Can choose to limit to non-commercial uses
- Share alike
  - Requires future users to issue the same license
- No derivatives
  - Stops others from altering your work

# Six Possible Combinations

- Attribution
- Attribution share-alike
- Attribution no derivatives
- Attribution non-commercial
- Attribution non-commercial share-alike
- Attribution non-commercial no derivatives
  - “free advertising” – most restrictive

# Using CC Works

- Use CC-friendly search engine, i.e. Flickr
- Licenses are legally viable
- Licenses are irrevocable
  - As a licensor, you can choose to stop using the license, but you can't limit uses which began under the previous license

# Questions?

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