Copyright Law Module 1 of 3: An Overview of U.S. Copyright Law

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Summary

Introduction

What is copyright?

In the United States, copyright is the **exclusive right granted by the government to the creators of "original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works."**

U.S. Copyright is part of the federal law and was first established in Article I, Section 8, Clause 8 of the Constitution, which states

"The Congress shall have Power [. . .] 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."

This clause, sometimes called the "copyright clause", is also the basis for U.S. patent law. The phrase "for limited Times" is also worth noting, as its ambiguity has been the source of much controversy in the realm of intellectual property law.

Since the first U.S. Copyright Act was enacted in 1790, the duration of copyright protection on any given work has increased from 28 years (with another 28 years available upon renewal) to 70 years plus the life of the author. Does this lengthy period of time accord with the Constitutional provision that creators be given exclusive rights "for limited times"? In addition, Why might the duration of copyright have been so expanded?

What does copyright protect?

The following types of works may be copyrighted

- 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

The Idea/Expression Distinction

Unlike patent, which protects an idea, copyright protects only a particular expression of an idea. So while copyright might protect a book I write on how to build a particular cappuccino maker, it does not protect the idea of the cappuccino maker described. If no one has a patent on the cappuccino maker, others are free to build cappuccino makers identical to the one I describe in my book, and can even sell these machines for profit. What they cannot do, however, is copy my book (or even a substantial portion of it) without my explicit permission. This distinction between ideas and expression of ideas was explicitly clarified in the 1976 Copyright Act:

"In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

A "Modicum of Originality" and a "Fixed Tangible Form"

According to U.S. Copyright Law, copyright extends only to "original works of authorship" that are "fixed in a tangible form." The originality requirement is hardly stringent; the Supreme Court established the standard for copyrightable works as containing a "modicum of originality" in **Feist v. Rural** . Even compilations of facts (though not the facts themselves) may qualify for copyright protection, provided that they are arranged or displayed in an original way. (See the **Feist Publications v Rural Telephone Service** for more information). The second requirement--that copyrighted works be fixed in some tangible medium of expression--is not a problem in most cases where one might want to secure a copyright. Computers, paper, recordings, clay, paint, and any number of other media are considered "fixed." However, if I perform my latest poem at a slam poetry contest, my performance alone is not sufficient to secure copyright, since the performance is not "fixed" in any way. To be protected by copyright, my poem must be recorded in some other way--on paper, on audiotape, on video, etc.

Publication, Notice, and Registration

Prior to 1978 (when the 1976 Copyright Law came into effect), securing a copyright required publication of the relevant work, as well as registration of the copyright with the U.S. Copyright Office. To receive copyright protection, a work was also required to display "notice" (the word "copyright" or the little c with a circle around it followed by the name of the creator). Today, U.S. copyright protection is conferred automatically upon the creation of a copyrighted work, whether published or unpublished, and does not require registration of any kind.

Registration of your copyright is nonetheless a good idea, since you must register your copyright prior to suing for copyright infringement. You can register your copyright at any time (even after someone has already infringed upon it), but "timely registration" within three months of publication offers additional benefits. Timely registration "creates a legal presumption that your copyright is valid, and allows you to recover up to $150,000 (and possibly lawyer fees) without having to prove any actual monetary harm."

In 1989, the United States adopted the Berne Convention, which demands minimal formalities in copyright law. As such, notice of copyright (the little c with a circle around it followed by your name) is not required for U.S. copyright protection on works created after March 1, 1989.

What rights does copyright guarantee creators?

Copyright guarantees to the creator of a copyrightable work the exclusive rights to

- reproduce/copy the work
- make derivative works (adaptations of the work)
- distribute copies of the work (by sale or other method)
- publicly perform and/or publicly display the work

Fair Use

Among the changes to the Copyright Act in 1976 was the formal adoption of a "fair use" provision. Fair use--the idea that certain circumstances permit the limited use of other creators' work without permission--had long been a part of common law in the United States. Typically, the following types of uses are regarded as fair uses.

- **Criticism or Commentary,** such as reproducing a portion of a passage you are analyzing in your English paper
- Summary or quotation for the purposes of **news reporting**
- **Research and scholarship**
- **Parody** of another creator's work
- **Nonprofit educational use,** such as photocopying an article for a class of students.

Formally, there are four considerations courts use to determine whether the use of a particular work is "fair use"

- **Purpose of the work:** If the work is being used for educational purposes, the use is more likely to be considered fair. Using another author's work for commercial gain is typically not regarded as fair use.
- **Nature of the Copyrighted Work:** The more central the copyrighted material is to the original work, the less likely it is that its use without permission will be considered "fair use." Similarly, the more creative and less fact-based a work is, the harder it is to claim fair use.
- **Amount of Work Used:** The more of the work you use, the less likely it is that your use will be considered fair.
- **Effect on the Market for the Original Work:** If your use adversely affects the market of the original work, the use is less likely to be considered fair.

You might be thinking "What's all this talk about 'fair use'? When I use other people's work, I always cite my sources, so there's no problem." But in fact, if your use doesn't qualify as "fair use", then citing an author's name does not protect you from charges of copyright infringement. Even if you are not plagiarizing, you might still be breaking the law.

Sources

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