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Copyright Background

Class 3 – September 19, 2008

SI 519/PubPol 688

Bryce Pilz

Fall 2008

Copyright Background

- Why – Rationales for Copyright
- What – The Rights
- What Not – The Exceptions and Material Not Covered
- Other Stuff

Copyright Background

- **Why – Rationales for Copyright**
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Constitutional Basis

Art. I, Sec. 8, Cl. 8:

“The Congress shall have the power... **To Promote the Progress of Science and the useful Arts by securing for limited times to Authors and Inventors the exclusive right to their respective writings and discoveries.**”



Rationales For Copyright in General

- Natural Rights
 - Everyone is entitled to the product of one's labor
 - European
- Utilitarian Rights
 - Providing an incentive for innovation by giving creators and distributors a return for their investment
 - Economics-based

Not the Rationale

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- “sweat of the brow” rationale is dead
- *Feist* – no protection for the amount of effort in creating your work; protection is for the expression
 - White pages of phone directory not entitled to copyright protection
 - Directory as a whole is protected because there is originality in the introductory language and in arrangement of yellow pages

Rationale for U.S. Copyright Law

- **To Promote Learning**

- “Science” meant learning in the 18th century

- It may seem unfair that much of the fruit of the compiler's labor may be used by others without compensation. As Justice Brennan has correctly observed, however, this is not "some unforeseen byproduct of a statutory scheme." [] *It is, rather, "the essence of copyright," and a constitutional requirement. The primary objective of copyright is not to reward the labor of authors, but "to promote the Progress of Science and useful Arts." Art. I, § 8, cl. 8. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work.*

Other Influences

- Berne Convention (1989 – U.S. signed)
 - Countries must treat works from signatory country as they would their own
 - Minimum of life + 50 (individuals)/75 (works for hire)
 - No formalities

Other Influences

- Why is copyright act so long?
- Significant corporate monetary interests at stake

750.316 First degree murder; penalty; definitions.

Sec. 316.

(1) A person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life:

(a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.

(b) Murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first, second, or third degree, child abuse in the first degree, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, kidnapping, vulnerable adult abuse in the first and second degree under section 145n, torture under section 85, or aggravated stalking under section 411i.

(c) A murder of a peace officer or a corrections officer committed while the peace officer or corrections officer is lawfully engaged in the performance of any of his or her duties as a peace officer or corrections officer, knowing that the peace officer or corrections officer is a peace officer or corrections officer engaged in the performance of his or her duty as a peace officer or corrections officer.

(2) As used in this section:

(a) "Arson" means a felony violation of chapter X.

(b) "Corrections officer" means any of the following:

(i) A prison or jail guard or other prison or jail personnel.

(ii) Any of the personnel of a boot camp, special alternative incarceration unit, or other minimum security correctional facility.

(iii) A parole or probation officer.

(c) "Major controlled substance offense" means any of the following:

(i) A violation of section 7401(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401.

(ii) A violation of section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7403.

(iii) A conspiracy to commit an offense listed in subparagraph (i) or (ii).

(d) "Peace officer" means any of the following:

(i) A police or conservation officer of this state or a political subdivision of this state.

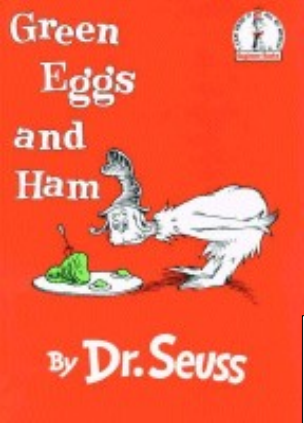
(ii) A police or conservation officer of the United States.

(iii) A police or conservation officer of another state or a political subdivision of another

Source: <http://legislature.mi.gov/doc.aspx?mcl-750-316>

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What Copyright Covers

Source:
http://en.wikipedia.org/wiki/Green_Eggs_and_Ham



Source:
http://www.tomsgames.com/us/fringedrinking/star_wars_poster.jpg

- Original works of authorship fixed in a tangible medium
 - (literary, dramatic, musical, visual, architectural, and other kinds of works)
 - Compilations?



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Copyright Online

- Expressions of authorship
 - Source code underlying a work
 - Traditional works of authorship included online
 - Look and feel of webpage? (sufficiently original and not functional or methods of operation)

The Rights

- Reproduction right
- Derivative works
- Distribute
- Perform publicly
- Display publicly

Enforcing the Rights

- (1) Validly owned copyright; (2) copying of original elements of protected work (access and similarities); (3) defenses?
- Copying can be literal or non-literal

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The Exceptions

- Sec. 107-122 give various exceptions
- 107 – Fair Use
- 108 – Libraries
- Other relatively specific exceptions

Rights Not Covered

- Right to perform privately
- Use of a specific work after the first sale
- Ideas
- Facts
- Functional elements

Rights in an Original Work of Authorship

106

–
Reproduce,
Derivative works,
Publicly perform,
Distribute,
Publicly display

107-122

Ex) fair use

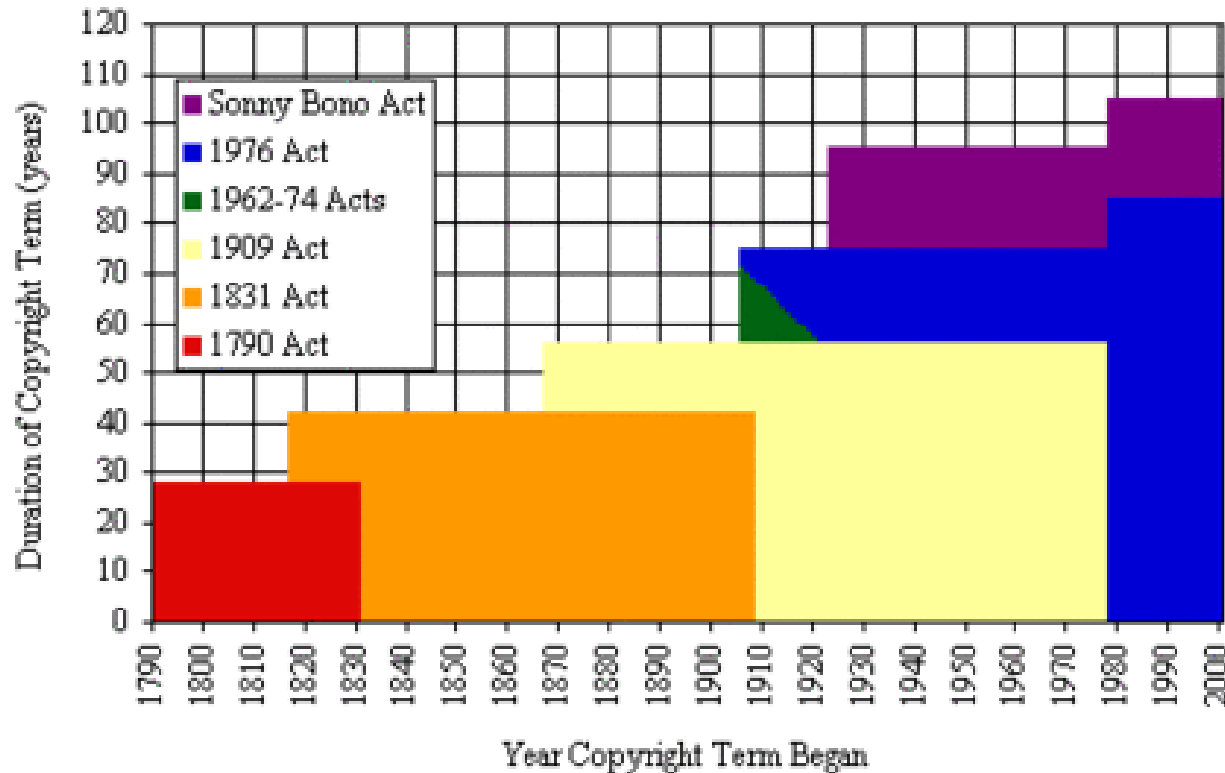
Ideas
Facts
Functional elements
Use after first sale
Private performance

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Term

- Individual: Life of author + 70 years
- Works for hire: 120 years after creation or 95 years after publication; whichever is shorter



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Statutory Damages

- Up to \$150,000 per work
 - No need to show lost profits



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DMCA

- Forbids circumvention of DRM systems
- Outlaws development or trafficking of any DRM circumvention device or technology
- Limited exceptions to liability – no fair use
- Limits service provider liability for merely transmitting information over the Internet
 - “take down notices”

Formalities

- No need to provide notice or register
- Notice – no innocent infringement defense
- Registration –
 - required to file lawsuit;
 - prima facie evidence of valid copyright;
 - eligible for statutory damages

Kelly v. Arriba

- Discussion

Fair Use Drill

- 1) Star Wars
- 2) Napster
- 3) Copying for research purposes
- 4) Video game screen shots
- 5) Abstracts of news articles
- 6) Seinfeld Aptitude Test



- “Galaxy Encyclopedia”
- Alphabetical index of every character, location, theme, weapon, etc.
- Contains some plot summaries, some direct quotes and close paraphrasing
- Section on Luke Skywalker, for example, is 11 pages long
- Lucasfilm is planning their own encyclopedia

Star Wars

1) Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes	Fair
2) Nature of the copyrighted work	Unfair
3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole	Unfair
4) Effect of the use upon the potential market for or value of the copyrighted work	Unfair

<u>Fair Use?</u>
Unfair

Reference: Warner Bros. Entertainment, Inc. and J. K. Rowling vs. RDR Books (2007)



- Software allows users to upload/download MP3 files of copyrighted songs
- Users are anonymous
- No fee
- Some users sample songs on Napster before buying

Napster

1) Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes	Unfair
2) Nature of the copyrighted work	Unfair
3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole	Unfair
4) Effect of the use upon the potential market for or value of the copyrighted work	Unfair

Fair Use?

Unfair

Reference: A&M Records, Inc. v. Napster, Inc. C.A.9 (Cal.), 2001



- Employs 400-500 research scientists working on alternative energies
- Subscribes to numerous scientific journals; 3 subscriptions each
- Circulation list for journals
- Scientists often copy articles; may not use
- Ex) one scientist had copied 8 articles, only used 5 of them in research

Texaco

1) Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes	Unfair
2) Nature of the copyrighted work	Fair
3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole	Unfair
4) Effect of the use upon the potential market for or value of the copyrighted work	Unfair

<u>Fair Use?</u>
Unfair

Reference: American Geophysical Union v. Texaco, Inc., 60 F.3d 913 (2d Cir. 1995)



- Developer creates “software emulator” which allows console games to be played on personal computers
- Games have higher resolution on PCs
- In advertising, developer shows screen shots from Sony PS3 games next to better resolution screen shots of same game on PC used with “software emulator”



1) Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes	Fair
2) Nature of the copyrighted work	Neutral
3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole	Fair
4) Effect of the use upon the potential market for or value of the copyrighted work	Fair

<u>Fair Use?</u>
Fair

Reference: Sony Computer Entertainment America, Inc. v. Bleem, LLC C.A.9 (Cal.), 2000.

Abstracts

- Defendant takes Japanese news articles, pre-edits them, translates them in to English, puts them in uniform abstract style and sells them
- Takes 36 minutes on average for each translation/abstraction



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1) Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes	Unfair
2) Nature of the copyrighted work	Neutral
3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole	Unfair
4) Effect of the use upon the potential market for or value of the copyrighted work	Unfair

<u>Fair Use?</u>
Unfair

Reference: Nihon Keizai Shimbun, Inc. v. Comline Business Data, Inc. C.A.2 (N.Y.), 1999

“Seinfeld Aptitude Test”

- 132 pages, 643 questions, some multiple choice, some matching, some short answer
- Different levels of difficulty
- Pictures of characters throughout and some direct quoting
- Popularity of show increased upon SAT hitting market

“Seinfeld Aptitude Test”

1) Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes	Slightly Fair
2) Nature of the copyrighted work	Unfair
3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole	Unfair
4) Effect of the use upon the potential market for or value of the copyrighted work	Unfair

<u>Fair Use?</u>
Unfair

Reference: Castle Rock Entertainment Inc. v. Carol Publishing Group, 150 F.3d 132 (2nd Cir. 1998)

Week 4 Preview

- Eldred
 - Consider whether CTEA is consistent with purpose of U.S. copyright law (other rationales)
 - Consider how copyright meshes with the First Amendment (p.29)
- National Geographic (Tasini)
- DMCA (1998) – higher ed. setting
- Orphan works (formalities)
- Lessig – copyright reform