

Copyright and Alternatives to Copyright

Why now?

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What Copyright is NOT

Trademark

Patent

Economic Principles

Information is:

-Non-excludable

-Non-rival



Legal Foundations

US Constitution Article I, § 8

"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."



Purpose behind copyright law...

to motivate the creative activity of authors and inventors and to allow the public access to the products of their genius (after the limited period of exclusive control has expired).

— *Sony v. Universal City Studios*

What rights does an author get?

Copyright law permits the copyright owner to exclude others from:

- Reproducing the work**
- Making derivative works**
- Distributing it by sale or transfer of ownership**
- Displaying it publicly**
- Performing it publicly**

Copyright applies
automatically.

No need to publish,
register, or notify.

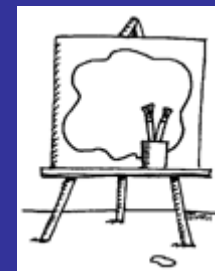
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What does copyright protect?

ORIGINAL WORKS OF AUTHORSHIP FIXED IN ANY TANGIBLE MEDIUM OF EXPRESSION

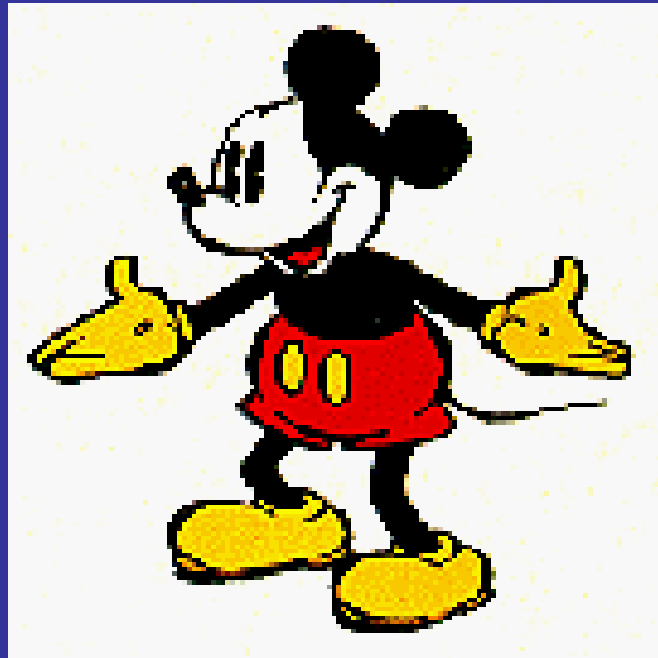
- **literary works (including software)**
- **musical works**
- **dramatic works**
- **pantomimes and choreographic works**
- **pictorial, graphic and sculptural works**
- **motion pictures and audiovisual works**
- **sound recordings and**
- **architectural works**



Facts are not copyrightable

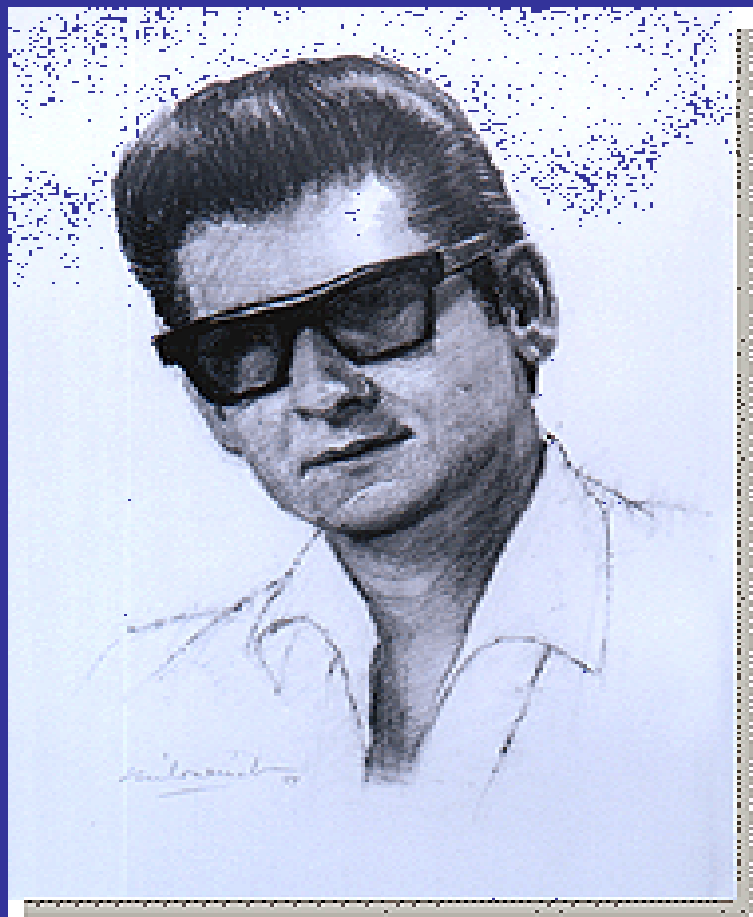
“The primary objective of copyright is not to reward the labor of authors, but to promote the Progress of Science and the Useful Arts.”

-Feist v. Rural Telephone



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Fair Use

Criticism, comment, news reporting,
teaching, scholarship, research

Factors:

- purpose and character of use (commercial vs. non-profit educational)
- nature of copyrighted work
- amount and substantiality of portion used
- effect upon market for copyrighted work

First Sale doctrine

If you own a physical copy of a copyrighted work (CD, book, ...) you can:

- lend it
- resell it
- throw it away
- burn it
- draw on it

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WHY NOW?

Digital Millennium Copyright Act (DMCA)

New rights: prevent access through use of
Digital Rights Management (DRM) tools

Safe Harbors for copyright infringement to
online service providers

DMCA

- No person shall circumvent a technological measure that effectively controls access to a work protected under this title.
- “circumvent technological measure” = to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate or impair a technological measure without the copyright owner’s authority

DMCA cont.

Also illegal to manufacture, offer, provide, or traffic in a device that is primarily designed for circumvention of DRM system (no need to prove the tool is used for piracy)

“fair uses” for DRM circumvention

- Nonprofit library, archive and educational institutions (to determine if wish to obtain authorized access to work)
- Reverse engineering (to achieve interoperability)
- Encryption research (to identify flaws and vulnerabilities)
- Protection of minors (to see if should incorporate into technology preventing minors' access to Internet materials)
- Personal privacy (if technology collects/disseminates PII)
- Security testing (with owner's authorization)
- Law enforcement, intelligence and gov't activities

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Why now?

Misappropriation

- -time sensitive value of factual information
- -free riding
- -threat to the very existence of the author's product or service



Publicity



- Misappropriation of name and likeness
- Usually involves commercial name use
- Right to “publicity,” a cousin of privacy

Don't forget about the first
amendment.

Congress shall make no law ...
abridging the freedom of speech, or of
the press ...

Contracts

End user license agreements

Shrinkwrap, clickwrap

Mass market

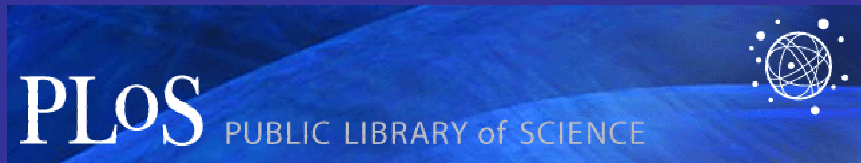
-Pre-empted by copyright?

-Contracts of adhesion?



Contracts go both ways...

Open source (GPL)



Open access

Creative commons



Some good websites

ChillingEffects

www.chillingeffects.org

US Copyright Office

<http://www.copyright.gov>

The Consortium of College and University Media Centers

<http://www.ccumc.org>

University of Maine Intellectual Property policy:

<http://www.maine.edu/policysc209.html>

Thank you.

Technology Law Center

