

UNIVERSITY OF ILLINOIS  
AT URBANA-CHAMPAIGN

# Engineering Law

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Class 12



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# Reminders

- Exam #3 –Thursday, Dec 6th
  - 2<sup>nd</sup> half of class
  - No Final Exam
- Today
  - Finish Class 11
  - Class 12



# What Is A Copyright?

- Exclusive right to a work of expression, such as a written story, painting, photo, or song.
- The subject of the copyright must NOT be functional – if it's functional, look to patents
- Lasts for a LONG time – life +70 to 120 years
- Copyrights provide exclusive rights with regard to appearance or expression, but may be curtailed in certain situations such as fair use or parody, for example.
- Title 17 U.S.C.



# § 102 · Subject Matter of Copyright-1

- (a) Copyright protection subsists, in accordance with this title, in original works of authorship **fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.
- As soon as the work is fixed in a medium, you have a copyright in it (Unregistered ©)
  - Registration of © with the Copyright Office increases your rights
  - Can mark with © as soon as it is fixed in a medium



## § 102 · Subject Matter of Copyright-2

- Works of authorship include the following
- (1) literary works;
- (2) musical works, incl. accompanying words;
- (3) dramatic works, incl. accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.



## § 102 · Subject Matter of Copyright-3

- (b) **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
- Can't copyright an idea or invention



# § 106 Exclusive Rights - 1

- A copyright gives you several exclusive rights:
- (1) to **reproduce** the copyrighted work
- (2) to **prepare derivative works** based upon the copyrighted work
- (3) to **distribute copies** to the public by sale or other transfer of ownership, or by rental, lease, or lending



# § 106 Exclusive Rights - 2

- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to **perform** the copyrighted work publicly
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to **display** the copyrighted work publicly
- (6) in the case of sound recordings, to **perform** the copyrighted work publicly by means of a digital audio transmission



# Fair Use - 1

- **§ 107 • Limitations on exclusive rights: Fair use**
- Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as **criticism**, **comment**, **news reporting**, **teaching** (including multiple copies for classroom use), **scholarship**, or **research**, is not an infringement of copyright.



# Fair Use - 2

- In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
  - (1) the purpose and character of the use, including whether such use is of a **commercial nature or is for nonprofit educational purposes**;
  - (2) the **nature of the copyrighted work**;
  - (3) the **amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
  - (4) the **effect of the use upon the potential market** for or value of the copyrighted work.



# Copyright Process

- File copyright application with Copyright Office - [www.copyright.gov](http://www.copyright.gov) – cost is \$35 or \$55
  - Most applications filed electronically
  - Just identify work and ownership
  - Upload digital copy
  - Registration of computer software is more complicated – seek legal assistance
- No errors in form – certificate issues
- Six months to receive copyright certificate
  - Special handling ~\$800 & 2-3 weeks
  - Link to presentation on how to e-file at [JoeBarich.com](http://JoeBarich.com)



# Standard For Infringement

- Actual copying
  - Substantial similarity
    - Defendant had access to the work (usually required)
    - Degree of similarity between the two works is such that the similarity could only have been caused by copying, and not through coincidence, independent creation, or a prior common source
    - A substantial portion of the work is similar
  - Derivative Work
    - New work that uses aspects of already ©-ed work
    - Only © owner can make, or authorize someone else to make, an adaptation of that work
-  2<sup>nd</sup> author can get a © in new material in new work

# Infringement Remedies

- What can you get if someone is infringing your copyright?
- § 502 - Injunction
- § 503 - Impounding and disposition of infringing articles
- § 505 - Costs and attorney's fees
- Damages – Actual or statutory
  - Applies for all of: actual copying, substantial similarity, and unauthorized derivative works



# § 502 Damages and Profits

- (b) Actual Damages and Profits.—The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, **and** any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.
  - You get the greater of your damages or the infringer's profits
  - If infringement took place before your © was registered, this is all you can get



# § 502 (C) Statutory Damages

- (1) The copyright owner **may elect**, at any time before final judgment is rendered, to recover, **instead of actual damages and profits**, an award of statutory damages for all infringements ... in a sum of **not less than \$750 or more than \$30,000** as the court considers just.
  - Up to \$30K for each song infringed, regardless of number of times
  - May be greater or lesser than actual damages amount, but don't need to prove amount



# Willful Statutory Damages

- (2) In a case where the copyright owner sustains the burden of proving, and the court finds, that **infringement was committed willfully**, the court in its discretion may increase the award of statutory damages to a sum of **not more than \$150,000**.
  - Up to \$150K for each song infringed, regardless of number of times



# Damages If Not Aware

- In a case where the infringer sustains the burden of proving, and the court finds, that such **infringer was not aware** and **had no reason to believe that his or her acts constituted an infringement of copyright**, the court in its discretion may reduce the award of statutory damages to a sum of **not less than \$200**.
- At least \$200 for each song infringed, regardless of number of times
- Good reason to mark with © - defeats claim of lack of knowledge



# § 506 · Criminal Infringement

- (a)(1) In general.—Any person who willfully infringes a copyright shall be punished if the infringement was committed -
  - (A) for purposes of commercial advantage or private financial gain;
  - (B) by the reproduction or distribution, including by electronic means, during any 180-day period, of **1** or more copies or phonorecords of 1 or more copyrighted works, which have a **total retail value of more than \$1,000**



# Ouch!

- (1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than \$2,500;
- (2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); and
- (3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case.



# No Fraud - 1

- (c) Fraudulent Copyright Notice.—Any person who, with fraudulent intent, **places on any article a notice of copyright** or words of the same purport **that such person knows to be false**, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, **shall be fined not more than \$2,500.**



# No Fraud - 2

- (d) Fraudulent Removal of Copyright Notice.— Any person who, with fraudulent intent, **removes or alters any notice of copyright** appearing on a copy of a copyrighted work shall be fined not more than **\$2,500**.
- (e) False Representation.— Any person who **knowingly makes a false representation of a material fact in the application for copyright registration** shall be fined not more than **\$2,500**.



# Term of Copyright

- Depends on when work was created
- Today – life of author +70 years
- Work made for hire – 95 years from first publication or 120 from creation, whichever comes first
- Multiple authors? – Life of last dying author + 70 years



# Work Made For Hire

- When you pay someone to make a copyrighted work
- Typically, the paying person is the owner
- However! Always great to document that you are the owner
  - In the initial contract with creator, specify that you will own all rights in the product and you do not give them permission to use the work for their own purposes
  - Make sure you acquire full, irrevocable, royalty-free, worldwide rights from author



# Computer Software

- May be able to obtain both copyright and patent for computer software
- Software written on paper is considered a non-functional literary work, therefore copyrightable
- Software executing on a computer is considered functional. If it is statutory subject matter, novel, and non-obvious, it may be patentable.



# © Evolution - Sony (1984)

- “Betamax” case - taping TV programs
    - © owners allege infringement and want to enforce against everyone – or at least against manufacturers of taping machines
  - However! Alternate use - playing rented tapes (Most people did not have Betamax cameras)
    - Alternate use may be questioned because “record” feature not needed to play rented tapes
  - Supreme Court 5-4 ruling that system has “substantial non-infringing uses”, therefore no contributory infringement
-  Private, non-commercial “time-shifting” is OK

# After Sony

- © owners lobby congress to trump Sony with legislation
    - but congress stands up and says no
  - © owners lobby to impose royalty on sale of all blank video tapes – congress says no (mostly)
    - Reasoning: Blank tapes most likely will be used to record © material
    - © owners won in Canada, Australia, and others
  - 1998 – Digital Millennium Copyright Act (DMCA) – includes several new rights and significantly benefits owners
    - “Attempting to circumvent” is infringement
    - System of take down notices
    - Large shift in attitude in favor of © owners
-  • Massive Lobbying
- “Re-education” campaigns->copying equated to theft

# Napster (2001)

- Peer-To-Peer Network with central directory
  - Users making MP3s available
- Sued under DMCA – 9<sup>th</sup> Circuit in CA
- Napster claims fair use due to non-infringing uses (about 20% of use)
  - Some artists releasing new material
- 18 copyright professors file *amicii* in favor of Napster
- Found - Contributory infringement
  - D has knowledge of infringement and provides support
- Found - Vicarious Infringement
  - D benefitted financially from infringement (due to ads on system) and did not police users



# Grokster (2005)

- Peer-To-Peer Network with decentralized directory
- US Supreme Ct (Napster was just 9<sup>th</sup> Circuit)
  - “We hold that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.”
- Sony today – would selling blank tapes be an “affirmative step taken to foster infringement?”
- Would including a “record button” on a VCR machine be such a step?



# Practical © Practices

- Mark your works with “© Name, year.” to avoid a claim that infringer was unaware of ©
  - Still have to prove actual damages if not registered, but \$0 cost
- If work is anything that you are going to sell/monetize/use in your business, file © application
  - Access to statutory damages
  - Make sure you acquire full, irrevocable US and international rights from author
  - Must police your works (DMCA takedowns)
- Be cautious of other’s ©s – get clearance before use



• Questions?

