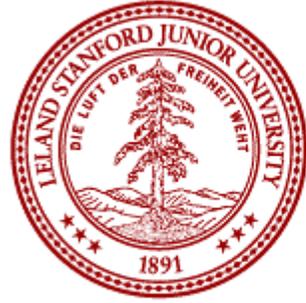




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CS-202: Law For Computer Science Professionals

Class 5: Introduction To Copyrights

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Tidbit Of The Week



The First
U.S. Copyright Law
Signed in Script Type by
George Washington

Appearing in
The Columbian Centinel

of July 17, 1790

Columbian



Centinel.

Printed and published, on WEDNESDAYS and SATURDAYS, by BENJAMIN RUSSELL, in *State-Street*, BOSTON, MASSACHUSETTS.

Whole No. 660]

SATURDAY, JULY 17, 1790.

[No. 36—of VOL. XIII.

LAWS of the UNITED STATES.
PUBLISHED

By Authority



CONGRESS of the UNITED STATES:
AT THE SECOND SESSION,
Begun and held at the City of New-York, on
Monday the 4th of January, 1790.

An ACT for the ENCOURAGEMENT
of LEARNING, by securing the Copies
of Maps, Charts and Books, to the
Authors and Proprietors of such Copies,
during the Times therein mentioned.

BE it enacted by the SENATE and HOUSE
of REPRESENTATIVES of the United
States of America, in Congress assembled,
That from and after the passing of this act,
the author and authors of any map, chart,
book or books already printed within the
United States, being a citizen or citizens
thereof, or resident within the same, his
or their executors, administrators or assigns,
who hath or have no transfer of
to any other person the copy-right of such
map, chart, book or books, share or shares
thereof: and any other person or persons,
being a citizen or citizens of these United
States, or residents therein, his or
their executors, administrators or assigns,
who hath or have purchased or legally
acquired the copy-right of any such map,
chart, book or books, in order to print,
reprint, publish or vend the same, shall
have the sole right and liberty of printing,
reprinting, publishing and vending

very free which shall be found in his or
her possession, either printed or printing,
published, imported or exposed to sale,
contrary to the true intent and meaning
of this Act, the one moiety thereof to the
author or proprietor of such map, chart,
book or books, who shall sue for the same,
and the other moiety thereof to and for
the use of the United States, to be recovered
by action of debt in any court of record
in the United States, wherein the same
is cognizable: *Provided always*, That
such action be commenced within one
year after the cause of action shall arise,
and not afterwards.

And be it further enacted, That no person
shall be entitled to the benefit of this
Act, in cases where any map, chart, book
or books, hath or have been already printed
and published, unless he shall first deposit
and in all other cases, unless he shall
before publication deposit a printed copy
of the title of such map, chart, book or
books, in the Clerk's office of the district
court where the author or proprietor shall
reside: And the clerk of such court is
hereby directed and required to record
the same forthwith, in a book to be kept
by him for that purpose, in the words
following, (giving a copy thereof to the
said author or proprietor, under the seal
of the court, if he shall require the same)

"District of _____ to wit: Be it
remembered, That on the _____ day of _____
in the _____ year of
the independence of the United States of
America, A. B. of the said district, hath
deposited in this office the title of a map,
chart, book, or books, (as the case may
be) the right whereof he claims as author
or proprietor, (as the case may be) in the
words following, to wit: [here insert the
title] in conformity to the act of the Con-
gress of the United States, intitled, "An
act for the encouragement of learning, by

the ACT intitled, "An Act for
nally adjusting and satisfying the claims
of Frederick Wm. deSteuken"—An Act
intitled, "An Act for giving effect to an Act,
intitled, "an Act to establish the Judicial
Courts of the United States," within the
State of North-Carolina"—and *also* intitled,
"an Act supplemental to the Act for es-
tablishing the salaries of the Executive Of-
ficers of Government, with their Assist-
ants and Clerks"—were inserted in THE
CENTINEL of June 19, 1790. Accord-
ing to their dates, they follow the above.

MISCELLANY.

OBSERVATIONS on the MANUFACTURES
and COMMERCE of the United
States.

By W. BARTON, of Philadelphia.
(CONTINUED FROM OUR LAST.)

PAPER-HANGINGS, equal in qual-
ity and cheapness to any imported,
are manufactured in large quantities by
Mr. William Poyntell, and Messrs. Le
Collay and Chardon, at Philadelphia;
by Messrs. Mackay and Dixey, at Spring-
field, in New-Jersey; and other places
in the Union*.

A great progress has been made in the
manufacture of hosiery, in this country;
and, with proper encouragement, much
more may be accomplished in this branch.
Mr. Burnaby, (in his travels through the
middle settlements of North-America, in
the years 1759 and 1760) notices the high
estimation in which the Germantown
stockings were then held; and this gen-
tleman mentions his having been credi-
bly informed, that two years before that
period, there were manufactured, in that
town, sixty thousand dozen pair; the
common retail price of which was a dol-
lar per pair. This, however, is conceiv-
ed to be a mistake—it is probable that six
thousand dozen pair was meant, as a re-

The great and increasing consumption
of window-glass and bottles, in this coun-
try, should operate as a powerful motive
for encouraging the glass-manufactories
already established in some of these States,
and for promoting the speedy establish-
ment of similar works in other parts of
the Union.—The glass manufactory on the
Patuxmack, it is said, gives employment
to five hundred persons.

The printing of calicoes, cottons, and
linens, may be expected to increase in
proportion as we extend the manufac-
tures of those articles: And the mullins
and white calicoes imported from India,
will likewise give employment to our
calico printers. Mr. John Newton, and
Mr. Robert Taylor, both in the neigh-
bourhood of this city, are masterly work-
men in this branch: The former obtain-
ed a premium from the manufacturing
society for the best specimens of printed
goods.

In the state of Pennsylvania, there
are twenty-one powder mills, capable of
making six hundred and twenty-five tons
of powder, per annum. This is retailed
at five dollars per quarter, of 25 lbs; and
is offered for sale in larger quantities un-
der sixteen dollars per cwt. The Eng-
lish price, after deducting the bounty of
4/6, is 7/30 sterling; or, about sixteen
dollars and seventy-eight cents, per cwt.
Independently of the importance of this
article, as a means of national defence,
the manufacture of it in this state is
worth two hundred thousand dollars per
annum. It is said, that the largest gun-
powder works existing any where, are
those at Frankford, near Philadelphia—
now the property of Mr. Joseph J. Mil-
ler. The mill-work is constructed on the
model of Mr. Rumley's improvement of
Barker's mill; Mr. Miller having purchas-
ed a license from the patentee.

So much is done by the first settler.

“An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the Times therein mentioned.”

The first Copyright Act to protect books, maps and other original materials. Rights were granted only to citizens of the United States, a policy which continued until 1891. Passage was due mainly to Noah Webster who worked unceasingly on its behalf.

The Act provides that "the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof....shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books...."

The Act gave protection for a period of 14 years, with the right of renewal for another 14 years.

Violators of the new law "shall forfeit all and every copy....and all and every sheet....to the author or proprietor....who shall forthwith destroy the same."

Violators also required to “forfeit and pay the sum of fifty cents for every sheet which shall be found in his or her possession....“

The Act was signed by the Speaker and the President of the Senate on May 25, 1790. It was signed by George Washington on May 31, 1790, shown in this issue of The Centinel with his signature printed in script type.

Current Copyright Law

Copyright Sources

Article 1, section 8 of the U.S.

Constitution:

“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”

The Copyright Act:

The U.S. copyright laws were enacted by Congress pursuant to its Constitutional grant of authority to secure for “limited times” to “authors” the “exclusive right to their . . . writings.”

U.S. Copyright Law

- Protection provided by Title 17 of the U.S. Code.
- Protects authors of “original works of authorship.”
- Protects both published and unpublished works.
- Secures “a fair return for an author's creative labor” while seeking “to stimulate artistic creativity for the general public good.” *Twentieth Century Music Corp. v. Aiken* (U.S. 1975).
- It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright.

Exclusive Rights

Copyright owners are given the exclusive right to do and to authorize others to do the following (section 106):

- ***Reproduce*** the work in copies or phonorecords.
- Prepare ***derivative works*** based upon the work
- ***Distribute copies or phonorecords*** of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
- ***Perform the work publicly*** (literary, musical, dramatic, movies and other audiovisual works).
- ***Display the copyrighted work publicly*** (including the individual images of a motion picture or other audiovisual work).
- In the case of ***sound recordings, perform the work publicly*** by means of a ***digital audio transmission***.

Permission has been granted by the Sergeant at Arms, U. S. Senate Office of the Sergeant at Arms, for the use of this photograph on this Web site, *"I Do Solemnly Swear . . .": Presidential Inaugurations*, but one must seek permission from the Sergeant at Arms to obtain a copy of this photograph, reproduce it, or use it for any other purpose. Permission must be obtained from the Office of the Sergeant at Arms, U. S. Senate, Suite S-321, The Capitol, Washington, D. C., 20510-7200.



Protected Works

- Copyright protects "original works of authorship" that are fixed in a "tangible" form of expression.
- Copyrightable works include the following categories:
 - 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 categories are interpreted broadly.

Computer Programs

- Computer programs may be registered as “literary works.”
- The Copyright Act defines a “computer program” as “a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result.”
- Copyright protection extends to all of the copyrightable “expression” embodied in the computer program.
- Copyright protection is not available for ideas, program logic, algorithms, systems, methods, concepts or layouts.
- Protection is only available for the “particular expression” of the foregoing embodied in the program.

What Is Not Protected

- The categories of material generally not eligible for federal copyright protection:
 - Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices (versus particular “expression”).
 - Works that have *not* been fixed in a tangible form of expression (*e.g.*, choreographic works or speeches that are not recorded).
 - Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.
 - Works consisting *entirely* of information that is common property and containing no original authorship (*e.g.*, standard calendars, tape measures and rulers, and lists or tables taken from public documents).

Derivative Works

- Defined as a work that is derived from or based on one or more already existing works.
- Separately copyrightable if it includes an “original work of authorship.”
- The copyright only covers the additions, changes or other new material.
- It does not extend to any preexisting material and does not imply a copyright in those materials.
- The owner of the original copyrighted materials has the exclusive right to create derivative works.
- Minor changes are not copyrightable.

“Work Made For Hire”

Defined in the Copyright Act as:

- (1) a work prepared by an employee within the scope of employment; or
- (2) a work specially ordered or commissioned for use as:
 - a contribution to a collective work
 - a part of a motion picture or other audiovisual work
 - a translation
 - a supplementary work
 - a compilation
 - an instructional text
 - a test
 - answer material for a test
 - an atlas

The parties can agree in writing that the work will be a WMFH.

Joint/Collective Works

- A “joint work” is defined as a work prepared by 2 or more authors with intent to create a “unitary whole.”
- A “collective work” is defined as a work that includes a number of separate and independent copyrightable works.
- The authors of a “joint work” are co-owners of the copyright in the work, absent agreement to the contrary.
- The copyright in each separate contribution to a periodical or other “collective work” is distinct from the copyright in the “collective work” as a whole.
 - Ownership of each work vests initially with the author of the contribution.
 - Ownership in the “collective work” is separate.

Infringement

- Infringement exists if a copy of a copyrighted work is made without the permission of the copyright owner.
- “Copyright infringement may occur by reason of a *substantial similarity* that involves only a small portion of the work.”
 - “No plagiarist can excuse the wrong by showing how much of his work he did not pirate.”
- Independent creation of a work is a *complete defense* to a copyright claim, even if the accused work is identical:
 - “if by some magic a man who had never known it were to compose anew Keats's Ode on a Grecian Urn, he would be an ‘author.’”
- “Independent creation” is undercut by the rule that access can be inferentially proven by "striking similarity" even if there is no other proof of “access” to the copyrighted work.

Defenses To Infringement

- “Fair use”:
 - Preserves public access to the ideas and functional elements of copyrighted works (*e.g.*, reverse engineering of computer code).
- The “elusive boundary line” between “idea” and “expression”:
 - The “merger” doctrine: only one/very few ways of expressing an idea; the “idea” and “expression” are deemed to have “merged.”
 - The “scenes a faire” doctrine: the elements are dictated by “practical realities” (hardware/software standards, compatibility requirements)
- Compulsory license:
 - Streaming music royalty rates set by Copyright Arbitration Royalty Panel.
 - Copyright owner must license at this rate.

Who Can Claim Copyright?

- Copyright protection exists from the moment a work is created in fixed form.
- The copyright in the work of authorship *immediately* becomes the property of the author who created the work.
- Only the author or those deriving their rights through the author (WMFH) can rightfully claim copyright.
- In the case of works made for hire, the employer and not the employee is considered to be the author.

Possession Not Ownership

- Mere ownership of a book, manuscript, painting, or any other copy or record does not give the possessor ownership of the copyright.
- Transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
- The copyright must separately be transferred.

National Origin

- Copyright protection is available for all unpublished works, regardless of the nationality or domicile of the author.
- Published works are eligible for US copyright protection if:
 - On the date of first publication, one or more of the authors is a national or domiciliary of the United States, or
 - The work is first published in the United States (or a treaty party), or
 - The work is published in the United States (or a treaty party) within 30 days after publication in a foreign nation that is not a treaty party.

Securing A Copyright

- No publication or registration or other action in the Copyright Office is required to secure a copyright.
- A copyright is secured *automatically* when the work is created (*i.e.*, when it is fixed in a copy or phonorecord for the first time).
 - “Copies”: material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device (*e.g.*, books, manuscripts, sheet music, film, videotape, microfilm).
 - “Phonorecords“: material objects embodying fixations of sounds (*e.g.*, cassette tapes, CDs, or LPs).
- Songs (the "work") can be fixed in sheet music (“copies”), in records/CDs/DVDs (“phonorecords”), or both.

Publication

- Before 1978, US copyright was secured generally by:
 - “publication” with notice of copyright.
 - Registration with the Copyright Office.
- The 1976 Copyright Act defines publication as follows:
 - Distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
 - The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication.
 - A public performance or display of a work does not of itself constitute publication (not in a “fixed” medium).

Publication Still Important

- Publication must be to persons under no restrictions regarding disclosure.
- Importance of publication:
 - Works that are published in the United States are subject to mandatory deposit with the Library of Congress.
 - The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.
 - When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright.

Notice Of Copyright

- The use of a copyright notice is no longer required under U.S. law, although it is often beneficial.
- The notice requirement was eliminated when the U.S. adhered to the Berne Convention, effective March 1, 1989.
- Notice may be important because it:
 - informs the public that the work is protected by copyright.
 - identifies the copyright owner.
 - shows the year of first publication.
 - In the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies, no weight is given to infringer's defense of "innocent infringement" (the infringer claims that (s)he not realize that the work was protected).

Form Of Notice

1. The symbol ©, the word "Copyright," or the abbreviation "Copr."
 2. The year of first publication of the work.
 - In the case of compilations or derivative works incorporating previously published material, the date of first publication of the compilation or derivative work.
 3. The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.
- The form should "give reasonable notice of the claim of copyright."



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A
BONGO
PUBLICATION



TREEHOUSE
of
HORROR
#6

BART SIMPSON'S



TREEHOUSE OF

HORROR

\$4.50 U.S.
\$6.75 CANADA

FEATURING
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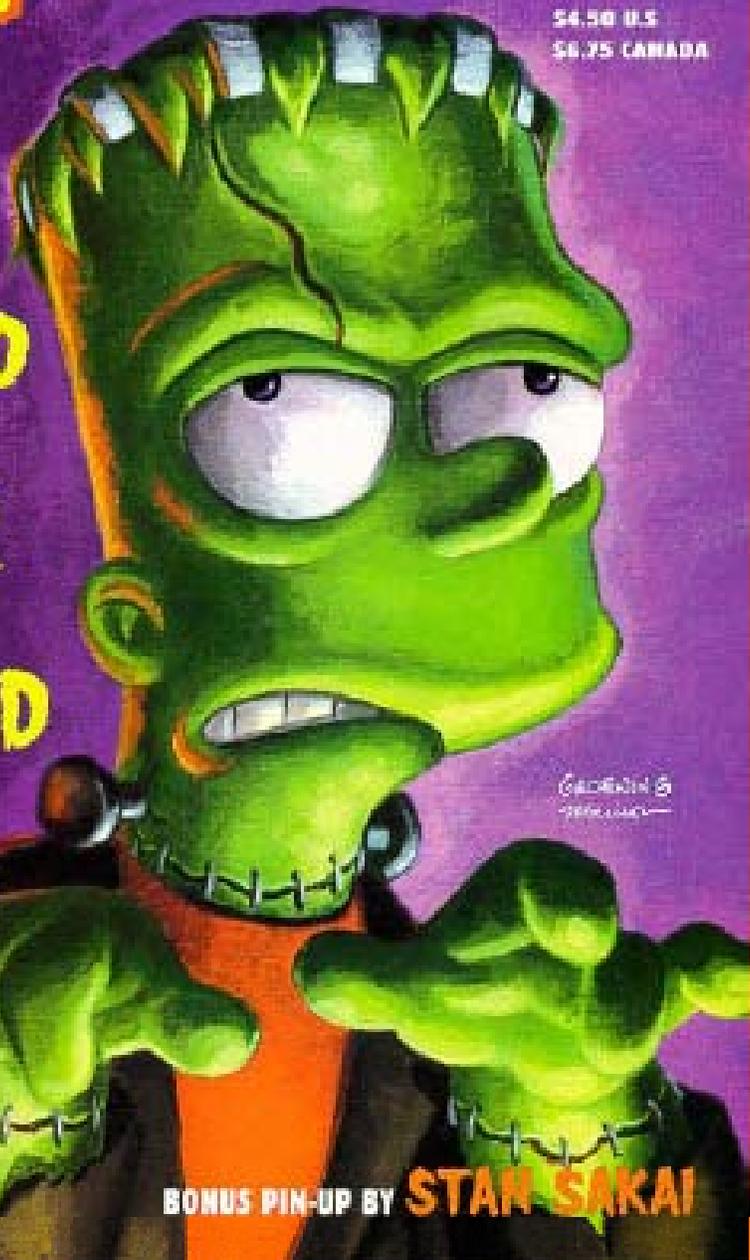
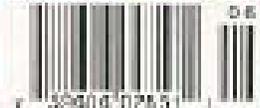


Illustration by Stan Sakai

DIRECT EDITION



BONUS PIN-UP BY **STAN SAKAI**

Bart Simpson's Treehouse of Horror; no. 6; Oct. 2000; Bongo

© Bongo Entertainment Inc.

© Twentieth Century Fox Film Corporation

Work Made For Hire



© Copyright Twentieth Century Fox

PAu-2-362-689 (COHM)

Title:	Pilot / written by Matt Groening, David S. Cohen.
Description:	48 p.
Series:	Futurama ; production no. 1ACV01
Note:	TV script. Add. ti.: Space pilot 3000.
Claimant:	acTwentieth Century Fox Film Corporation (employer for hire)
Created:	1998

Length Of Protection

- A work that is created (fixed in tangible form for the first time) on or after January 1, 1978, is automatically protected from the moment of its creation.
- Works are ordinarily given a term enduring for the author's life plus an additional 70 years after the author's death.
- Joint works (not WMFH): 70 years after the last surviving author's death.
- WMFH: 95 years from publication or 120 years from creation, whichever is shorter.

Copyright Transfer

- Any or all of the copyright owner's *exclusive* rights or any subdivision of those rights may be transferred.
- The transfer of exclusive rights is not valid unless:
 - The transfer is in writing, and
 - signed by the owner of the rights conveyed or the owner's duly authorized agent.
- Transfer of nonexclusive rights does not require a writing.
- May be transferred in a will.

International Protection

- There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world.
- Protection in a particular country depends on the national laws of that country.
- Most countries offer protection to foreign works under certain conditions, which have been greatly simplified by international copyright treaties and conventions.

Registration

- A legal formality intended to make a public record of the basic facts of a particular copyright.
- Not a condition of copyright protection.
- Advantages of registration:
 - Establishes a public record of the copyright.
 - Required for filing an infringement lawsuit.
 - If within 5 years of publication, *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate.
 - If within 3 months of publication or prior to an infringement of the work, statutory damages and attorney's fees are available to the copyright owner.
 - Allows the copyright owner to record the registration with the U. S. Customs Service for protection against the importation of infringing copies.

Software Registration

- One visually perceptible copy in source code of the first 25 and last 25 pages of the program.
- For a program of fewer than 50 pages, a copy of the entire program.
- If the work is in a CD-ROM format, the CD-ROM, the operating software, and any manual(s) accompanying it must be registered.
- If registration is sought for the computer program on the CD-ROM, the deposit should also include a printout of the first 25 and last 25 pages of source code for the program.
- If object code, the registrant must certify that it contains copyrightable authorship.

Screen Displays

- Copyright Office takes the position that a single registration protects the copyright in the program and all related screen displays, including videogames.
- A claim to the copyright in the screen displays can be made in the registration, in which case identifying materials for the screen displays must be deposited with the Copyright Office.

Registration Examples

1. Registration Number:	PA-726-114
Title:	Microsoft Multimedia Schubert--The trout quintet.
Imprint:	[Redmond, WA] : Microsoft Corp., c1993.
Description:	CD-ROM package.
Note:	Add. ti.: Multimedia Schubert--The trout quintet.
Claimant:	caMicrosoft Corporation
Created:	1994
Published:	4Jan94
Registered:	22Apr94
Claim Limit:	NEW MATTER: additional programming & written texts, editorial revisions.
Miscellaneous:	C.O. corres.
<u>Special Codes:</u>	3/C/D

2. Registration Number:	PA-1-129-755
Title:	Links 2003 championship courses.
Imprint:	[Redmond, WA] : Microsoft, c2002.
Description:	CD-ROM.
Note:	Videogame.
Claimant:	[Author and claimant] Microsoft Corporation
Created:	2002
Published:	19Sep02
Registered:	25Nov02
Author on © Application:	audiovisual elements (excluding software program), documentation & text on product packaging: Microsoft Corporation, employer for hire.
Previous Related Version:	Appl. identifies some material as preexisting.
<u>Special Codes:</u>	3/C/D

Patents v. Copyrights

- A copyright protects only particular expression:
 - “unoriginal” portions of a software program can freely be copied.
- A patent may protect an algorithm if it is used to produce a “useful, concrete and tangible result.”
- A patent may also protect the “business method” implemented by the program.
- Patents are required to be new and non-obvious.
- Patent prosecution can take years.
- Costs of obtaining a patent are high.
- Copyright protection is automatic and relatively inexpensive.

Patents v. Copyrights

- The life of patent is 20 years; copyright life is much longer.
- A preliminary injunction typically available in copyright cases; much harder to obtain in patent cases.
- Must show copying in a copyright case – copyright does not protect “independent development.”
- Copying/independent development irrelevant in patent cases.
- Because only part of the program is required to be registered, it is possible to maintain trade secrets.
- Trade secrets likely lost with patent (“best mode” must be disclosed).

Patents v. Copyrights

- If a patentable process and its expression are “indistinguishable” or “inextricably intertwined,” then “the process merges with the expression and precludes copyright protection.” *Atari v. Nintendo* (Fed. Cir. 1992).
- Commentators dispute whether copyright and patent protection for computer software should be mutually exclusive.
- Some opponents of software patents argue that copyright protection should be expanded.
- Some argue that patent protection should not be available for software.