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 Centinl
of July 17, 1790
SATURDAY, JULY 17, 1792.

LAWS of the UNITED STATES.

By Authority of Congress, the second session, begun and held in the City of New York, on Monday the 4th of July, 1792.

AN ACT for the ENCOURAGEMENT of LEARNING, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors thereof, during the Terms therein mentioned.

By the Senate and House of Representatives of the United States of America, in Congress assembled.

The first and second sections of the act, which contain the main provisions of the law, are as follows:

Section 1: An Act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and owners thereof, in the United States, during the term therein mentioned.

Section 2: That no person shall be authorized to issue a book, map, chart, or other intellectual work, in the United States, without obtaining the consent of the author, and without paying him a royalty or other compensation.

Section 3: That the consent of the author shall be obtained in writing, and shall be signed by the author, or his agent, or by his attorney in fact.

Section 4: That the royalty or other compensation shall be paid to the author, or his agent, or to his attorney in fact, within thirty days after the date of the publication of the book, map, chart, or other intellectual work.

Section 5: That the term of protection shall be for fourteen years.

Section 6: That the act shall extend to every person, natural or artificial, resident in the United States, who shall be the author, or the owner of any intellectual work, or who shall be the owner of the copyright of any intellectual work.

The act was intended to encourage the publication of maps, charts, and books, and to provide authors with a means of protecting their intellectual property. It was a significant piece of legislation that had a lasting impact on copyright law in the United States.

MISCELLANEOUS.

OBSERVATIONS on the MANUFACTURES and COMMERCE of the UNITED STATES.

By W. PABST, of Philadelphia.

PAPER-HANGINGS, equal in quality and cheapness to any imported, are manufactured in large quantities by Mr. William Poole, and Messrs. Colby and Cordier, at Philadelphia; by Mr. Mathew and Deering, at Springfield, in New Jersey; and other places in the United States.

A paper hangs in the new State House in Philadelphia, which is one of the finest examples of American manufacture.

The act contained in this article may be of interest to those who are interested in the history of copyright law and its development in the United States.
“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 extent 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."
**Work Made For Hire**

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<td></td>
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<td></td>
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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

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<tr>
<td>Title</td>
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<td>4Jan94</td>
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<td>22Apr94</td>
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<td>25Nov02</td>
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<td>Author on © Application</td>
<td>audiovisual elements (excluding software program), documentation &amp; text on product packaging: Microsoft Corporation, employer for hire.</td>
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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.