Copyright Law

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What is Copyright?

• A monopoly,
  ▪ created by law that gives exclusive rights to the author or creator of a work.
  ▪ The copyright protection vests immediately and automatically upon the creation of “original works of authorship” that are “fixed in any tangible medium of expression.”
Copyright Registration

• Copyright registration is no longer required, as of 1989, for a work to have copyright protection.
• Protection is immediate upon creation.
• Assume everything is copyrighted.
• Copyright registration does have a legal effect, however.
  ▪ Provides evidence of copyright ownership.
  ▪ Allows a copyright holder to bring a lawsuit.
  ▪ Is a requirement for the ability to bring a suit in Federal court.
  ▪ Has bearing on what damages the copyright holder can get.
Who Owns Copyright?

• The general rule is that the person who does the creative work owns the copyright.

• Variations
  ▪ Two or more authors can own a single copyright jointly.
  ▪ Someone might create a new work, but if it is a work made for hire, the copyright belongs to the employer.
  ▪ Copyright owner may transfer the copyright.
Exclusive Rights of Copyright Holder

- Right to make copies
- Right to distribute copies.
- Right to publicly perform.
- Right to publicly display.
- Right to prepare derivative works based upon the original work.
Exceptions to the Rights of Copyright Owners

- Fair Use.
- Library copying.
- The First Sale Doctrine.
- Exception for public display.
- Displays and performances in face-to-face teaching.
- Displays and performances in distance learning.
- Computer software.
- Architectural works.
- Special formats for persons who are blind or have other disabilities.
What is Copyrightable? (An illustrative, not exhaustive, list.)

• Literary works.
• Musical works, including accompanying words.
• Dramatic works, including accompanying music.
• Pantomimes and choreographic works.
• Pictorial, graphic, and sculptural works.
• Motion pictures and other audiovisual works.
• Sound recordings.
• Architectural works.
What is Not Copyrightable?

• Works in the public domain.
• Facts and discoveries.
• Compilations and databases.
• Works of the U.S. Government.
• Works that have not been fixed in a tangible form of expression.
• Titles, names, short phrases, and slogans.
• Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices.
Fair Use

- Allows the public to make limited use of copyrighted works for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.
- Created deliberately by Congress to fill the gaps where exceptions in the law do not go far enough.
- Can be used in tandem with other exceptions in the law.
Using Fair Use: The Four Factors

• When determining whether the use made of a work is fair use, consider the following four factors:
  ▪ The **purpose** and character of the use, including whether such use is of a commercial nature or for nonprofit educational purposes.
  ▪ The **nature** of the copyrighted work.
  ▪ The **amount** and substantiality of the portion used in relation to the copyrighted work as a whole.
  ▪ The **effect** of the use upon the potential market for or value of the copyrighted work.
Factor One: The Purpose and Character of the Use

• Whether the use of a copyrighted work “is of a commercial nature or is for nonprofit educational purposes.”

• Transformative Uses
  ▪ May occur when the work is altered or transformed into something new.
  ▪ When the work is used in a new manner or context, distinct from the intended uses of the original.

• Multiple Copies
  ▪ Allowed for classroom use.
Factor Two: The Nature of the Copyrighted Work

• Fiction and Nonfiction
  ▪ Fair use applies most generously to published works of nonfiction.
  ▪ By contrast, copyright law gives greater protection for works of fiction.

• Consumable and Out-of-Print Works
  ▪ Publishers often produce and sell workbooks with the expectation that they will be fully consumed and repurchased with each use.
  ▪ Out-of-print works may become an obsolete concept as digital copies become the norm.
Factor Three: The Amount and Substantiality of the Portion Used

• Quantity and Quality
  ▪ No exact measure of allowed quantity exists in the law.
  ▪ Rules about word counts and percentages have no place in the law of fair use.
  ▪ Appropriate amount can depend on the nature of the work.
  ▪ Shorter excerpts are more likely than longer pieces to be within fair use.
  ▪ Although sometimes, the smallest phrase may be the “heart of the work” and not be considered fair use.
Factor Four: The Effect of the Use on the Market

- Encompasses whether the use harms the market for the work or its value.
- Questions to ask:
  - How is the work actually marketed?
  - What are the realistic potential markets?
  - Is the work realistically marketed for my needs and uses?
  - Am I harming or inhibiting that market potential?
  - Am I replacing a sale?
  - Are my market effects significant?
  - Would the market effects be significant if uses like mine were widespread?
Principles for Working with Fair Use

• Fair use is a balancing test. Ask yourself if the factors lean in favor of or against fair use overall.
• Fair use is highly fact-sensitive.
• Don’t reach hasty conclusions. Evaluate all factors.
• If your use in not “fair”, don’t forget there are other statutory exceptions to the rights of owners.
• If your use is not within any of the exceptions, permission from the copyright owner is an important option.
• Fair use is relevant only if the work is protected by copyright.