

**NOW SHOWING:**

**Navigating Federal  
Copyright Law**

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**Agenda**

- 1. Copyright 101**
- 2. Public Domain**
- 3. Copyright Infringement**
- 4. Lawfully Using Copyrighted  
Material**
- 5. Copyright Issues in  
Schools**





## What is Copyright?

**ADMIT ONE**

“Copyright is a form of protection provided by the laws of the United States to the authors of original works of authorship, including literary, dramatic, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.”

“Copyright Basics,” U.S. Copyright Office

## Copyrights, Patents, and Trademarks?

- **Copyright:** Protects works of authorship, such as writings, music, and works of art, that have been tangibly expressed.
- **Patent:** Property right in an invention, granted by the US government in exchange for public disclosure of the invention.
- **Trademark:** Word, phrase, symbol, and/or design that identifies and distinguishes the source of goods.



## Who Can Hold Copyrights?

- The author or joint authors of the original work
- The employer of an employee who creates the original work within the scope of his/her employment (ordinarily not the employee)
- Usually applies even if the author is not in the United States



*Note for Schools:* Boards of Education generally hold copyrights of works created by teachers and other staff (but consult your CBAs)

## What is Protected?

Original works of authorship that are fixed in a tangible form of expression or may be communicated with the aid of a machine or device.

- Literary works
- Musical works, including accompanying words
- Dramatic works, including accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Sound recordings
- Architectural works



## What is not Protected?

- Works not fixed in a tangible form of expression
- Titles, names, short phrases, slogans, familiar symbols/designs, typographic variations, lettering, coloring, listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, devices (as opposed to descriptions, explanations, illustrations)
- Common property/no original authorship (e.g., calendars, measurement charts, etc.)
- Works by the U.S. government



## Copyright Law – A Case Study



## How are Copyrights Secured?

- Automatically upon creation
- Creation = When fixed in a copy or phonorecord (recording) for the first time
- NOT REQUIRED:
  - Publication
  - Registration
  - Display of the © symbol



## What are the Rights of a Copyright Holder?

Exclusive right to:

- Reproduce the work in copies or recordings
- Prepare derivative works
- Distribute copies to the public by sale, rent, lease, lending, etc.
- Perform the work publicly
- Display the work publicly



## What is a Derivative Work?

- A “derivative work” is a work that is based on a copyrighted work.
  - Recasts, transforms, or adapts the original work.
  - The owner of the copyright possesses the exclusive right to prepare derivative works.
  - Requires a license from the underlying copyright holder.



## How Long Does a Copyright Last?

A looooong time....

Works created or published in 1978 or later	The author's life + 70 years
Works for hire created in 1978 or later	95 years from publication or 120 years from creation, whichever shorter
Works created and published before 1978	95 years



## PUBLIC DOMAIN



## What is the “Public Domain”?

Creative work that is **not protected by copyright** and may be **used by anyone**.

Reasons an original work may be public domain:

- Term of copyright has expired
- The author of the work is the U.S. Government
- Author designated the work as being in the public domain
- Work never subject to copyright protection in the first place

All the pictures in this presentation are in the public domain.



## Happy Birthday to You!



- Composed in 1893 by schoolteachers.
- Copyright filed in 1935. Warner/Chappell bought the rights in 1988.
- In 1994, the producers of *Hoop Dreams* paid \$5,000 to use nine seconds of the eight-note song.
- September 2015:
  - A California court ruled the original copyright holder never legally obtained rights to the song.
  - **BOTTOM LINE:** Happy Birthday is *finally* in the public domain

## Copyright Law – A Case Study, Cont.



## COPYRIGHT INFRINGEMENT



## What is Copyright Infringement?

Two elements a copyright holder must prove:

1. Ownership of a valid copyright;  
and
2. Copying of constituent elements of the original work.



## Types of Copyright Infringement

- Direct Infringement: Copying of constituent elements of an original work
- Contributory Infringement: Actual or constructive knowledge of the infringement
- Vicarious Infringement: Financial interest in the infringement



## Penalties for Copyright Infringement

- Civil Penalties
  - Injunctions
  - Impounding and Disposition
  - Damage Awards
- Criminal Penalties
- Statute of Limitations
  - Civil – 3 years after claim accrued
  - Criminal – 5 years after the infringement



## What if....

- I won't make any money from my use of the copyrighted material?
- I don't know the material is copyrighted?
- The material doesn't have "©" on it?



**Copyright Law – A Case Study,  
Cont.**



**LAWFULLY USING  
COPYRIGHTED MATERIAL**



## Permission & Licensing

- Read any licensing agreements or terms of use that accompany the material
- Other sources:
  - Copyright Clearance Center (CCC) for books and journal articles
  - Image Archives
  - ASCAP, BMI, or SESAC for musical works
  - The recording label for musical works
  - The Motion Picture Licensing Corp., Movie Licensing USA, and Swank Motion Pictures, Inc., for movies
  - The author, publisher, or owner
  - U.S. Copyright Office – Copyright Search
  - Google



## Fair Use

4 factors will be considered to determine whether the use of a copyrighted work constitutes “fair use”:

1. Purpose and character of use
2. Nature of the original work – whether creative or factual
3. Amount and substantiality of the portion copied
4. The effect of the use on the potential market or value of the original work



## Fair Use

- Difficult to determine & fact specific
- Two Main Categories:
  1. Commentary and criticism
  2. Parody and satire



## Fair Use: Commentary & Criticism

Public benefit from review, which is enhanced by inclusion of original material

- Selectively quoting *To Kill A Mockingbird* in an analysis of 20<sup>th</sup>-Century American fiction
- Copying a few paragraphs from a news article about Donald Trump for a lesson on the election
- Playing a portion of a Beyoncé song in a speech critiquing contemporary pop music.



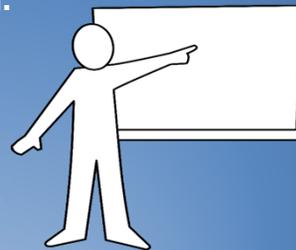
## Fair Use: Parody

- By nature, parody requires taking from original work.
- Fairly extensive use is permitted – necessary to create an effective parody.
- E.g., Saturday Night Live, *The Onion*



## Education Exception

- Performance or display of a work by instructors or pupils;
- In the course of face-to-face teaching activities of a nonprofit education institution;
- In a classroom or other similar place devoted to instruction.



## Fair Use vs. Education Exception

- **Fair Use**
  - May use for any purpose.
  - May only use portion of original work in certain ways.
- **Education Exception**
  - May only use for education purposes.
  - May use entire original work.



## Copyright Law – A Case Study, Cont.





What about....

## Playing a Song on the Loudspeaker at a Basketball Game?

- Songs are copyrighted works.
- Copyright holders have the exclusive right to play the song in public.
- No exception applies:
  - Not Fair Use
  - Not Education Exception
- **Bottom Line:** Must have a license or other form of permission before playing.



What about....

## Teachers Playing Movies in Class?

- Movies are copyrighted works.
- Copyright holders have the exclusive right to play the movie in public.
- Exceptions:
  - Not Fair Use
  - Education Exception *if* playing for instruction purposes. *Not* if playing as a reward/entertainment
- **Bottom Line:** Must have a license/permission unless actually for educational purposes.



What about....

## Arrangements of Songs for Band, Orchestra, and Choir?

- Determine copyright protection for original **AND** arrangement.
- Copyright holders have the exclusive right to create derivative works.
- **Bottom Line:** Must have a license to arrange a copyrighted work.



### What about....

## Student Theatrical Productions?

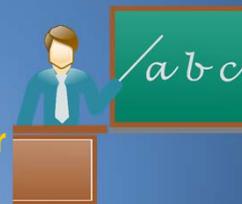
- Plays and musicals are copyrighted (unless in the public domain).
- Copyright holders have the exclusive right to perform in public.
- Exceptions:
  - Not Fair Use
  - Education Exception only if performed only to students in the classroom. Not if performed for the public.
- **Bottom Line:** Unless just for other students in a class, must get a license/permission.



### What about....

## Teachers Quoting from Books in their Lesson Plans?

- Books are copyrighted (unless in the public domain).
- Copyright holders have the exclusive right to reproduce the work.
- Exceptions:
  - Probably Fair Use if selectively quoted for commentary.
  - Education Exception because for students for education purpose.



**Remember...**

**Districts Also Have Their Own Intellectual Property.**

- Employer has rights to works employees create.
- K-12 teachers usually do not share the right, unless the CBA provides otherwise.
- Examples:
  - Lesson plans
  - Teaching aids
  - Musical & dramatic works
  - Photographs
  - Computer software
  - Name of school (™)
  - School mascot or logo (™)



**Copyright Law – A Case Study, Cont.**



