UNITED STATES COPYRIGHT LAW

I. What Are Copyrights

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

1. To *reproduce* (make copies);

2. To prepare *derivative works* based upon the work;

3. *To distribute copies or phonorecords* of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

4. To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;

5. *To display the copyrighted work publicly*, 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; and

6. In the case of *sound recordings, to perform the work publicly* by means of a *digital audio transmission.*

In addition, certain authors of works of visual art have the rights of attribution and integrity.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use." In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions.

II. Who Can Claim Copyrights

Copyright protection subsists from the time the 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 can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is considered to be the author. The copyright law defines a "work made for hire" as: (1) a work prepared by an employee within the scope of his or her 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
- a sound recording
- an atlas

If the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

III. What Works Are Protected

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. In other words, one can obtain copyright protection for an original work of authorship fixed in a tangible medium of expression. The primary issues in determining whether a work may be protected by a copyright are (1) originality, (2) authorship and the type of work, and (3) fixation in a tangible medium, each of which is discussed separately below.

To be "original," a work must be created independently but does not necessarily need to be new (i.e., unique or different from existing works). As a result, as long as you do not copy your work from the pre-existing work, you can obtain copyright protection for a work that is very similar or even identical to the pre-existing work. The work also must show some creative expression, although the threshold for creativity is low and a lack of creative expression is rarely found.

The authorship and originality requirements of the Copyright Act are understood to require "creative expression" in order to gain copyright protection, and it is this limit that ensures the facts are not copyrightable. *Feist Publications, Inc. v. Rural Tel. Serv.*[1] In Feist, the court found that a local telephone directory that was alphabetically arranged and contained every possible known listing was "devoid of even the slightest traces of creativity."[2] The court emphasized, however, that the originality or creativity requirement is not a stringent one. "Presumably, the vast majority of compilations [of facts] will pass this test [and have some minimum level of creativity], but not all will."[3] The court also emphasized that the copyright in a factual compilation is "thin." That is to say, "[n]ot withstanding a valid copyright, a subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement." Id.

Copyrightable works include the following categories:

(1) literary works;

(2) musical works, including any accompanying words

(3) dramatic works, including any accompanying music

(4) pantomimes and choreographic works

(5) pictorial, graphic, and sculptural works

(6) motion pictures and other audiovisual works

(7) sound recordings

(8) architectural works

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."

To fix your work in a tangible medium of expression, you must embody it in a copy that is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a sufficiently long period. For example, you can fix a work in print, film, computer disk, magnetic tapes, and many other mediums from which the work may be communicated. Even software copies in RAM have been found to be sufficiently fixed, presumably, because it is possible for such copies to remain for long periods of time.[4] Conversely, it appears likely that transitory RAM copies, such as those made by an intermediary network node to propagate a transmitted message or file, may not be deemed fixed.

IV. What is Not Protected By Copyright

Several categories of material are generally not eligible for federal copyright protection. These include among others:

Works that have *not* been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or 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

Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration

Works consisting *entirely* of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

V. How To Secure a Copyright

Copyright Secured Automatically upon Creation. The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright.

Copyright is secured *automatically* when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or LPs. Thus, for example, a song (the "work") can be fixed in sheet music (" copies") or in phonograph disks (" phonorecords"), or both.

If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

VI. Notice of Copyright

The use of a copyright notice is no longer required under U. S. law, although it is often beneficial. Because prior law did contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.

Notice was required under the 1976 Copyright Act. This requirement was eliminated when the United States adhered to the Berne Convention, effective March 1, 1989. Although works published without notice before that date could have entered the public domain in the United States, the Uruguay Round Agreements Act (URAA) restores copyright in certain foreign works originally published without notice.

The Copyright Office does not take a position on whether copies of works first published with notice before March 1, 1989, which are distributed on or after March 1, 1989, must bear the copyright notice.

Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages.

The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

VII. Form of Notice of Copyright

The notice for visually perceptible copies should contain all the following three elements:

1. The symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr."; and

2. The year of first publication of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and

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.

Example: © 2000 Barnard Loop & McCormack LLP

The "C in a circle" notice is used only on "visually perceptible copies." Certain kinds of works—for example, musical, dramatic, and literary works—may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

The notice for phonorecords embodying a sound recording should contain all the following three elements:

1. *The symbol* (the letter P in a circle); and

2. *The year of first publication* of the sound recording; and

3. *The name of the owner of copyright* in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. If the producer of the sound recording is named on the phonorecord label or container and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

Example: 2000 A. B. C. Records Inc.

VIII. How Long Copyright Protections Lasts

A. Works Originally Created on or after January 1, 1978

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 and is ordinarily given a term enduring for the author's life plus an additional 70 years after the author's death. In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 70 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter.

B. Works Originally Created before January 1, 1978, But Not Published or Registered by That Date

These works have been automatically brought under the statute and are now given federal copyright protection. The duration of copyright in these works will generally be computed in the same way as for works created on or after January 1, 1978: the life-plus-70 or 95/120-year terms will apply to them as well. The law provides that in no case will the term of copyright for works in this category expire before December 31, 2002, and for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2047.

C. Works Originally Created and Published or Registered before January 1, 1978

Under the law in effect before 1978, copyright was secured either on the date a work was published with a copyright notice or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a first term of 28 years from the date it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. The Copyright Act of 1976 extended the renewal term from 28 to 47 years for copyrights that were subsisting on January 1, 1978, or for pre-1978 copyrights restored under the Uruguay Round Agreements Act (URAA), making these works eligible for a total term of protection of 75 years. Public Law 105-298, enacted on October 27, 1998, further extended the renewal term of copyrights still subsisting on that date by an additional 20 years, providing for a renewal term of 67 years and a total term of protection of 95 years.

Public Law 102-307, enacted on June 26, 1992, amended the 1976 Copyright Act to provide for automatic renewal of the term of copyrights secured between January 1, 1964, and December 31, 1977. Although the renewal term is automatically provided, the Copyright Office does not issue a renewal certificate for these works unless a renewal application and fee are received and registered in the Copyright Office. Public Law 102-307 makes renewal registration optional. Thus, filing for renewal registration is no longer required in order to extend the original 28-year copyright term to the full 95 years. However, some benefits accrue from making a renewal registration during the 28th year of the original term.

When Works Pass Into The Public Domain

WHEN WORKS PASS INTO THE PUBLIC DOMAIN[5]

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years[6] (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation[7]
Published before 1923	In public domain	None
Published between 1923 and the end of 1963	When published with notice[8]	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published 1964-77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

IV. Transfer of Copyright

Any or all of the copyright owner's *exclusive* rights or any subdivision of those rights may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent. Transfer of a right on a nonexclusive basis does not require a written agreement.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

Transfers of copyright are normally made by contract. The Copyright Office does not have any forms for such transfers. The law does provide for the recordation in the Copyright Office of transfers of copyright ownership. Although recordation is not required to make a valid transfer between the parties, it does provide certain legal advantages and may be required to validate the transfer as against third parties.

X. Publication

Publication is no longer the key to obtaining federal copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners.

The 1976 Copyright Act defines publication as follows:

> "Publication" is the 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.

Publication is an important concept in the copyright law for several reasons:

Works that are published in the United States are subject to mandatory deposit with the Library of Congress.

Publication of a work can affect the limitations on the exclusive rights of the copyright owner.

The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works and for works made for hire.

Deposit requirements for registration of published works differ from those for registration of unpublished works.

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. Copies of works published before March 1, 1989, must bear the notice or risk loss of copyright protection.

XI. International Copyright Protection

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

XII. Internet Copyright Issues & The Digital Millennium Copyright Act

Due to a growing concern that some on-line businesses were, in some cases, being unfairly targeted for lawsuits based on "deep pocket" third party liability theories, e.g., contributory infringement, Congress has recently passed the Digital Millennium Copyright Act (the "Millennium Act"). The Millennium Act limits some copyright claims, against some on-line businesses, under certain circumstances.

There are four categories of copyright infringement liability limitations. The four categories are:

- Transitory communications;
- System caching;
- Storage of information on systems or networks at the discretion of users; and
- Information location tools. Information location tools covers many linking issues. The Millennium Act may cover copyright claims for framing by analogy to information location tools.

The "system caching" category[9] limits the liability of service providers for the practice of retaining copies of material that have been made available on-line so that subsequent requests for the same material can be fulfilled by transmitting the retained copy, rather than retrieving the material from the original source on the network.

The "information location tools" category[10] relates to hyperlinks, online directories, search engines and the like. This category limits liability for the acts of referring or linking users to a site that contains infringing material. The Millennium Act may cover copyright claims for framing by analogy to information location tools.

To qualify for copyright infringement liability protection under the Millennium Act on-line businesses must:

Register an agent with the Copyright Office (the agent must also be referenced via the Internet); and

Expeditiously remove or disable access to any infringing material upon obtaining actual knowledge or awareness or proper notice of the infringing material.

System "caching" refers to when a networked computer copies information from another computer to facilitate faster performance the next time the same information is requested. Once a particular piece of information has been cached on a system, the time required to display the information is reduced because at least part of the information to be displayed has previously been transferred across the network.

Internet "linking" occurs when one website links to another site via a typical Internet hyperlink, which is the highlighted text or pictures on a website that direct the user to another part of the same website or a new site altogether. Linking theories of copyright infringement (contributory and vicarious infringement) have been used to bring third parties into lawsuits simply because their websites linked to another site that contained infringement material. The question of "deep linking" has also been at the center of the linking controversies. Deep linking occurs when one website links to an internal page from another website by skipping the opening page from the same website. In deep linking cases the plaintiff usually alleges some form of unfair competition and/or false representation of affiliation; copyright claims also appear to be common in linking cases.

Internet "framing" happens when one website places the content from another website into a window-like frame appearing as part of the first website. The frame acts as a sort of portal to information on other websites without the person browsing the web having to actually go to a second website. Strategic use of frames can help keep on-line customers on a particular website and still allow the customers to gain access to other sites. Controversy often arises when the frame covers over advertising and branding appearing on the framed site. Claims ranging from copyright infringement to unfair competition and trademark dilution usually accompany allegations of unlawful Internet framing.

XIII. Benefits of Copyright Registration

Under the current Copyright Act, registration is not required for an author to receive copyright protection.[11] Registration, however, provides several advantages and benefits, including:

1. Statutory damages and attorneys' fees will be available to the copyright owner in court actions if registration is made within three months after publication of the work or prior to an infringement of the work; otherwise, the copyright owner may only receive actual damages and lost profits;

2. Before an infringement suit may be filed in court, registration is necessary for works of United States origin and for foreign works not originating in a Berne Convention country;

3. Registration provides constructive notice of copyrights to others across the United States and may establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate;

4. Registration allows the owner of the copyright to record the registration with the United States Customs Service for protection against the importation of infringing copies;

5. Registration will help limit the likelihood that someone else "innocently" infringes a copyrighted work. We thus recommend that you register all computer programs you develop.[12]

AVOIDING COPYRIGHT INFRINGEMENT

A Review Checklist

DETERMINING WHAT CAN BE COPIED

COMPUTER ELEMENTS THAT ARE PROBABLY COPYRIGHTED

- ❑ COMPUTER SOURCE CODE AND OBJECT CODE, REGARDLESS OF THE TYPE OF PROGRAM (I.E., APPLICATION PROGRAMS OR OPERATING SYSTEMS)
- ❑ SCHEMATICS, FLOW CHARTS, STRUCTURE CHARTS, DATA FLOW DIAGRAMS, STATE TABLES, AND OTHER DIAGRAMS ILLUSTRATING A PROGRAM'S STRUC TURE, SEQUENCE, AND ARRANGEMENT
- ❑ SOFTWARE DOCUMENTATION, SUCH AS A USER MANUAL STRUCTURE AND ORGANIZATION OF A COMPUTER PROGRAM (CERTAIN NON-LITERAL ELEMENTS)
- ❑ VIDEO DISPLAYS
- ❑ PROGRAM DESIGN DOCUMENTATION
- ❑ HTML CODE, SCRIPTS OR OTHER WEB PAGE PROGRAMMING
- ❑ FREEWARE
- ❑ SHAREWARE
- ❑ USE IN EXCESS OF LICENSED RIGHTS
- ❑ DERIVATIVE WORKS
  - ❑ MODIFYING ANOTHER PERSON'S EXISTING CODE
  - ❑ TRANSLATING COMPUTER CODE FROM ONE LANGUAGE INTO ANOTHER
- ❑ REORGANIZING A PROGRAM'S STRUCTURE AND ORGANIZATION
- ❑ ALTERING COMPUTER GRAPHICS
- ❑ ALTERING OTHER PROTECTABLE ELEMENTS
- ❑ COMPUTER ELEMENTS THAT ARE PROBABLY NOT COPYRIGHTED
- ❑ COMPUTER LANGUAGES
- ❑ ALGORITHMS
- ❑ OTHER NON-PROTECTED ELEMENTS

- ❑ COMMAND STRUCTURES OF PULL-DOWN MENUS IN COMPUTER APPLICATIONS
- ❑ OVERLAPPING WINDOWS ON A COMPUTER DISPLAY
- ❑ EXPIRED COPYRIGHTS & COPYRIGHTS IN THE PUBLIC DOMAIN
- ❑ COMPUTER ELEMENTS THAT MIGHT BE COPYRIGHTED (THE "GRAY AREAS") STRUCTURE, SEQUENCE, AND ORGANIZATION❑EXTERNAL CONSTRAINTS
- ❑ MECHANICAL SPECIFICATIONS OF A COMPUTER
- ❑ MANUFACTURER'S DESIGN STANDARDS
- ❑ INDUSTRY DEMANDS
- ❑ COMPATIBILITY/INTEROPERABILITY OF COMPUTER INTERFACES
- ❑ INDUSTRY STANDARDS
- ❑ REVERSE ENGINEERING

OTHER STUFF THAT IS PROBABLY COPYRIGHTED

- ❑ EMAIL
- ❑ USENET AND NEWS GROUP POSTINGS
- ❑ BULLETIN BOARD SYSTEM (BBS) POSTINGS
- ❑ MAILING LIST POSTINGS
- ❑ POSTINGS TO INTERNET SERVICE PROVIDERS (ISPs)
- ❑ INTERACTIVE CHAT COMMUNICATION
- ❑ COMMUNICATIONS VIA INTERNET TELEPHONE AND INTERNET VIDEO CONFERENCING
- ❑ ALL CONTENT ON WEB PAGES
- ❑ GRAPHICS
- ❑ SOUND
- ❑ VIDEO

COPYRIGHT DEFENSES

- ❑ FUNDAMENTAL COPYRIGHT DEFENSES (THE "COPYRIGHT BASICS")

- ❑ THE WORK IS NOT COPYRIGHTABLE
  - ❑ NO ORIGINALITY
  - ❑ NO AUTHORSHIP AND DOES NOT FALL INTO A STATUTORY CATEGORY OF WORKS
  - ❑ NOT FIXED IN A TANGIBLE MEDIUM OF EXPRESSION
- ❑ IDEA/EXPRESSION DICHOTOMY (AN IDEA IS BEING PROTECTED)
- ❑ MERGER DOCTRINE (THERE ARE LIMITED WAYS OF EXPRESSING THE IDEA)
- ❑ NO COPYRIGHT DEFENSE ("IT'S NOT COPYRIGHTED")
- ❑ GOVERNMENTAL WORK
- ❑ EXPIRED COPYRIGHTS AND PUBLIC DOMAIN (THE PUBLIC OWNS IT NOW)

WHEN WORKS PASS INTO THE PUBLIC DOMAIN[13]

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years[14] (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation[15]
Published before 1923	In public domain	None
Published between 1923 and the end of 1963	When published with notice[4]	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published 1964-77	When published with notice[16]	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

- ❑ NO INFRINGEMENT DEFENSE (INDEPENDENT CREATION)
- ❑ AUTHORIZATION DEFENSE ("I AM NOT DOING ANYTHING WRONG")
- ❑ CONSENT (e.g., via LICENSE)
    - ❑ WRITTEN
    - ❑ ORAL
    - ❑ IMPLIED
- ❑ ARGUING AROUND THE COPYRIGHT DEFENSE ("THERE IS A COPYRIGHT BUT I MIGHT BE ABLE TO COPY IT ANYWAY?")
- ❑ ABANDONMENT OR FORFEITURE
- ❑ FAIR USE (e.g., COPYING JUST A LITTLE BIT)
- ❑ FIRST SALE DOCTRINE
- ❑ LEGAL DEFENSES ("MY LAWYER SAYS . . .")
- ❑ EQUITABLE DEFENSES
    - ❑ LACHES (WAITED TOO LONG TO ASSERT RIGHTS)
    - ❑ ESTOPPEL (CAN'T GO BACK ON YOUR WORD)
    - ❑ UNCLEAN HANDS (ACTED IN BAD FAITH)
- ❑ COPYRIGHT MISUSE (CONTRACTUALLY EXPANDING OWNERSHIP RIGHTS BEYOND WHAT IS ALLOWED UNDER COPYRIGHT LAW)
- ❑ STATUTE OF LIMITATIONS (WAITED TOO LONG TO BRING CLAIM)
- ❑ ANTITRUST ("ROUGHING-UP" THE COMPETITION UNFAIRLY)
- ❑ FRAUD
- ❑ FRAUD ON THE COPYRIGHT OFFICE (e.g., LYING ON COPYRIGHT REGISTRATION)
- ❑ COMMON LAW FRAUD

[1] 499 U.S. 340 (1991).

[2] *Id.* at 362.

[3] *Id.* at 349.

[4] *See generally MAI Sys. Corp. v. Peak Computer Inc.*, 991 F.2d 511 (9th Cir. 1993); *Triad Sys. v. Southeastern Express Co.*, 31 U.S.P.Q.2d 1239, 1243 (N.D.C. 1994) (stating that "*MAI* stands for the general proposition that a copy made in RAM is 'fixed' and qualifies as a copy under the Copyright Act").

[5] This chart includes material from the new Term Extension Act, PL 105-298. The chart was prepared by Laura N. Gasaway, Professor of Law, University of North Carolina. The accompanying footnotes are courtesy of Professor Tom Field, Franklin Pierce Law Center. Reprinted with permission. Professor Gasaway's chart can also be found at: http://www.unc.edu/~unclng/public-d.htm (last updated 11/05/98).

[6] The Term of joint works is measured by life of the longest author.

[7] Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

[8] Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 01/01/78 and 03/01/89, effective date of Berne Convention Implementation Act, retained copyright only if, *e.g.*, registration was made within five years. 17 U.S.C. § 405.

[9] Section 512(b).

[10] Section 512(d).

[11] Under the Berne Convention, Article 5(2) "the enjoyment and the exercise of [copyright] shall not be subject to any formality." The United States harmonized its law in accordance with the Berne Convention on March 1, 1989. United States Copyright Office CIRCULAR NO. 1, COPYRIGHT BASICS, http://lcweb.loc.gov/copyright/circs/circ1.html.

[12] Some other benefits to copyright registration are: (1) early registration will allow a copyright holder to troubleshoot any difficulties identified by the Copyright Office, such as statutory formalities; (2) registration allows a copyright holder to import a limited number of foreign-made copies of English language literary words; 2,000 copies can be imported; (3) registration is required to renew certain copyrighted works published before 1978 and still in their first term; (4) registration can lead to marketing opportunities from interested business people discovering work in the Copyright Office records. *See generally* United States Copyright Office CIRCULAR NO. 1, COPYRIGHT BASICS, http://lcweb.loc.gov/copyright/circs/circ1.html; Robert B. Chickering, et al., *HOW TO REGISTER A COPYRIGHT AND PROTECT YOUR CREATIVE WORK* 7-9.

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