

COPYRIGHT BASICS

Community College of Aurora

What Is Copyright ?

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 This protection is available to both published and unpublished works.

What works are protected?

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

What works are protected?

pictorial, graphic,
and sculptural
works

motion pictures
and other
audiovisual works

sound recordings

architectural
works

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.”

So what is *not* protected?

U.S. Code TITLE 17 CHAPTER 1 § 102

“In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

- In other words, copyright applies only to the specific *execution* of an idea, not the idea itself.
- Processes, systems, etc may be covered by different principles (generally trademarks or patents)

So what is *not* protected?

Works that lack originality

- logical, comprehensive compilations (like the phone book)
- unoriginal reprints of public domain works

Works in the public domain

US Government works

Facts

Ideas, processes, methods, and systems described in copyrighted works

Freeware/open source software

Public Domain

Public Domain

- works that don't fall under copyright protection may be used freely
- When do works fall into the public domain?
 - <http://www.librarycopyright.net/digitalslider/>
 - <http://www.unc.edu/~uncclng/public-d.htm>

Fair use

Copyrighted works can sometimes be used without permission:

- **Criticism**
- **Parody**
- **Educational Use**

Fair use

Four Factors:

the purpose and character of the use, including whether such use is of a commercial nature or is 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.

Fair use

Factor # 1: the purpose and character of the use, including whether use is of a commercial nature or is for nonprofit educational purposes

- Congress favored nonprofit educational uses over commercial uses.
- Copies used in education, but made or sold at a monetary profit, may not be favored.
- Courts also favor uses that are "transformative," or that are not mere reproductions.
- Fair use is more likely when the copyrighted work is "transformed" into something new or of new utility, such as quotations incorporated into a paper, or included in commentary or criticism of the original.

Fair use

Factor # 2 : The nature of the copyrighted work

- Because dissemination of facts or information benefits the public, you have more leeway to copy from factual works such as biographies than you do from fictional works such as plays or novels.
- A stronger case can be made fair use if the material copied is from a published work than an unpublished work.
- The scope of fair use is narrower for unpublished works because an author has the right to control the first public appearance of his expression.

Fair use

Factor # 3: The amount and substantiality of the portion used in relation to the copyrighted work as a whole

Generally, the less taken the better

- Unless it is the 'heart' of a work (a portion that makes the work easily identifiable)

Parodies *may* be allowed to use more (even the heart)

- According to the Supreme Court: "the heart is also what most readily conjures up the [original] for parody, and it is the heart at which parody takes aim. " -*Campbell v. Acuff-Rose Music* , 510 U.S. 569 (1994)

Fair use

Factor 4: Effect of the use upon the potential market for or value of the copyrighted work.

- The court not only investigates whether the defendant's specific use of the work has significantly harmed the copyright owner's market, but also whether such uses in general, if widespread, would harm the potential market of the original