


**WELCOME**

*To the Advanced CBA  
ReadyTalk Webinar Training  
Intellectual Property: Copyrights  
November 7, 2006  
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**Copyright: Protecting Your Rights at Home and Abroad**



Michael Shapiro, Attorney-Advisor  
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**Michael Shapiro**, Attorney-Advisor, Office of International Relations, USPTO

- Michael specializes in domestic and international copyright law. Prior to joining USPTO, Mr. Shapiro was in private practice and served as General Counsel of the National Endowment for the Humanities. He is the co-author of *A Museum Guide to Copyright and Trademark* (1999) and a contributing author to *Copyright and Consequences: Central European and U.S. Perspectives* (2003) and to *International Intellectual Property: The European Community and Eastern Europe* (1992). Mr. Shapiro earned the Ph.D. in American Civilization from Brown University and the JD from the George Washington University Law School, where he is Professorial Lecturer in Law and teaches "Art, Cultural Property, and the Law."

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## U.S. Constitution (1787)

“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 Rights to their Respective Writings and Discoveries.

-- Article 1, Section 8, Clause 8

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## What is Copyright?

Copyright is a legal protection for the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works.

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## What Works are Protected?

- Work must be **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.

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## What Works are Protected?

- Must be an **original** work of authorship, meaning that the work must be independently created by the author (as opposed to copied from other works).
- The U.S.' required level of originality is very low. Other countries' laws may differ in this respect.

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## Categories of Protected Works

- Literary works
- Musical works
- Sound recordings
- Dramatic works
- Choreographic works
- Pictorial, graphic and sculptural works
- Motion pictures
- Architectural works

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## Works from Pre-existing Works

- Compilations
- Derivative Works

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## What Works are Not Protected?

- Works that have not been fixed in a tangible form of expression
- Titles, names; familiar symbols or designs; mere variations of lettering; mere listings of ingredients or content
- Ideas, procedures, concepts, principles
- Works consisting entirely of common property, containing no original authorship

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## Copyright: A Bundle of Rights

- Reproduction
- Adaptation
- Distribution
- Public Performance
- Public Display

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## Securing Protection

- Copyright protection is secured **automatically** upon creation (fixation).
- No publication or registration is required.

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## Registration Process

A copyright owner must:

- File an application;
- Pay a nominal filing fee (\$30); and
- Deposit copies of the work at the Copyright Office. Some of the works may be added to the collections of the Library of Congress.

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## Registration

- Registration is administered by the U.S. Copyright Office of the Library of Congress
- Forms available at [www.copyright.gov](http://www.copyright.gov)
- Registration does not involve complex examination of applications as for patents and trademarks.

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## Why Register?

- As a U.S. copyright owner, you must register in order to be able to bring suit in federal court for infringement.
- Pre-requisite for obtaining statutory damages and attorney's fees.
- Easier to enforce your copyrights in foreign courts.
- Puts others on notice.
- Easier to license work, collect royalties, and enforce your rights outside of court.

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## Notice

- **No notice is required.**
- Notice may benefit the owner against a supposed “innocent infringer.”
- Forms of notice: ©, the word “Copyright,” or the abbreviation “Copr.,” year of publication, and name of the copyright owner.

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## Copyright Term

- Life Plus 70:** In the U.S., copyright subsists from creation and endures the full life of the author plus 70 years after the author’s death.
- 95 Years from Publication:** If the author is not a natural person, then copyright endures 95 years from publication or 120 years from creation, whichever expires first.

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## Ownership of Copyright

- Copyright initially belongs to the individual authors
- Joint authors are co-owners of the copyright in joint works
- Under the work-made-for-hire doctrine, the employer is the owner of the copyright for works created within the scope of employment
- Special rules apply to “commissioned works”

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## Who is an employee?

- Right to control the manner and means of production
- Skill required
- Employee benefits
- Tax treatment
- Right to assign additional projects
- Tools
- Location of work

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## Works Made for Hire

A work prepared by an employee within the scope of his or her employment.

A work pecially 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.

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## Transfer of Copyright

“Any or all of the copyright owner’s exclusive rights...may be transferred, but the transfer of *exclusive* rights is not valid unless that transfer is in writing.... Transfer of a right on a *nonexclusive* basis does not require a written agreement.”

-- U.S. Copyright Office, Circular 1, page 6

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## Copyright Infringement

Infringement is a violation of any of the exclusive rights of copyright

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## Elements of a Copyright Infringement Case

- Validity and ownership of a copyright
- Wrongful copying of protected expression

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## Proving Infringement

- Direct Evidence of Infringement
- or
- Circumstantial evidence of infringement:
  - Access to plaintiff's copyrighted work
  - Unlawful copying of the work as evidenced by
  - Substantial similarity of original and infringing work

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## Liability for Infringement

- Direct Liability
- Contributory Liability
  - Knowledge of infringement (actual or constructive)
  - Material contribution
- Vicarious Liability
  - The right and ability to supervise
  - Financial interest

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## Limitations & Exceptions

- First sale doctrine
- Special exceptions for libraries, archives, and teaching;
- Certain statutory licenses;
- Certain television & radio exceptions;
- Reproduction for those with disabilities;
- Single software copy for archival purposes.

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## Fair Use

“Fair Use” is not an infringement of copyright. Use for purposes such as:

- Criticism,
- Comment,
- News reporting,
- Teaching,
- Scholarship, or
- Research.

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## Four Factor Test

1. The **purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The **nature of the copyrighted work**;
3. The **amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
4. The **effect of the use upon the potential market** for or value of the copyrighted work.

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## Fair Use Checklist

- Does the use infringe exclusive rights protected by copyright?
- Is the use of the work "commercial," or for nonprofit purposes such as criticism, commentary, education, or news reporting?
- Is the use "transformative," bringing new expressive meanings to the copyrighted material?
- Does the use impact an existing market for the work, or one that is likely to be exploited in the future?
- How much of the copyrighted material is being used?

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## Copyright Remedies

- Actual damages
- Statutory damages
- Injunctions, including temporary and permanent
- Impounding infringing copies
- Destroying infringing copies and the machinery and equipment used to produce them
- Attorney's fees and costs

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## The WIPO "Internet" Treaties

- Negotiated in 1996 under the auspices of the World Intellectual Property Organization, part of the United Nations.
- The WIPO Copyright Treaty entered into force with 30 ratifications on March 6, 2002.
- The WIPO Performances and Phonograms Treaty entered into force with 30 ratifications on May 20, 2002.
- The U.S. implemented the Treaties through the Digital Millennium Copyright Act.

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## Three New Obligations Established

- The Right of Making Available to the Public;
- Legal Protection of Technological Measures to Protect Copyrighted Works ("TPMs"); and
- Legal Protection of Rights Management Information ("RMI").

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## Digital Millennium Copyright Act

- 1998 U.S. implementation of the treaties;
- Extends U.S. copyright law into the digital realm; and
- Prohibits circumvention of technological protection measures;
- Prevents tampering with rights management information;
- Limits infringement liability for ISPs that meet certain criteria.

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## Notice and Takedown System

- Once an ISP receives a proper notice alleging infringement, it must expeditiously take the material down and notify the user.
- The user may then respond to the notice and the ISP must put back the material if no court order is filed by right holder.

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## THANK YOU

For further information, please contact:

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Department of External Affairs  
Michael.shapiro@uspto.gov  
(571) 272-9300  
1(866) 999-HALT  
www.USPTO.gov

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