



UNDERSTANDING COPYRIGHT LAW

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- Intellectual Property (IP) lawyer
 - *Copyright*
 - *Trademark*
 - *Litigation*
 - *Transactions*
- Copyright Law “101” – Treatises!
- Questions? Please ask
- Why Are You Here?



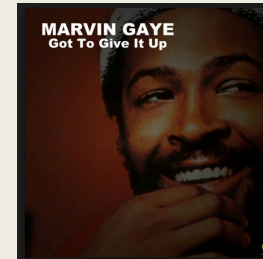


Why Do I Care?

■ Valuable Asset

– *Traditional: Arts & Media*

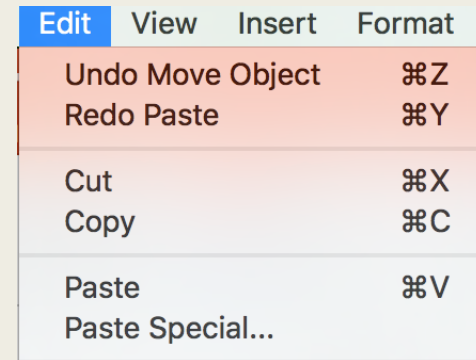
– *“Emerging”: Technology/Start-ups, Fashion*



Why Do I Care (continued...)

■ Potential Liabilities

- *Technological advances* [copy>paste]
- *Strict Liability* [innocent / willful / fair use]



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Undo Move Object			⌘Z
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Five Things To Know About Copyright

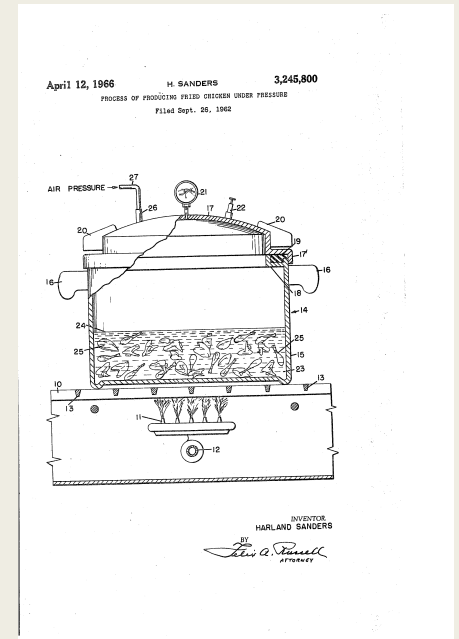
1. What Is Copyright & What Does It Protect
2. How & When Copyright Protects
3. Who Has A Copyright Interest
4. Using Copyrighted Work
5. Resolving Copyright Disputes



What Copyright Is Not

- Other Types Of Intellectual Property

- Patent (inventions)
- Trademark (source of goods/services)
- Trade Secrets
- Related: Right of Publicity, Defamation, Unfair Competition



- Overlap?



What Copyright Protects

- Original Works Of Authorship
 - *Common: books, songs, plays, pictures, films*
 - *Less-Obvious: compilations, computer code, tattoos, grafitti*
- “Original” – A Low Threshold (e.g., fabric designs, simple photographs)
- Utilitarian items / Separate Design Elements (e.g., lighting fixtures, furniture, cheerleader uniforms?)
- Idea vs. Expression

How Copyright Protects

- Exclusive Rights (Section 106)
 - *Reproduce*
 - *Prepare a derivative work*
 - *Distribute copies*
 - *Perform or display the work publicly*

- Duration
 - *Life +70*
 - *Anonymous, Work Made For Hire:
Publication + 95 / Creation + 120*



Do I Need To Register?

- When Does Author Acquire Rights?
- Fixation in any tangible medium of expression that is perceptible either directly or with the aid of a machine or device
 - *Pen to paper*
 - *Image to film*
 - *Sound to tape*



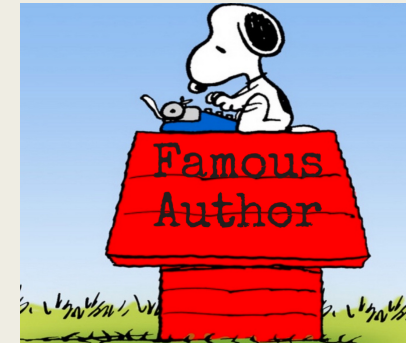
Benefits Of Registration

- Public Record
- Certificate of Registration
- Litigation
 - *Evidence of validity of copyright and ownership*
 - *Enhanced remedies (attorney's fees & statutory damages)*
- Compelling reason not to register? (Privacy, cost)



Who Has A Copyright Interest

- Author(s)
- Work Made For Hire – Issues of Control
 - *Employee within scope of employment*
 - *Specially ordered/commissions + signed writing*
- Contributor?



Who Has A Copyright Interest (cont.)

- Voluntary Transfers – Sales, Licenses, Collateral, Bequeathed By Will

- *Bundle of rights - in whole or in part*
- *Licenses: Exclusive or non-exclusive*
- *Termination of transfers / reversions*



- Material Object On/In Which Work Is Embodied (& First-Sale Doctrine)



Using Another's Copyrighted Work

- Public Domain vs. Public Sphere
- Licensing
- Copy & paste with “credit”?
- Political speech/elections?



Using Another's Copyrighted Work (cont.)

■ Fair Use

- *Case by case analysis*
- *Criticism, comments, news reporting, teaching*
- *Purpose & character (commercial in nature), amount and substantiality of the portion used, effect upon the potential market for or value of the work*
- *Whether the new work uses the copyrighted material itself for a purpose, or imbues it with a character, different from that for which it was created.*

■ De minimis (insubstantial and trifle – unable to identify the source) ([Madonna](#) 0:56)



Resolving Copyright Disputes

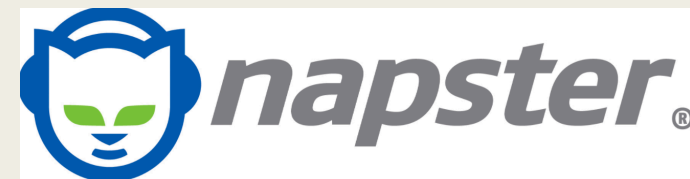
- Privately
 - *DMCA "Take Down"*
 - *Cease & Desist (C&D) Letters*
 - *Negotiation*



Resolving Disputes (cont.)



- Federal Court – Infringement Claims & Declaratory Judgment Actions
 - *Monetary Damages – Actual vs. Statutory; Attorney’s Fees*
 - *Injunctions & Impoundment*
- Standing Issue
- Secondary liability
- Breach of contract vs. copyright infringement
- Small Claims Court (?)



Complex & Nuanced

- General overview
- Competent counsel
- Questions?



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