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Copyright Basics for Non-profit Organizations

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Information adapted from CA³ (Copyright Advice and Assistance for Artists) 2003 presentation

Copyright 101: A Brief Introduction to Copyright Law

[Noah Kanter]

What is Copyright?

- Copyrightable Subject Matter
 - “Copyright protection subsists. . .in original works of authorship fixed in a tangible medium of expression. . .”
 - 17 U.S.C. § 102
- Rights and Protections
 - Protects “expression” only – not underlying “ideas”
 - Control of work
 - “Right to make copies”
 - A bundle of divisible rights
- 6 Rights of ©Owner
 - Reproduce
 - Adapt
 - Distribute
 - Perform publicly
 - Control some aspects of digital transmission
- Protects Expression Not Ideas!!!
 - Does not have to be extremely creative
 - Applies to your expression of an idea no matter how “original” the idea is
 - And usually not more than that
- Selection and Arrangement of Everyday Things – Yes
- MYTH #1: If I haven’t registered by work, I don’t have any copyright protection.
- Registration
 - Has many added protections over unregistered works
 - Gives notice who is author or owner
 - Needed in order to sue for infringement
 - Statutory benefits
 - Evidence of when you created and/or published work
 - Requirement in some countries
- Poor Man’s Copyright
 - Sent in letter to yourself
 - Doesn’t add much
 - May give evidence of date of creation
 - Some things you can’t mail to yourself – or shouldn’t
 - Better to register it’s easy!
- Copyright Notice

- Typically:
 - © or (P), and
 - Date of first publication, and
 - Owner's name
- On work (neat and big enough)
- Not mandatory for works first published after 3/1/89
- Still good idea on all works
- The correct form for a notice is: “© or (P) [date] by [author/owner]” OR “Copyright [dates] by [author/owner]”
- Why Notice is Important
 - Litigation over copyright infringement more feasible if notice placed on work
 - Willful = substantial damages
 - Deters potential infringers
 - Protects in countries that require notice
- Duration of Copyright
 - Generally – life of author + 70 years.
 - Exceptions for older works and works for hire (WMFH)
 - Is controlled by owner but goes by lifetime of author
 - Can sell, will, or give all or some of your rights away (licensing and assignment)
- MYTH #2: “As long as I don't charge for my use of another's work, it is ok to use the work.”
- “Fair Use” Is A Grey Area
 - Unauthorized use of another's copyrighted work
 - Always balancing 4 or more factors to see if “fair”
 - Too much either in quality or quantity is not “fair use”
 - Sometimes hard to tell – very subjective
- Things Protected by Fair Use
 - Parody
 - Criticism and comment
 - News reporting and research
 - Non-profit educational photocopying
 - Sometimes “time shifting” or “space shifting”
- Other Fair Use Issues
 - Can affect damages awarded in court
 - Even if you give it away
 - Serious damages if you hurt the commercial value of the property
 - Exception for personal copying of music, probably not Napster!!!
 - Fair use determinations do sometimes depend on the involvement of money

Works Made for Hire

[Scott Okamoto]

- What is a Work for Hire?
 - Basically, it is a work created for someone else. If your boss tells you to create something, then the company might own it. If you are specially commissioned to create something, then the commissioning party might own it.

- Many types of copyrightable material can be works for hire (more later).
- Implications of WMFH
 - Creator has **no rights** to control the product and is not deemed the “author” of the work (but should still get paid).
 - Duration will be 95 years from publication or 120 years from creation, whichever is earlier.
 - If not a WMFH, then creator can regain the copyright even if assigned “in perpetuity”.
- When is a work “for hire”?
 - Scenario 1
 - Employer – employee
 - Prepared by an employee
 - Hiring party’s right to control
 - Skill required
 - Employee benefits
 - Tax treatment
 - Right to assign additional projects
 - Within the scope of the employment relationship
 - Kind of work the employee is hired to perform
 - Substantially within work hours, space, and resources
 - Actuated by purpose to serve employer
 - Scenario 2
 - Independent contractor
 - Specially ordered or commissioned
 - Within one of nine enumerated works (see next column)
 - With an express agreement to back it up
 - The enumerated 9
 - Collective work
 - Motion picture
 - Translation
 - Supplementary work
 - Compilation
 - Instructional text
 - Test
 - Answer material for test
 - Atlas

Sound Recordings

[Kevin Knapp]

- Dispelling Myths About Compilations
 - Myth #4
 - The compilation of existing songs or the production of DJ mixes does not create a copyright for the individual assembling or mixing them
- Compilation Copyright Examples
 - Underlying work

- Artist: (Omid) 16 B featuring Morel
- Song: Driving to Heaven
- Label: Hooch Choons
- Underlying work as part of a mix or compilations
 - Artist: Global Underground 21 Deep Dish – Moscow
 - Track 1, CD 1 – (Omid) 16 B featuring Morel
 - Song: Driving to Heaven
 - Label: Global underground (attained a separate copyright for Deep Dish’s selection, arrangement, and coordination of tracks)
- Dispelling Myths About Sampling
 - Myth #5
 - You can use a certain amount of another’s work (sample) without the risk of copyright infringement, and the line is generally drawn at 4 bars or up to 30% of someone else’s work
- Infringement Explained
 - To prove infringement one must demonstrate:
 - Ownership of a valid copyright, and
 - Violation of any of the exclusive rights of the copyright owner, which is established by proving the other guy had:
 - Access to the material, and
 - The material is substantially similar to that being infringed
- Fair Use (a defense to infringement)
 - 4 Factors for Establishing Fair Use
 - Purpose and Character of Use
 - Nature of the Copyrighted Work
 - The Substantiality of the Portion Used
 - The Effect of the “Sampler’s” Use upon the Potential Market for the Original Artist’s Copyrighted Work

Copyright and Films - Myths and How Not to Get Jacked [Drew Sherman]

- Basics
 - A Copyright (©) can be obtained in any original script or movie you create
- Film adaptations of TV shows , books, or plays
 - What are we talking about?
 - Do I need permission from the © holder of the TV show, book, or play to make my film?
 - Can I © my film that I adapted from the TV show, book , or play?
- What is an adaptation?
 - Also called a derivative work
 - A variation on an original ©’d work
 - Example: *Chicago* (the musical) was made into *Chicago* (the film)
- Do I need permission to make my adaptation?
 - Yes, adaptations / derivatives are part of the bundle of rights attached to a ©
 - You need permission from **each** of the © owners

- Myth #6: Can I © my film adaptation?
 - Yes, but...
 - Only in the layer of expression that you add
 - Example: MGM has a © in the film The Wizard of Oz, but MGM does not own the © in the script or the book.
- Using another artist's work in your film may be Parody / Fair Use issue
 - Is the parody making a comment on the work or society
 - Is the parody "transformative" – adding new meaning, message, or expression
 - What is the effect on the market for the original © holder
 - Is the parody using no more than is necessary to convey the meaning (amount of copied material)
 - Using actual footage may or may not require consent from the original © holder
- Using ©'d paintings or sculptures in your film
 - Using ©'d paintings or sculptures in your film has been allowed by the courts, so long as the painting / sculpture is not important to the film's meaning
- Original scripts
 - Register your work
 - Put © notices on your scripts
 - Have a lawyer draw up a confidentiality agreement for the studios to sign, before allowing them to look at the script (can be difficult)
- Infringement of Characters
 - Two different tests
 - 1. Have the characters been sufficiently delineated in enough detail?
 - Have the characters been developed throughout the story?
 - Did the second artist copy the development of the characters, and not just their general idea?
 - 2. Story being told test
 - Do the characters being copied facilitate and bring the rest of the original story along?
 - Are the characters being copied main characters, or just secondary to the original story?

Copyright Registration: A How To

[Lisa Rowe]

- Myth #7: Registering your work is expensive and time consuming
 - FALSE! Nothing could be further from the truth
 - The reality of registering your work is that it's cheap and it's easy
 - By completing the forms yourself, you will save additional money in legal fees
- It's cheap to register your work
 - Copyright registration fee is **minimal**
 - \$30 for registration fee
 - \$5 for certified mail, with return receipt
 - Not necessary, but recommended as a way to track your application
 - Copyright office does not issue an acknowledgement of receipt

- It will take about six to eight months before you hear anything from the Copyright Office *unless* there is a problem
- Copyright Forms – www.copyright.gov
- Application form types
 - Literary works
 - Form TX
 - Published non-dramatic literary works
 - Unpublished non-dramatic literary works
 - Excluded periodicals or serial issues
 - Short form TX
 - If you are the only author and © owner; **AND**
 - Work was NOT made for hire; **AND**
 - Work is completely new (i.e., not derivative)
 - Performing Arts
 - Form PA
 - Published or unpublished works of performing arts
 - Short form PA
 - You are the ONLY author; **AND**
 - Work was NOT made for hire; **AND**
 - Work is completely new (i.e., not derivative)
 - Does not contain a substantial amount of material previously published or registered or in the public domain; **AND**
 - Work is NOT a motion picture or other audiovisual work
 - Sound recordings
 - Form SR
 - Published or unpublished sound recordings
 - Can get one registration for BOTH the sound recording and the underlying musical composition:
 - ONLY if the copyright claimant is the same for BOTH the sound recording and musical composition
 - Registration of multimedia kit combining two or more kinds of authorship including a sound recording (e.g., a kit containing a book and an audiocassette)
 - Serial Issues or Periodicals
 - Form SE
 - Works issued or intended to be issued in successive parts
 - Bearing numerical or chronological designations
 - Intended to be continued indefinitely
 - Visual Arts
 - Form VA
 - Published or unpublished works of visual arts
- What must be deposited
 - Two complete copies or phonorecords
 - Best edition of work

- Meaning the “best edition” of a work published in the United States at any time before the date of deposit
- Applies for publication of 2 or more editions
- Generally, the one that is of the highest quality will be considered the “best edition”
- Criterion-by-criterion comparison should be made to determine “best edition”
- Best Edition Criteria
 - Printed textual matter
 - Paper, binding and packaging
 - Rarity
 - Illustrations
 - Special features
 - Size
 - Photographs
 - Size and finish
 - Unmounted rather than mounted
 - Archival-quality rather than less-permanent paper stock or printing process
- Submitting application to copyright office
 - Application
 - 2-sided
 - Deposit of work to be registered
 - Non-returnable
 - Filing fee
 - Non-refundable
 - Check or money order
 - Payable to the Register of Copyrights
 - Mail, via certified mail, return receipt, to:
Library of Congress
Copyright Office
101 Independence Ave., S.E.
Washington, D.C. 20559-6000