

Copyright Law in the Workplace

What is Protected?

Original works of authorship fixed in any tangible medium of expression.

U.S. Constitution art. 1, § 8

17 USC § 102

Examples

- ✍ **Literary works**
 - ✍ Computer programs
- ✍ **Musical works**
- ✍ **Dramatic works, including any accompanying music**
- ✍ **Pantomimes and choreographic works**

- ✍ **Pictorial, graphic, sculptural works**
- ✍ **Motion pictures, other audiovisual works**
- ✍ **Sound recordings**
- ✍ **Architectural works**

Work For Hire

As an employee, all original works created within the scope of employment belong to the employer unless an express agreement otherwise

17 USC § 101

Work For Hire

For work specially hired or commissioned, copyright ownership belongs to the creator unless an express agreement otherwise

17 USC § 101

When does it attach?

- ✍ **Copyright protection attaches automatically when the work is created (17 USC § 302)**
- ✍ **No requirement to register the original work (17 USC § 408)**
- ✍ **No requirement to include copyright notice (17 USC § 401)**

Exclusive Rights

 **Make copies**

 **Distribute copies**

 **Make derivative works**

 **Perform the work publicly**

 **Display the work publicly**

 **17 USC § 106**

**Every commercial use of
copyrighted material is
presumptively an unfair
exploitation**

Sony, 104 S.Ct. 774 (1984)

Not Protected

Ideas

 **Superman v. Greatest American Hero**

Concepts

Procedures

Processes

Facts

 **Baseball Cards v. Premium Cards**

 **Telephone Directories**

Not Protected

U.S Government Works

 **17 USC § 105**

 **Opinion itself not copyright protected, is the arrangement?**

 **West v. LEXIS (8th Cir. 1986)**

799 F.2d 1219

 **Matthew Bender v. West (2nd Cir. 1998)**

158 F.3d 674

State government works

 **Not prohibited by USC, but statutes, opinions, etc. are inherently public domain**

Fair Use Exception

Factors to consider:

- ✍ **Commercial purpose or nonprofit?**
- ✍ **Nature of copyrighted work**
- ✍ **Amount of the work used**
- ✍ **Effect on potential market**

Fair Use Exception Examples:

 **Criticism**

 **Comment**

 **News Reporting**

 **Teaching**

 **Scholarship**

 **Research**

Teaching

- ✍ **Students receive a degree?**
- ✍ **Become qualified or certified?**
- ✍ **Prerequisite for further education in an educational or vocational endeavor?**
- ✍ **Brevity and spontaneity**

Scholarship and Research

Texaco (2nd Cir. 1995)

60 F.3d 913

 **Intermediate commercial use**

 **Manifestly factual character**

 **Each article is an original work**

 **Lost licensing and subscription revenue**

Penalties for Infringement

- ✍ **Any infringement can result in lawsuits by the owner to recover actual damages and lost profits**
- ✍ **Infringement of registered works can result in statutory damages, costs and attorney's fees**
- ✍ **Willful infringement is a federal crime punishable by jail time and fines**

Trademark

- ✍ **A word, phrase, symbol or design**
- ✍ **Identifies and distinguishes the source of goods or services of one party from those of others**
- ✍ **Trademark and service mark**
- ✍ **May use ® if trademark is registered**
- ✍ **Duration can be indefinite, but duty to protect the mark and to prove continued use**

Practical Application

- 1. If it doesn't have a copyright notice, is it protected?**
- 2. If someone infringes a copyright, must the copyright owner sue or else lose the copyright?**
- 3. If I don't charge for it, is it okay?**

Practical Application

- 4. They emailed me a copy, so can I forward that, right?**
- 5. Can I make a copy of a music CD I bought, and can I give a copy to a friend?**
- 6. Can I copy an article and send it to a colleague?**

Practical Application

- 7. Can I include a cartoon in my PowerPoint presentation?**
- 8. Can I copy and paste pictures from the Internet into a presentation?**
- 9. Can I include a recent quote from a respected figure in my presentation?**

Practical Application

- 10. Can I copy a recent case, statute, regulation, etc. and send it to a colleague?**
- 11. Can I print a case off Westlaw and copy it and circulate it?**
- 12. If a journal or magazine contains a relevant article, can I copy that article and place it in a research file for future use?**

Practical Application

- 13. I have only one instruction manual and 4 people using the device, can I copy the manual for each user?**

- 14. I am scheduled to watch a live broadcast of a seminar, can I tape it and watch it later?**

- 15. Can I include a hyperlink in an electronic document?**