

# Introduction to Computer Law

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## How do you protect software?

- Copyrights
- Patents
- Trademarks
- Trade Secrets
- Contract
- Technology (encryption)



## U.S. Constitution, Art. I, § 8

Congress shall have power ... to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries



## What is a Copyright?

Original works fixed in a tangible medium including:

- Musical works
- Dramatic works
- Pantomime and choreographic works
- Pictorial graphics and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works
- Literary works (e.g., software!)



# What is not protected?

Copyright protection does  
NOT extend to:

- Ideas
- Procedures
- Processes
- Systems
- Methods of Operation
- Concepts
- Principles
- Discoveries



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## Protection Afforded by a Copyright

As a general rule, the owner of a copyright has the exclusive right to do and authorize any of the following:

- ***Reproduce the copyrighted work;***
- ***Prepare derivative works*** based on the copyrighted work;
- ***Distribute, sell, rent, or lease*** copies
- ***Perform or display*** the copyrighted work publicly
- ***Grant exclusive and non-exclusive licenses***

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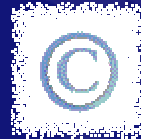
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## How Long Does it Last?

- *Automatically begins at the moment of creation* (when work is fixed onto its medium).
- *Works by independent authors:* protection lasts for the author's life plus 70 years.
- *Corporate works:* protection lasts 95 years from the date of publication or 120 years from creation, whichever is shorter.



## Copyright Notice



- Notice consists of 3 elements:
  - The symbol ©, year of the first publication, and name of the copyright owner
  - Example: © 2001 CopyrightOwner
- Notice is not required for protection.
- Advantages of using Notice
  - Precludes defense of innocent infringement.
  - Best way to disclose the ownership of the copyright.



## Copyright Registration

- Not required to receive protection.
- Registration is required for U.S. citizens and companies in order to bring legal action
- May qualify copyright owner for statutory damages and attorneys fees in infringement actions.



## Copyright Ownership

- **General Rule:** The author is the owner and retains the rights unless he specifically transfers them in writing.
- **Exception:** Works made for hire.
  - if created by an employee in the course of employment; or
  - if the parties specifically agree in writing and the work fits within 1 of 9 statutory categories
- “Work for hire” provision of the law is strictly construed by courts.



# Copyright Infringement

To be successful in a suit for copyright infringement, an owner must prove:

- ***Ownership*** in the work (I.e., a valid copyright);
- The infringer had ***access*** to the work; and
- The accused work is an ***unauthorized reproduction*** of the copyrighted work, ***or*** is ***substantially similar*** to the copyrighted work (ordinary observer test).



# Fair Use

Even if the works are substantially similar, infringement is avoided if the use is deemed to be fair. To determine whether the use was “fair” courts consider 4 factors:

- ***Purpose and character*** of the use
- ***Nature*** of the copyrighted work
- ***Amount and substantiality of the portion used*** in relation to the copyrighted work
- ***Effect of the use*** upon the potential market for, or the value of, the copyrighted work



# Remedies for Infringement

- *Injunction*
- *Actual damages and profits*, which may include: lost sales, license rate, market value, and/or infringer's profits
- *Statutory damages* (if registered w/i 3 months of first publication or before infringing activities),
  - \$750-\$30,000 per use,
  - up to \$100,000 if willful
  - If innocent \$200
- *Attorneys fees and costs* (discretionary)



## Cases

- Feist Publications Inc. v. Rural Telephone Service Co. Inc., 18 USPQ2d 1275 (1991).
- Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240 ( 3rd Cir. 1983).
- Lotus Development Corp. v. Borland Int'l Inc., 49 F.3d 807 (1st Cir. 1995)
- RIAA v. Diamond Multimedia Systems, Inc., 180 F.3d 1072 (9th Cir. 1999)
- Universal City Studios, Inc. v. Remerdes, 111 F.Supp.2d 294 (S.D.N.Y. 2000)
- Sega Enterprises v. Accolade, 977 F.2d 1510 (9th Cir. 1992)
- UMG Recordings, Inc. v. MP3.com, 92 F.Supp.2d 349 (S.D.N.Y. 2000)
- NEC Corp. v. Intel Corp., 10 USPQ2d 1177, 1989 WL 67434 (N.D. Cal. 1989)
- Kelly v. Arriba Soft Corp., 77 F.Supp.2d 1116 (C.D. Cal. 1999)

