



Copyright Basics:

Origins and Scope of Copyright Protection

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Copyright Basics

- **Origins**
- **Subject Matter**
- **Formalities**
- **Exclusive Rights**
- **Infringement**
- **Fair Use**



Origins

- **Royal grants in 16th century England**
 - London Stationers' Company
 - Court of Star Chamber
 - Revenue for the king
 - Author protection secondary
- **1710 Statute of Anne reform**
 - Protection of authors key
 - Limited duration of right established
 - 28 years became standard



Origins

- **Similar laws followed in Europe:**
 - Denmark (1741)
 - France (1793)
- **U.S. Constitution (1789)**
 - Article 1, Section 8:
 - authorizes Congress to create a national copyright system to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors . . . the exclusive Right to their . . . Writings.”
- **1st federal copyright statute (1790)**



Subject Matter

- **What is copyright?**
 - Copyright is a form of protection provided by the laws of the United States (Title 17, U.S. Code) to the authors of “**original works of authorship**”
- **Subject matter that can be protected:**
 - Intellectual works “**fixed in any tangible medium**” (Section 102)
 - Expression of work protected, **not** facts or the underlying idea, process or discovery
 - Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991)



Subject Matter

Covered Works

- Literary works
- Musical works
- Dramatic works
- Pantomimes, choreographic works
- Pictorial, graphic or sculptural works
- Motion pictures Sound recordings
- Architectural works



Formalities

1976 Copyright Act

- Radical departure from 1909 Act
- Registration of copyright no longer required for protection
 - Registration still required to bring suit against infringers
- Publication of work not required for statutory protection
- Copyright protection automatically arises when an original work is fixed in a tangible medium of expression



Formalities

Notices and Treaty Protection

- **Copyright Notice**
 - © 2003 Encyclopaedia Britannica, Inc.
- **Berne Convention Implementation Act (1988)**
 - Protection automatic outside the U.S. without further publication or registration
 - “Moral rights” protect artistic integrity



Formalities

Duration

- Works created AFTER January 1, 1978:
 - Life of author plus 70 years
 - If anonymous or “work for hire”
 - 95 years from first publication or
 - 120 years from creation, whichever expires first
 - After expiration of term, work is in the “public domain”



Formalities

Transfers

- **Assignment**
- **License**
- **Security interest in intellectual property**



Exclusive Rights

Copyright Owner's Bundle of Exclusive Rights

- Reproduce the copyrighted work
- Prepare derivative works
- Distribute copies of the work to the public
- Perform the copyrighted work publicly
- Display the copyrighted work publicly



Infringement

Elements of Proof

- **Ownership of a Valid Copyright**
 - Original, copyrightable & compliance with statutory formalities
- **Copying**
 - Access
 - Substantial Similarity
 - Atari, Inc. v. North American Philips, 672 F.2d 607, 614 (7th Cir. 1982)



Fair Use

Balancing the Factors

- **Purpose and character of the use**
 - Commercial or noncommercial use
 - criticism, comment, scholarship, research, news reporting or teaching
- **Nature of the copyrighted work**
 - Fact laden or creative fiction?
- **Amount and substantiality of the portion used in relation to the copyrighted work as a whole**
 - A snippet vs. wholesale copying
 - “Heart” of the work issue (Harper & Row vs. The Nation 471 U.S. 539 (1985))
- **Effect of the use upon the potential market for the copyrighted work**
 - Often considered most important factor of the four
 - But see Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)



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Stocks

Monday, January 10, 2000 11:46 AM

AOL, Time Warner Merging in Stock Deal

The \$166 billion deal would rank as the biggest corporate merger in U.S. history and raises the stakes in the media industry consolidation.

- **Stock quotes:** [Time Warner](#), [AOL](#)



Talks Winding Down

Israeli Prime Minister Ehud Barak and U.S. Secretary of State Madeleine Albright tour the Civil War battlefiel at Antietam, Maryland, Sunday during a break in Israel-Syria peace talks. Formal negotiations were expected to end today with a dialogue continuing. *Reuters*

Medicare's Future More Stable After Fraud Battle

Spending growth is at lowest level ever as a result of crackdown on deceit. If savings continue, program would stay solvent for years longer than is forecast.

Fewer Troops, More Missions Strain Military

Survey indicates stresses are undermining troops' confidence in leadership and stirring concern over

Today's Times

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Infringement

Dealing with Online Infringers

Los Angeles Times v. Free Republic

54 U.S.P.Q.2d 1453 (C.D. Ca. 2000)

- Religious Technology Center v. Netcom
923 F. Supp. 1231 (N.D. Calif. 1995)
- Harper & Row v. Nation
471 U.S. 539 (1985)
- Hustler v. Moral Majority
796 F. 2d 1148 (9th Cir. 1986)



Infringement

Dealing with Online Infringers

- Demand letter directly to infringing site
- Demand letter to Internet Service Provider
- Copyright office filing
- Digital Millennium Copyright Act prohibits trafficking in any technology that:
 - is primarily designed for circumventing a technological measure that effectively “controls access to” a copyrighted work or “protects a right of a copyright owner”
 - has only limited use other than to circumvent such technological protection measures or
 - is marketed for use in circumventing technological protection measures. 17 U.S.C. §§ 1201(a)(2); 1201(b); RealNetworks v. Streambox, 2000 WL 127311 (W.D. Wash. 2000)



Fair Use

Parody or Infringement?

- Parody as criticism
 - Imitation for humorous or satirical effect
 - Must be valid parody
- 1st Amendment deference
 - Public interest in social commentary
 - Goal of commercial gain may undercut Fair Use defense
- Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)



Fair Use

Parody or Infringement?

Campbell v. Acuff-Rose Music, Inc.

- 2 Live Crew rap song “Pretty Woman” copied parts of “Oh, Pretty Woman” by Roy Orbison
- 2 Live Crew claimed “parody” and Fair Use
- U.S. Supreme Court reversed 6th Circuit
 - Fair Use can exist here, even if the copying was for a commercial purpose

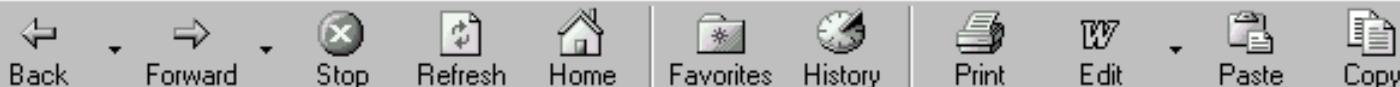


Fair Use

Effect on Market for the Original

- 6th Circuit erred in giving dispositive weight to the commercial goal of the parody
- Opening lyrics and bass riff may have been “heart” of original work,
 - but the more “transformative” the copying work, the less its commercialism matters
- **Unlikely parody will harm market for original**
 - Sun Trust Bank v. Houghton Mifflin Co., 268 F.3d 1257 (11th Cir., 2001) (The Wind Done Gone case)

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Fair Use

Failing the Test

	Favors	Disfavors
Purpose and character of use	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nature of work used	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amount and substantiality of use	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Economic effect of use	<input type="checkbox"/>	<input checked="" type="checkbox"/>



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Officially known as **The Sovereign Democratic Republic of the Fiji Islands**, the Fiji Islands is an independent nation consisting of an archipelago surrounding the **Koro Sea** in the South Pacific Ocean, between longitudes 175° East and 178° West and latitudes 15° and 22° South. It is about 2,100 kilometers north of Auckland, N.Z. It forms part of the Melanesian cultural area. The archipelago consists of some 332 islands scattered over about 3,000,000 square kilometers. Of the 330 islands, about 100 are inhabited. The total land area is 18,333 square kilometers. The capital, **Suva**, is on the southeast coast of the largest island, **Viti Levu** ("Big Fiji"). Fiji includes within its borders **Rotuma**, an island of 18 square miles located about 650 kilometers north-northwest of Suva; Rotuma has a Polynesian population and was administered from the Fiji Islands in colonial times. The 1996 population census recorded 775,077 persons.

- [The Land](#)
- [History](#): Information on the early settlers and discoverers including the happenings of the coup in 1987.
- [The People](#): Details of multicultural Fiji including ethnic and religious information



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