

Copyright: Laws and Implications

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1 Brief History

- Printing press (c. 1439)
 - Copying costs decrease versus authoring costs
 - Requires legal mechanism to ensure people author material, since otherwise copying other people's material becomes more profitable
 - Encourage people to produce works and publish them
 - King James Bible copyrighted (16th century) by the British Crown
- US Constitution & Early Law
 - Article 1, Section 8: "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;" (copyright & patents)
 - Copyright required to be registered with the Library of Congress

2 Copyright Term Length in the USA

| Year Enacted | Term Length | With Renewals | Term after Death | Comments |
|--------------|-------------|---------------|------------------|--|
| 1790 | 14 | 28 | | |
| 1909 | 28 | 56 | | |
| 1976 | 75 | 75 | 50 | 75 years applies to works-for-hire. 50 applies to works with an actual author. |
| 1998 | 95 | 95 | 70 | Called "Sonny Bono Copyright Extension Act" or sometimes "Mickey Mouse Protection Act" |

The Sonny Bono Copyright Extension Act worked as follows:

Before 1 January 1978 95 years of protection

After, works-for-hire, anonymous, pseudonymous 95 years from date of first publication, or 120 years from creation, whichever comes earlier.

After, other (i.e. with a real author) 70 years from death

Note that this changed copyright terms for preexisting works (even if the author had died).

3 Breadth of Copyright

3.1 Statutory Damages

The Copyright Act of 1976 added the concept of “statutory damages”, which allow a copyright holder to sue for damages, even if no revenue was actually lost.

Currently, statutory damages can range from \$200 to \$150,000. The standard range is \$750–30,000. However, if the copyright owner can prove that the infringement was willful, the court can increase to up to \$150,000. Similarly, if the defendant can prove that he or she was not aware and had no reason to believe that he or she was committing copyright infringement, then the court may decrease the damages to \$200.

3.2 Registration

The Copyright Act of 1976 made registration of copyrights optional. However, to sue for statutory damages, the copyright must have been registered at the time of the infringement. Additionally, in order to sue, the copyright must be registered, though the infringement in question may have taken place before registration.

3.3 Fair use

The Copyright Act of 1976 defined the concept of “fair use” (previously, it was part of common law). Copying or distributing copyrighted materials does not constitute copyright infringement if it meets certain criteria. The act specifically mentions “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research”. It also cites factors to be considered before declaring something as “fair use”, including the nature of the original work, the nature and purpose of the copy, how much of the work was copied, and the effect that the copy would have on the original work and its value. It also specifically states that the fact that a work is unpublished does not, by itself, constitute fair use.

3.4 Campbell v. Acuff-Rose Music, Inc.

Roy Orbison, managed by Acuff-Rose Music, Inc., produced a song called “Oh, Pretty Woman”. The members of a band called “2 Live Crew”, led by Luther R. Campbell, produced a parody called “Pretty Woman”. After asking Acuff-Rose Music for a license and being denied, they opted to distribute the song anyway. Acuff-Rose Music sued the band and its record company.

In 1994, the Supreme Court unanimously ruled that the work was a parody and was protected as fair use, even though it was sold for profit. It also distinguished between “parody” and “satire”, with the latter being a more broad genre.

3.5 The Betamax Case (Sony Corp. of America v. Universal City Studios, Inc.)

Universal City Studios, Inc. and the Walt Disney Company sued the Sony Corporation after it developed a VHS format called “Betamax”. The claim was that since the device enables users to infringe on copyright laws, Sony should be held liable. In 1984, the Supreme Court decided, in a 5-4 vote, that:

- Since the device has substantial use beyond that of copyright infringement, it is unfair to prohibit it.
- Personal use of the device to record television broadcast for repeated viewing constitutes fair use.

3.6 MGM Studios, Inc. v. Grokster, Ltd.

MGM Studios, Inc., leading twenty-eight entertainment companies, sued Grokster, Ltd. and Streamcast Networks, Inc. which had developed a peer-to-peer file sharing program called Morpheus. MGM Studios et al. claimed that since Morpheus’ primary purpose was to enable copyright infringement, its creators should be held liable. In 2005, in a unanimous decision, the Supreme Court upheld the claim, and the companies stopped development of Morpheus.

3.7 Digital Millennium Copyright Act (DMCA)

Anti-Circumvention The DMCA attached penalties to producing or using hardware or software that are designed to circumvent Digital Rights Management (DRM) measures.

Safe harbor Providers of online services that don't exercise control over users are protected from copyright infringement claims, as long as they act on take-down notices.