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Definition

Copyright is a type of intellectual property that gives an **originator** the exclusive and assignable legal right, for a **fixed number of years**, to print, publish, perform, film, or record literary, artistic, or musical material.

- Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself.
- Some jurisdictions require "fixing" copyrighted works in a tangible form. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders.
- These rights frequently include reproduction, control over <u>derivative works</u>, distribution, <u>public performance</u>, and <u>moral rights</u> such as attributions
- Copyrights can be granted by public law and are in that case considered "territorial rights". This means that copyrights granted by the law of a certain state, do not extend beyond the territory of that specific jurisdiction.
- Copyrights of this type vary by country; many countries, and sometimes a large group of countries, have made agreements with other countries on procedures applicable when works "cross" national borders or national rights are inconsistent

Concept

- The concept of copyright first developed in England. In reaction to the printing of "scandalous books and pamphlets",
- Passed the Licensing of the Press Act 1662, which required all intended publications to be registered with the government-approved Stationers' Company, giving the Stationers the right to regulate what material could be printed.
- The Statute of Anne, enacted in 1710 in England and Scotland provided the first legislation to protect copyrights (but not authors' rights).
- The Copyright Act of 1814 extended more rights for authors but did not protect British from reprinting in the US.
- The Berne International Copyright Convention of 1886 finally provided protection for authors among the countries who signed the agreement, although the US did not join the Berne Convention until 1989.
 - The Berne Convention for the Protection of Literary and Artistic Works, is an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886
 - The Berne Convention has 179 contracting parties, most of which are parties to the Paris Act of 1971

International copyright treaties

- The 1886 Berne Convention first established recognition of copyrights among sovereign nations, rather than merely bilaterally.
- Under the Berne Convention, copyrights for creative works do not have to be asserted or declared, as they are automatically in force at creation: an author need not "register" or "apply for" a copyright in countries adhering to the Berne Convention
- As soon as a work is "fixed", i,e., written or recorded on some physical medium, its author is automatically entitled to all copyrights in the work, and to any derivative works unless and until the author explicitly disclaims them, or until the copyright expires

- Copyright Act of 1790, modeling it after the Statute of Anne. While the national law protected authors' published works, authority was granted to the states to protect authors' unpublished works.
- The Copyright Act of 1976 is a United States copyright law and remains the primary basis of copyright law in the United States
- The Copyright, Designs and Patents Act 1988 (c 48), also known as the CDPA, is an Act of the Parliament of the United Kingdom that received Royal Assent on 15 November 1988
- United States and most Latin American countries instead entered into the Buenos Aires Convention in 1910, which required a copyright notice on the work (such as all rights reserved), and permitted signatory nations to limit the duration of copyrights to shorter and renewable terms
- The Universal Copyright Convention (UCC), adopted in Geneva, Switzerland, in 1952, is one of the two principal international conventions protecting copyright; the other is the Berne Convention.

- The regulations of the Berne Convention are incorporated into the World Trade Organization's TRIPS agreement (1995), thus giving the Berne Convention effectively nearglobal application
- In 1961, the United International Bureaux for the Protection of Intellectual Property signed the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.
- In 1996, this organization was succeeded by the founding of the World Intellectual Property Organization, which launched the 1996 WIPO Performances and Phonograms Treaty and the 2002 WIPO Copyright Treaty, which enacted greater restrictions on the use of technology to copy works in the nations that ratified it.
- Trans-Pacific Partnership includes intellectual Property Provisions relating to copyright.
- The Trans-Pacific Partnership (TPP), or Trans-Pacific Partnership Agreement, was a highly contested proposed trade agreement between 12 Pacific Rim economies, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States.

- Copyright laws allow products of creative human activities, such as literary and artistic production, to be preferentially exploited and thus incentivized.
- Copyright has developed into a concept that has a significant effect on nearly every modern industry, including not just literary work, but also forms of creative work such as sound recordings, films, photographs, software, and architecture

THE COPYRIGHT ACT, 1957 ACT NO. 14 OF 1957

- The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses.
- There is no copyright protection for ideas, procedures, methods of operation or mathematical concepts as such
- Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirements of encouraging the same

Section 14 of the act defines copyright as:

- 1. In case of literary, dramatic or musical work:
 - a) Reproducing the work in any material form which includes storing of it in any medium by electronic means,
 - b) Issuing copies of the work to the public which are not already in circulation,
 - c) Performing the work in public or communicating it to the public,
 - d) Making any cinematograph film or sound recording in the respect of work,
 - e) Making any translation or adaptation of the work.

- 2. In case of a computer programme:
 - a) To do any of the acts specified in respect of a literary, dramatic or musical works,
 - b) To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme.
 - Example: A programmer automatically owns the copyright of any program they write (it does not need to be applied for) and it lasts until 70 years after the death of the author.

- 3. In the case of artistic works:
 - a) To reproduce the work in any material from including storing of it in any medium by electronic or other means, depiction in three dimensions of a two dimensional work and depiction in two dimensions of a three dimensional work,
 - b) Communicating the work to the public,
 - c) Issuing copies of work to the public which are not already in existence,
 - d) Including work in any cinematograph films,
 - e) Making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

Adaption in each category shall be explained*

- 4. In the case of cinematograph film:
 - a) To make a copy of the film, including photograph of any image forming part thereof or storing of it in any medium by electronic means or otherwise.
 - b) To sell or give on commercial rental or offer for sale or for such rental, any copy of the film,
 - c) To **communicate** the film to the public.

- 5. In the case of sound recording:
 - a) To make any other sound recording embodying it "including storing of it in any medium by electronic or other means,
 - b) To sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording,
 - c) To communicate the sound recording to the public.

AUTHORSHIP AND OWNERSHIP

Copyright protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings.

Works	Author
Literary or dramatic work	Creator of work
Musical Work	Composer
Cinematograph Film	Producer
Sound Recording	Producer
Photograph	Photographer
Computer Generated Work	Person who causes the work to be created

https://copyright.gov.in/documents/handbook.html

Exercise

- A professor is teaching an online Survey of Music course surveying representative compositions, the goal of the course is to supply students with analytical and critical tools to develop a historically informed appreciation of music. Instead of using a standard textbook, Professor has posted online lesson narratives to Brightspace and plans to use the university's streaming media server to provide students with access to the assigned music.
- A Professor heads to the library to discuss whether or not it is okay to stream the full-length recordings of the compositions she has selected for the course. She presents three of her choices to the music librarian:
- Wolfgang Amadeus Mozart (1756-1791) Piano Concerto No. 21 in C Major (K.467), performed by Murray Perahia and the Chamber Orchestra of Europe, recorded in 1991
- Ludwig von Beethoven (1770-1827) Piano Sonata No. 32 in C minor (Op.111), performed by Claudio Arrau, recorded some time in the 1960s
- John Cage (1912-1992) In a Landscape, performed by Stephen Drury, recorded in 1993-1994.
- The streamed recordings will be available to students through learning portal for the duration of the semester only. Only students registered for the course will be able to access the recordings, and students will not be able to download or copy them. Is this fair use?

Term of Copyright

- Literary, dramatic, musical or artistic works enjoy protection for the life time of the author plus 60 years beyond i.e. 60 years after his death.
- In case of joint authorship which implies collaboration of two or more authors in the production of work, the term of copyright is to be construed as a reference to the author who dies at last.
- In case of copyright of posthumous, anonymous and pseudonymous works, cinematograph films, sound recordings, works of Government, public undertakings and international organization, the term of protection is 60 years from the beginning of the calendar year next following the year in the work has been first published.
- The act has given broadcasting reproduction right to every broadcaster which is valid for 25 years from the beginning of the calendar year next following the year in the broadcast has been done.

Copyright Board

- Section 11 of the act provides for the establishment of the Copyright Board and empowers Central Government to constitute the same consisting of Chairman and 2 other members.
- It has many important functions, such as:
 - Settlement of disputes,
 - Granting of licenses, etc

Copyright Licenses

- Copyright Licenses: Chapter VI containing Sections 30-32B deals with Licenses.
- Licenses by Owners of Copyright:
 - Section 30 of the act empowers the owner of the copyright in any existing work or the prospective owner of the copyright in any future work to grant any interest in the right by license in writing by him or by his duly authorized agent.
 - However, in the case of a license relating to copyright in any future work, the license shall take effect only when the work comes into existence.

Explanation.— Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

Compulsory License withheld from public:

Section 31 provides that of at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work has refused to republish or allow the reproduction of the work or has refused to allow the performance in public of the work and by reason of such refusal the work is withheld from the public or has refused to allow communication to the public by broadcast of such work or recording, on terms which the complainant considers reasonable, the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyright to grant to the complainant the license to republish the work.

- Statutory License for broadcasting of literary and musical work and sound recording
 - Section 31D provides that any broadcasting organization desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the fulfilment of prescribed conditions.

Termination of License:

- Section 32B of the act deals with termination of licenses and provides that if any time after the granting of a license, the owner of the copyright in the work or any person authorized by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the license so granted shall be terminated.
- Other Licenses can be by way of License in unpublished or published works, benefit of disabled, etc

Power to extend copyright to foreign works

- The Central Government may, by order publishe in the Official Gazette, direct that all or any provisions of this Act shall apply—
 - (a) to works first published in any territory outside India to which the order relates in like manner as if they were first published within India;
 - (b) to unpublished works, or any class thereof, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of India;
 - (c) in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India;
 - (d) to any work of which the author was at the date of the first publication thereof, or, in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of India at that date or time

copyright infringement

- copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner
- Section 51 defines infringement of copyright and states that a person infringes copyright of another if he unauthorizedly commits any act which only the copyright folder has exclusive rights to do.
- Civil remedies to copyright infringements are provided in chapter XII of Copyright Act, 1957 granting injunction and damages for copyright infringement and criminal liability provisions are provided in chapter XII of Copyright Act, 1957 wherein abetment of infringement is also unlawful and punishable with imprisonment of upto three years and a fine up to Rs. 2 Lacs

Example

- A person who knowingly uses the **infringing copies of Computer software** commits a criminal offence punishable with imprisonment for not for not less than seven days extendable up to three years and a fine not less than Rs. 50,000/- which may extend to Rs. 2 Lacs.
- Section 62 of the Copyright Act, 1957 entitles a Plaintiff to file for a suit for injunction against infringements within District Court of the jurisdiction where Plaintiff resides or carries on business or works for gain.
- Indian Courts have accepted petitions against unknown Defendants or persons identifiable through their IP Addresses in internet law related litigation. Popularly known as John Doe order in the US Courts, India had adopted the principal of accepting petitions against unknown persons in defamation cases or Intellectual property infringements including cases relating to software piracy.
- This is a positive legal enforcement strategy adopted by Indian Courts to resolve internet related litigation where defendants cannot be identified at stage of filing of the position.

Software Copyright Infringement

- When you run a program on a computer it is often impossible to avoid copying some of the code as there is normally some automatic copying of the program that takes place within the computer's memory in order to enable the software to function.
- Also uniquely with software, copyright is not only infringed by taking a direct copy of the original work, but also by adapting versions of the original.
- Example, if the code (source code or compiled code) is re-written or otherwise converted into another computer language, this is also deemed an infringement of software copyright law as it is a 'derivative' work, and an appropriate licence is required to do this.
- Software copyright can also be infringed without even taking a copy of the code
- For example, using an **original computer program** for "inspiration", to create the same **functionality in a new program**. Even if **none of the original code** is actually used, **the copyright in the original program may in some cases be infringed**

copyright software

- Software copyright is predominantly used by software developers and proprietary software owners to prevent unauthorized copying of their software.
- The copyright holder is typically the work's creator, or a publisher or other business to whom copyright has been assigned.
- Copyright holders routinely invoke legal and technological measures to prevent and penalize copyright infringement (more commonly referred to as piracy) where works protected by copyright law are used without permission.
- For works such as software and web applications, the source code is primarily where copyright exists and a copyright notice should be inserted in the headers of all source code files, help files, user manuals and/or 'about this software' pages, to make the assertion of copyright explicit.

- Where there is no direct copying of code, line-for-line, it can be difficult to prove that copying has actually occurred.
- One way of trying to make copying easier to detect is to include redundant code or program components in among the real code.
- If an alleged copy includes the same redundant program components, even if they are not line-for-line copies, it can provide a very strong inference that copying has occurred.
- Independent software vendors should be very careful about disclosing source code. If someone can independently create from scratch what you have produced, just by looking at your source code, providing that the code is substantively different then your software copyright has not been infringed

- The modification of your copyrighted software for personal use may also be deemed acceptable under the caveat of 'fair use' and also code breaking and reverse engineering when a 'legitimate reason' can be provided for doing so.
- However, ultimately any unauthorized use of the software is deemed to be piracy or theft, in recognition of the commercial harm of infringement of copyright holders.
- Software copyright can be difficult to enforce. However, using an identitybased licensing solution will ensure that you always know who your end-users are.
- Identity-based licensing is a software licensing solution is a solution that allows companies that write, publish and sell software applications to easily issue, manage and revoke the licenses that they provide to their customers.
- https://indiankanoon.org/doc/60862176/

Copyright infringement cases

Rogers vs. Koons





Copyright infringement cases

Case

Photographer Art Rogers shot a photograph of a couple holding a line of puppies in a row and søld it for use in greeting cards and similar products. Internationally, renowned artist Jeff Koons in the process of creating an exhibit on the banality of everyday items, ran across Rogers' photograph and used it to create a set of statues based on the image. sold several of these

Outcome

The court found the similarities between the 2 images too close, and that a "typical person" would be able to recognize the copy.

Koon's defense was rejected under the argument that he could have used a more generic source to make the same statement — without copying Rogers' work.

Koons was forced to pay a monetary settlement to Rogers.

Significance

This is one of those famous cases that encompassed a larger issue in the art world, the issue of appropriation art. Can you build upon another's work to create your own original piece? And if you do so, does that constitute derivative work? It also brought up the issue of photography as art, was photography just a documentation of the world, or is it a creative and artistic product? Neither of these issues was entirely answered by the case, of course, but it has also become a reference used in many cases afterward. You can parallel this with vector-tracing a photograph for your design. Are you creating a derivative work that subtracts value from the original artist?

The Associated Press vs. Fairey





Case

Famous street artist Shephard Fairey created the Hope poster during President Obama's first run for presidential election in **2008.** The design rapidly became a symbol for Obama's campaign, technically independent of the campaign but with its approval. In January 2009, the photograph on which Fairey allegedly based the design was revealed by the **Associated Press as one shot by** AP freelancer Mannie Garcia with the AP demanding compensation for its use in Fairey's work. Fairey responded with the defense of fair use, claiming his work didn't reduce the value of the original photograph.

Outcome

The artist and the AP press came to a private settlement in January 2011, part of which included a split in the profits for the work.

Significance

Though there wasn't a court case and an actual verdict, this case created a lot of discourse around the value of work in these copyright battles. It's unlikely that Garcia's work could have ever reached the level of fame it did, if not for Fairey's poster. Garcia himself stated he was "so proud of the photograph and that Fairey did what he did artistically with it, and the effect it has had," but still had a problem with the fact that Fairey took the image without permission and without credit for it's originator. Credit, credit! On 99designs you cannot use licensed work — but in the right circumstances you can use stock imagery. When doing so, make sure everyone knows the source.

Vanilla Ice vs. David Bowie/Freddie Mercury

Case

Vanilla Ice had a hit, in 1991, with Ice Ice Baby — it sampled but did not credit the song Under Pressure by David Bowie and Queen. Though at first denying it, Vanilla Ice later retracted the statement saying it was "a joke". Facing a lawsuit by the duo, Vanilla Ice 'fessed to sampling the work.

Outcome

The case was settled privately out of court with Ice paying an undeclared sum of money and crediting Bowie/Queen on the track.

Significance

There's really not a ton of meaning directly related to design with this one (except for, don't use other people's creative work!). But I couldn't resist adding it. This is one of the most hilarious copyright cases ever.

Modern Dog Design vs. Target Corporation





Case

Seattle design firm Modern Dog utilized a series of sketches of dogs in their compendium put out by Chronicle Books in 2008. The firm alleges that illustrations from that design have been used in a T-shirt produced by Disney/Target for sale, and filed a lawsuit in 2011.

Outcome

TBD. There hasn't been a decision yet in this case but Modern Dog has been campaigning online pretty heavily for publicity and funds to help with its legal fees over the issue.

Significance

The Modern Dog case has brought to light a question burning in the mind of many designers and artists — what happens if a major corporation with many more resources than me, utilizes my artwork for profit? Modern Dog was recently forced to sell their studio to cover the legal costs associated with this battle, so it's turning into a very extreme situation for them. We'll have to keep an eye out for how this progressed and continues to change the conversation around this issue.

Always defend your designs.

Regardless of who you're going up against — if you think your design is in the right, then make it known.

