

# Intellectual Property

INFO 200

Part I



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## Intellectual Property 1

agenda

- ♦ what do you create?
- ♦ basics of intellectual property
- ♦ copyright

who owns this picture?/why might it be hard to say?



what do you create?

## US Constitution, Article I, Section 8 (excerpt)

The Congress shall have Power...

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

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;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

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## protecting intellectual property: common justifications

**Lockean:** We want those who put lots of work into developing something new or innovative to **benefit economically** from their labor

**Moral/Personal:** We want those who create new or innovative things to be able to **control** how their work (the products of their own talents, feelings, experiences) is used and displayed

**Utilitarian:** We want those who create new or innovative things to share their creations so that **everyone can benefit from them in the long run**, moreover if those who incur no costs can reproduce intellectual effort, the system can't work

## And yet...

Some bands give their music away for free

Bloggers give away their writing for free; ditto vloggers, etc.

Software developers contribute to free and open-source efforts

Authors deposit scholarly articles in institutional repositories and publish in open-source journals

**Why?**

And what other mechanisms might encourage and support creative expression besides temporary monopolies?

## US Copyrights ©

protect **expressions, not ideas**

literary, musical, dramatic, choreographic, pictorial, graphical, sculptural, audiovisual, film, architectural, computer software works are covered

*not:* domain names, names/titles, short phrases, expressions, slogans, logos, website (cf. contents), methods or systems, commonly known information, fashion (patterns of fabric but not items themselves)

*also not:* materials not creative enough, works explicitly placed in the public domain, works created by Federal government (not necessarily state, local)

fixed in a **tangible medium of expression**

vests **in the moment of creation**...thus...

*you are all creators, and copyright holders*

## US Copyrights ©

grants 5 exclusive rights, which can be kept, sold, licensed, bequeathed, etc

- reproduction (copying, printing, duplicating)
- adaptation (incl. translation, etc, "**derivative works**")
- distribution
- display
- performance

© mark no longer required, but can be registered, requires deposit of 2 copies to Library of Congress

subject to certain restrictions: limited duration, first sale, fair use, parody

## Second Circuit Declines to Decide if Human Skin Can Be a Tangible Medium of Expression under Copyright Law and Affirms Dismissal of Makeup Artist's Lawsuit



By Susan Neuberger Weller, Paul S. Brockland

In a **recent decision** from the Second Circuit, Judges Parker, Chin, and Carney side-stepped a novel question: whether human skin can be the kind of "tangible medium of expression" required for copyright protection. Instead, the court held that a photograph of a makeup artist's application of a makeup design to a human "fixed" the design for purposes of copyright law and affirmed the district court's dismissal of the appellant Mourabit's unjust enrichment and unfair competition/misappropriation claims as preempted by the Copyright Act.

The New York Times

## Statue of Liberty Stamp Mistake to Cost Postal Service \$3.5 Million



When the post office chose the image for the stamp, it believed it showed the real Statue of Liberty. United States Postal Service, via Associated Press





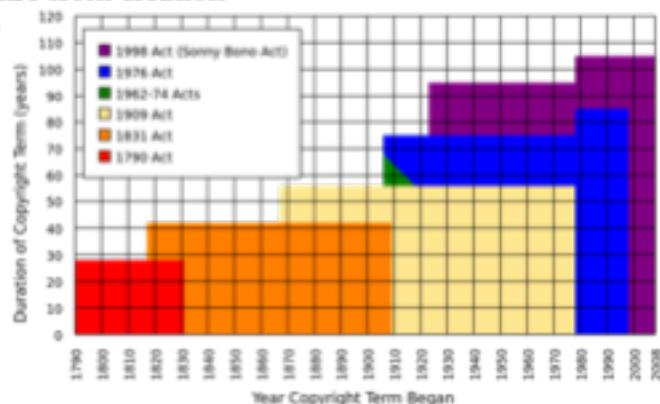
## restriction: limited duration

sort of

originally 28 years

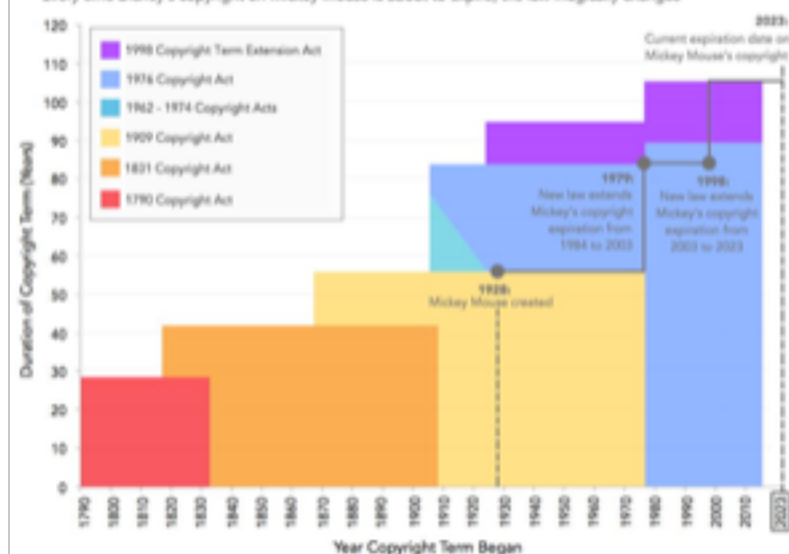
now **life of author + 70 years**; work for hire is **95 years** from publication or **120** from creation

why lengthening?



## Mickey Mouse's Effect on U.S. Copyright Law

Every time Disney's copyright on Mickey Mouse is about to expire, the law magically changes



Congressman

Oscar™ winner



## restriction: doctrine of first sale

permits the purchaser of a legal copy of a copyrighted work to treat that copy in any way desired, as long as the copyright owner's exclusive copyright rights are not infringed. This means the copy can be destroyed, sold, given away, or rented. (nolo.com)

permits video rentals, library loans, etc

applies only to that specific copy, not the rights to underlying work

As a result of lobbying by the computer and music industries, the rental of computer programs and sound recordings (except audiobooks) is prohibited.

It is also not permissible under the first-sale doctrine to destroy a fine art or photographic work that meets the requirements of the Visual Artists Rights Act (for example, signed and numbered photographs created in limited editions of 200 or fewer copies).

## restriction: doctrine of fair use

for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect upon the potential market for or value of the copyrighted work. (WSU)

*no simple test or guidance; a balancing of these factors case-by-case*

## Digital Millennium Copyright Act (DMCA) 1998

Prohibits the “circumvention” of any effective “technological protection measure” (e.g., a password or form of encryption) used by a copyright holder to restrict access to its material

Prohibits the manufacture of any device, or the offering of any service, primarily designed to defeat an effective “technological protection measure”. (American Library Association)

*even if fair use*

**the result of all of this:** works more or less permanently tethered to increasingly corporate sources, works that could never be free

## alternatives: Creative Commons

“Creative Commons helps you legally share your knowledge and creativity to build a more equitable, accessible, and innovative world. We unlock the full potential of the internet to drive a new era of development, growth and productivity.”

“Use Creative Commons tools to help share your work. Our free, easy-to-use copyright licenses provide a simple, standardized way to give you permission to share and use your creative work— on conditions of your choice”



## alternatives: Creative Commons

A screenshot of the Creative Commons website showing the process of selecting a license. The 'Selected License' is 'Attribution 4.0 International'. The interface includes sections for 'License Features' (allowing adaptations and commercial use), 'Help others attribute you!' (with fields for work title, name, URL, and format), and 'Have a web page?' (with a code snippet for embedding the license). The 'CC BY' logo is prominently displayed.

## alternatives: copyleft



licenses that allow derivative works but require them to use the same license as the original work.

For example, if you write some software and release it under the GNU General Public License (a widely-used copyleft license), and then someone else modifies that software and distributes their modified version, the modified version must be licensed under the GNU GPL too — including any new code written specifically to go into the modified version. ([opensource.org](https://opensource.org/))

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