

Legal Issues in Computer Science

General Principles in Copyright Law

Copyright Law

- The Statute of Anne (1710): «An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.»
- U.S. CONST. art. I, Sec. 8, cl. 8 «The 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.»

Copyright Law

- Copyright Scope:
 - Encourage learning
 - Promote the progress of sciences and arts
 - Dissemination of knowledge

Copyright Law

- The scope is achieved by:
 - Securing to the Authors an exclusive right:
 - Right to exclude others
 - Limited Times

Copyright Law

- Compatibility between the scope and the means:
 - Importance of the limits to the right to exclude
- Limits of the exclusive right:
 - Extension:
 - Originality
 - Expression/Ideas Dichotomy
 - Fair Uses
 - First Sale Doctrine
 - Duration

Copyright Law: Right to Exclude

- Object of the right:
 - Art 2 Berne Convention (“Protected Works”):
 - «(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.»

Copyright Law: Right to Exclude

- Object of the right:
 - § 102 (a) Title 17 U.S. Code:
 - «Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.»

Copyright Law: Originality

- U.S.:
 - U.S. CONST. art. I, Sec. 8, cl. 8:
 - «The 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.»
 - Authorship -> Originality (see Feist Publications, Inc. v. Rural Telephone Service Co., 499 u.s. 340 (1991))
 - § 102 (a) Title 17 U.S. Code:
 - «Copyright protection subsists, in accordance with this title, in *original* works of authorship fixed in any tangible medium of expression...» (Introduced by Copyright Act of 1976)

Copyright Law: Originality

- U.S.:
 - Feist Publications, Inc. v. Rural Telephone Service Co., 499 u.s. 340 (1991) and the protection of compilation of non-original facts

Copyright Law: Originality

- Italy:
 - Art. 1 Legge 633/1941 (Italian Copyright Law):
 - «Sono protette ai sensi di questa legge le opere dell'ingegno di ***carattere creativo*** che appartengono alla letteratura, alla musica, alle arti figurative, all'architettura, al teatro ed alla cinematografia, qualunque ne sia il modo o la forma di espressione.»
 - Creative character: originality, creativity and novelty

Copyright Law: Expression/Idea Dichotomy

- Expression/Idea Dichotomy:
 - Art 2 WIPO Copyright Treaty: «Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.»
 - § 102 (b) Title 17 U.S. Code: «In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.»

Copyright Law: Fair Use

- § 107 Title 17 U.S.C. “Limitations on exclusive rights: Fair use”:
 - Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, 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 of the use upon the potential market for or value of the copyrighted work.

Copyright Law: Fair Use

- Italy: see artt 65 ff. Copyright Law: specific exceptions and not a general clause

Copyright Law: First Sale Doctrine

- § 109 Title 17 U.S.C. “Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord”:
 - (a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.
- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, art. 4 c):
 - «The first sale in the Community of a copy of a program by the right holder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.»

Copyright Law: Duration

- Statute of Anne – 1710: 14 years (+ 14)
- U.S. Copyright Act 1790: 14 years
- Berne Convention art. 7: author's life + 50 years
- Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights: author's life + 70 years
- Sonny Bono Copyright Extension Act of 1998: author's life + 70 years
- See Eldred vs. Ashcroft