



3

Copyright Basics

Figure 3.1 (credit: modification of work “Copyright symbol under magnifying glass” by Marco Verch/flickr.com, CC BY 2.0)

Chapter Outline

- [**3.1** The Basics of Copyright](#)
- [**3.2** Early Copyright Systems](#)
- [**3.3** Copyright in America](#)
- [**3.4** Eligible Works](#)
- [**3.5** Rights and Term](#)
- [**3.6** Infringement and Remedies](#)
- [**3.7** The Fair Use Defense](#)
- [**3.8** Changes in Copyright Law](#)
- [**3.9** New Technology Challenges to Copyright](#)
- [**3.10** Alternative Forms of Copyright](#)
- [**3.11** Copyright in a Changing World](#)



Introduction

3.1 The Basics of Copyright



Figure 3.2 (credit: Wikimedia Commons / CC BY-SA 3.0)

Learning Objectives

After completing this section, you will be able to

- Understand the theoretical and legal underpinnings of copyright.
- Appreciate the important differences between copyrights and patents.

A copyright is an intellectual property right granted by a government to the author of an original literary, dramatic, musical, artistic, or other eligible creative work that gives them the exclusive right to control how the work is published, reproduced, performed, or displayed—as well as whether or not derivative works (e.g., a movie version of a novel) may be produced.

In the United States, the legal foundation for copyright is set forth, along with that for patents, in Article 1, Section 8, Clause 8 of the U.S. Constitution. This clause gives Congress the authority 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.”ⁱ

Congress and the courts have interpreted the terms “authors” and “writings” very broadly so as to include the creators of a wide variety of artistic and intellectual works. Title 17 of the United States Code authorizes the grant of a copyright to the authors of “original works of authorship”—including literary works, dramatic works, choreographic works, graphic works, audiovisual works, sound recordings, and architectural works. In most cases, a copyright lasts for the life of the author plus 70 years.

How to Obtain a Copyright

In America, the copyright system is administered by the U.S. Copyright Office, which is part of the Library of

ⁱ U.S. Constitution Art. 1, § 8

Congress and maintains a registry of copyrighted works. Interestingly, registration is not required to obtain a copyright. It is automatically granted to an author at the moment of creation—i.e., as soon as the work is expressed in a tangible form that allows it to be seen or copied, such as being written on paper or on a computer, or recorded as video or audio. Registration is only required if a copyright holder wants to initiate a copyright infringement suit in federal court.

Copyrights vs. Patents

Unlike the case with patents, the United States never developed an examination system for determining whether or not a creative work merits copyright protection. That's because while the validity of an invention can be evaluated fairly objectively based on its utility, novelty, and non-obviousness, the merit of any cultural work is a far more subjective affair, as demonstrated by the frequency with which publishers reject novels that later go on to become literary classics.

What the patent and copyright systems share, however, is the recognition that unless the inherent property rights of inventors and authors to their creations are protected, the wellsprings of creation and productivity would be negatively affected by the reduced incentive. Both systems also share the public policy goal of marshaling the benefits of individual creativity—whether technological, as in the case of inventions, or cultural, as in literary works—to the public good so that these promote the progress of the nation and the “general welfare” of its citizens.

How to promote that general welfare, however, was approached very differently by the Founders in the case of patents than it was with copyright.



Figure 3.3 A portrait of Supreme Court Justice Henry Baldwin. (credit: modification of work by Wikimedia Commons / Public Domain)

The explicit intention of patent law, explained Supreme Court Justice Henry Baldwin in [*Whitney v. Emmett*](https://openstax.org/l/Whitney_v_Emmett) (https://openstax.org/l/Whitney_v_Emmett) (1831), was “to benefit the inventor, in the belief that maximizing individual welfare leads to maximum social welfare.” Inventors, after all, created tools that enabled the new nation to free itself from dependency on foreign imports and develop industries of its own. Whatever incentives were needed to prod these technologically creative people to take on the challenge and succeed were well worth the bargain (see Chapter 1).

The Rights of Authors and the Public Interest

When it came to copyright, however, the rights of authors were thought to conflict with those of the public to a far greater extent. “Democratic values emphasized equal and widespread access to learning and the importance of information flows for maintaining political freedom, whereas strong copyrights impinged on the fullest attainment of these objectives,” notes Bowdoin College historian Zorina Khan, author of *The Democratization of Invention: Patents and Copyright in American Economic Development*, which won the Alice Hanson Jones prize for outstanding work in economic history in 2005.ⁱⁱ

As an example, a copyright owner’s right to prevent unauthorized use of their work may at times be constrained by the public’s First Amendment right of free speech—hence the doctrine of “fair use” (more on this later).

It was believed that a strategy of strong patent rights but weaker copyrights also better reflected the differing incentives that motivated inventors and authors. Inventors, many felt, were driven primarily by economic gain, whereas authors were often interested as much in the prospect of celebrity and reputation as they were in monetary reward.

Supreme Court Justice John McLean emphasized that this distinction between patents and copyrights exists in the structure of U.S. intellectual property law itself. In *Wheaton v. Peters (1834)* (https://openstax.org/l/Wheaton_v_Peters), the first high court ruling on copyright, he wrote:

“It has been argued at the bar that as the promotion of the progress of science and the useful arts is here united in the same clause in the Constitution, the rights of authors and inventors were considered as standing on the same footing. But this, I think, is a non-sequitur ... for when Congress came to execute this power by legislation, the subjects are kept distinct and very different provisions are made respecting them.”ⁱⁱⁱ

To understand why the Founders gave greater weight to the public domain in copyright law than they did in patent law, it’s important to examine the origin and development of early copyright systems and their political and economic impact on society.

3.2 Early Copyright Systems

Learning Objectives

After completing this section, you will be able to

- Understand the role early copyright systems played in enforcing monopolies.
- Appreciate the degree to which authors’ rights were ignored at that time.

As was the case with patents, the granting of book privileges (now called copyrights) began in the Republic of Venice in the fifteenth century. Prior to that, printed books were considered part of the public domain and anyone could copy or reproduce them. But in 1492—the same year Columbus sailed the Santa Maria to the New World—a Milanese author named Donatus Bossius petitioned the sixth duke of Milan, Gian Galeazzo Sforza, for an exclusive privilege for his book, arguing that without such a privilege he would be unjustly deprived of the fruit of his effort. He was granted a ten-year privilege, and the practice soon spread throughout Europe.

The French copyright system was introduced in 1498. Exclusive rights to not only books but also translations, maps, type designs, engravings, and artwork were granted by the monarch for periods initially ranging from

ⁱⁱ B. Zorina Khan, *The Democratization of Invention: Patents and Copyrights in American Economic Development*, 1790–1920, Cambridge University Press, 2005.

ⁱⁱⁱ *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834) Retrieved from <http://supreme.justia.com/cases/federal/us/33/591/case.html> courtesy of B. Zorina Khan.

two to ten years. There were stipulations attached to such grants, sometimes including even price controls on the published works.

It is important to realize, however, that authorship was not required for the granting of early copyrights. In fact, the early copyright systems of Europe more often than not enabled printers and publishers to establish quite effective monopolies over the commerce in books, the arts, and other cultural works that limited the diffusion of culture in society. The owners of such privileges may have waxed poetic about "droit d'auteur" (authors' rights), but this was often just a way of deflecting public criticism of their monopolistic power and superprofits.

Indeed, this was most glaringly revealed in the grant of exclusive privileges to French opera. According to a 1929 book by Henry Prunières,^{iv} Louis XIV in 1669 granted a perpetual monopoly over all operatic performances in France to Jean-Baptiste Lully, the director of the Paris Opera. Lully also gained sole publication rights to opera librettos, and sold shares in the rights to printers. He then used his copyright privilege to limit the number of musicians who could perform outside the Paris Opera and to suppress competitors like the Comédie Francaise. In the end, Lully became fabulously rich and bequeathed his monopoly rights to his heirs.

Not exactly your starving artist asking merely to enjoy the fruits of his work.

Early copyright systems also quickly evolved into means of censorship and surveillance of the population's reading habits. The 1566 Edict of Moulins in France, for example, required that any new book had to be approved and licensed by the Crown. Manuscripts first had to be read and approved by a censor before a permit was granted to print a book. The permit could be revoked if officials or influential citizens later complained about the book's content.



Figure 3.4 The Marble Court. Versailles Palace, France. (credit: photograph by Kimberly Vardeman via flickr / CC BY 2.0)

Interestingly, a decree in 1777 enabled authors who did not sell off their rights to gain a copyright in

iv Henry Prunières, "*La vie illustre et libertine de Jean-Baptiste Lully*," Librairie Plon, Paris, 1929, courtesy of B. Zorina Khan.

perpetuity. But like the A.J. Liebling quote about freedom of the press belonging only to those with enough wealth to own one, so, too, were authors' inalienable rights often just a lofty theory trumped by harsh economic reality. Because few authors had the capital required to print a book, they usually sold off their "exclusive rights" to commercial publishers.

Much the same situation prevailed in the English copyright system, where copyright law began as a monopoly grant to benefit favored guilds and as a means to censor public opinion on behalf of the Crown.

The Statute of Anne

In 1557, the Worshipful Company of Stationers was granted a royal privilege that enabled it to control the book trade for the next 150 years. Only in 1709 did a new copyright statute, the **Statute of Anne**, begin to erode the monopolistic power of the Stationers Company. It stipulated that a copyright could be obtained by anyone, and instead of a perpetual right, the term was limited to 14 years with the right to renew for one additional 14-year term. According to Professor John Feather of Loughborough University in Britain, the statute "wholly ignored the authors of books, and certainly was not intended to confer any additional rights on them."^v

Assessing early European copyright systems as a whole, Zorina Khan observes that they "resulted in 'odious monopolies,' higher prices and greater scarcity, large transfers [of money] to officials of the Crown and their allies, and pervasive censorship [while it also] disadvantaged smaller book producers, provincial publishers, and the academic and broader community."^{vi}

It wasn't until 1774 in England, in the landmark case *Donaldson v. Beckett*, that a court ruled that authors have a fundamental right to their writings—at least until publication, after which the Statute of Anne still gave the rights to the publishers. The immediate claim in the case was whether Scottish bookseller Alexander Donaldson had acted as a pirate when he published an edition of James Thomson's *The Seasons*, a work for which Thomas Beckett and other London booksellers claimed the copyright. But the larger principle at issue was whether copyright was a limited right granted by government under the Statute of Anne, or a common law right of publishers that existed in perpetuity despite the limitations of the statute.

The case would prove pivotal in deciding not only the future of publishing, but also of authors, in whose name the London publishers claimed to be acting. The court took the claim of authors' rights further than the publishers ever intended, however. It reaffirmed the limited statutory nature of copyright and also recognized that authors—with the decline of patronage, authors were only then emerging as independent professionals writing for a mass market of book buyers—were the true originators and proprietors of the product of their own creative labors.

^v John Feather, "Publishing, Piracy, and Politics: An Historical Study of Copyright in Britain," Mansell, New York, 1994, courtesy of Khan.

^{vi} Op. cit., Khan.

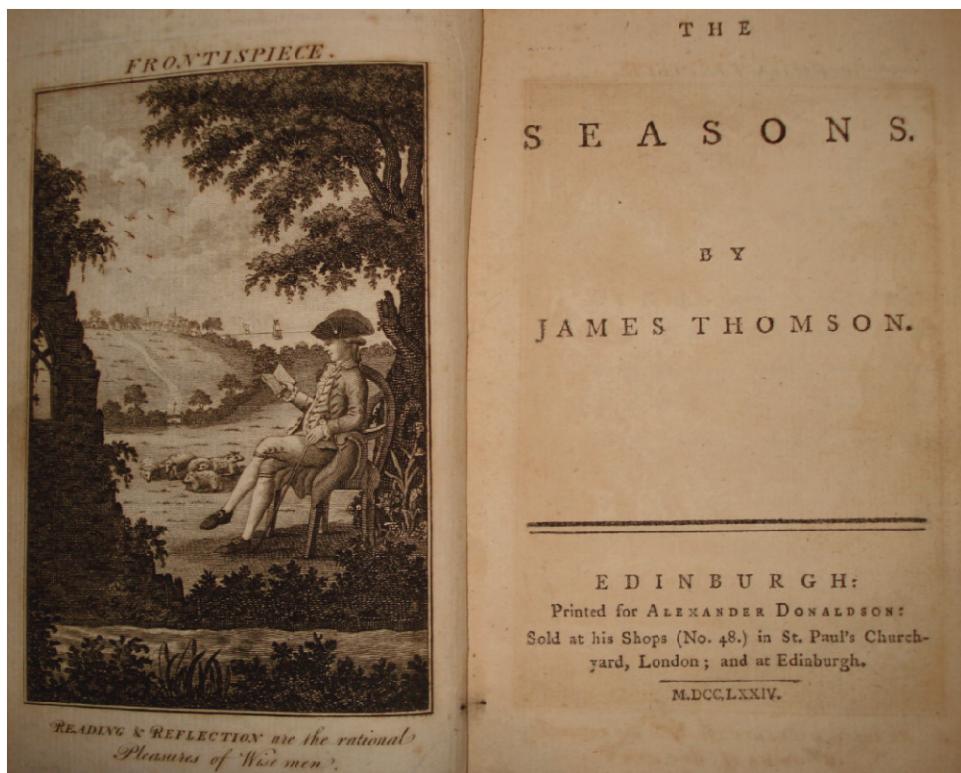


Figure 3.5 Photograph of Frontispiece – The Seasons by James Thomson Published by Alexander Donaldson. This work is published from the United States. (credit: Wikimedia Commons / Public Domain)

As Michel Foucault would put it nearly two centuries later,

“The coming into being of the notion of ‘author’ constitutes the privileged moment of individualization in the history of ideas, knowledge, literature, philosophy, and science.”

In the century after *Donaldson v. Beckett*, European copyright systems expanded to include sheet music, maps, design, sculpture, and even lectures. The doctrines of “work for hire” and “fair use” would emerge (more on these later), but the law would still remain largely arbitrary, confused, and frequently injurious to the public until late in the nineteenth century.

However, the process of transforming copyright from a scheme of monopoly privileges for publishers into a property right for the actual creators of cultural works had begun.

3.3 Copyright in America

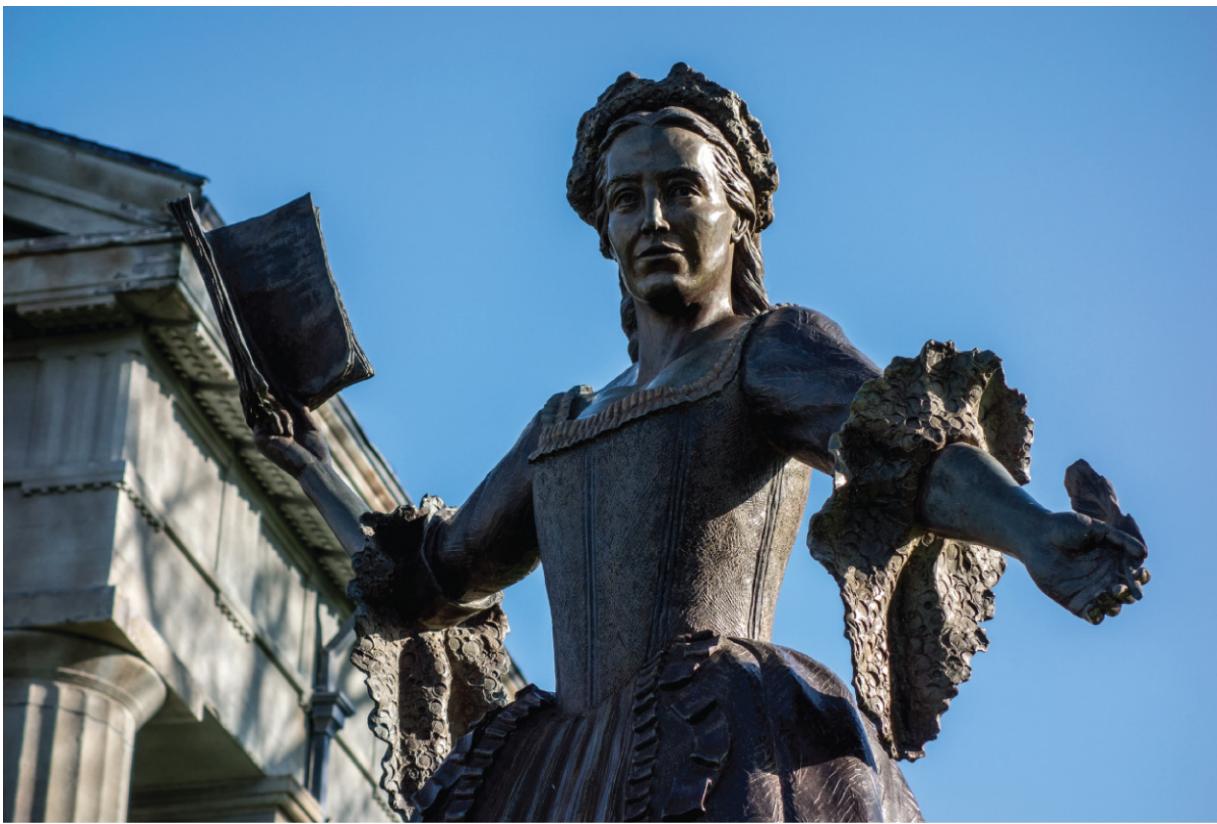


Figure 3.6 (credit: photograph by Kenneth C. Zirkel via Wikimedia Commons / CC BY-SA 3.0)

Learning Objectives

After completing this section, you will be able to

- See the origins of copyright law in the United States.
- Appreciate the importance the Founding Fathers attached to the public need for widespread access to learning and information.

Ever practical, the Founding Fathers sought to construct an intellectual property regime that above all else would encourage the growth of commerce and industry in order to ensure the survival of the young American nation during its precarious beginnings.

For patent law, this meant creating the maximum possible incentives to those whose ingenuity would spur the development of agriculture and domestic industry. As economist Jonathan Hughes once noted, entrepreneur-inventors like Eli Whitney, who developed a cotton gin in 1793 that increased agricultural production a hundredfold, were “the vital few” upon whom the nation depended for progress. That’s why early Supreme Court Justice Joseph Story argued that patent rights were “sacred,” and the just reward for their contributions to society.

But in copyright law, a different approach was taken—one that acknowledged authors’ rights but placed far greater emphasis on the public’s need for widespread access to learning and on the growth of markets. James Gilreath, the Library of Congress historian who in the late nineteenth century painstakingly reconstructed Thomas Jefferson’s massive library catalog burned by the British in 1814, explained the Founders’ view this way:

“The constitutional copyright provisions’ emphasis on the useful arts sought not to bolster a professional literary establishment of novelists, poets, and critics such as the one that existed in

England, but rather to ensure that books with demonstrably practical benefits to society would be available to readers of the new Republic."

This emphasis was certainly in tune with the realities of American book trade. Domestic publishers mainly produced newspapers, almanacs, and practical guides—reading material of useful value to a nation that needed to build an entire economy from scratch. Most important literary works, on the other hand, were imported from Britain and France.

As a result, even in colonial times, states that passed copyright laws did so only with explicit rules that ensured widespread public access to knowledge and information.

Take colonial Connecticut's 1783 copyright law, for example. It certainly contained all the right rhetoric about authors' natural rights:

"Whereas it is perfectly agreeable to the principles of natural equity and justice, that every author should be secured in receiving the profits that may arise from the sale of his works, and such security may encourage men of learning and genius to publish their writings; which may do honor to their country, and service to mankind."^{vii}

But it also made it quite clear that copyrighted books had to be offered at reasonable prices or the state would issue a compulsory license enabling anyone to copy these at will. No one failed to get the point.

After the Constitutional Convention and the establishment of Congress, the first federal copyright statute was signed into law by President George Washington on May 31, 1790, less than two months after the first patent law was approved.

The law stipulated that "the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books" for a period of 14 years, with the right of renewal for another 14 years. The Founders' belief that 28 years was the proper maximum copyright term stands in sharp contrast to today's controversial maximum copyright term of life-plus-70 years, an issue we will discuss later in this chapter.

Anyone violating a copyright "shall forfeit all and every copy and all and every sheet to the author or proprietor who shall forthwith destroy the same." What's more, "offenders shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his or her possession." As a final disincentive to infringers, the law allowed copyright owners to file suit "in any court of record in the United States within one year after the cause of action."

^{vii} State of Connecticut. (1906). Copyright Laws Passed by the Original States: 1783-1786. In T. Solberg (Ed.), *Copyright Enactments of the United States, 1783-1906* (2 ed., pg. 11). Retrieved from <http://books.google.com/books?id=xNA9AAAAIAA&oe=UTF-8>



Figure 3.7 The US Copyright Act of 1790 reprinted in the Colombian Centinel, published 17 July 1790. (credit: Wikimedia Commons / Public Domain)

Still, the law's focus on the public interest was clear in the first five words of the text: *"An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the Times therein mentioned."*

The failure in the text to distinguish between "authors" and "proprietors" (i.e., publishers, printers, and booksellers), of course, also suggested that Congress did not view copyright as an innate or moral right of authors. In fact, copyright was conditional upon the author or proprietor depositing a copy of the work in the district court and paying a fee of 60 cents.

Another sign that the emphasis of U.S. copyright law was to facilitate the diffusion of knowledge over the protection of authors' inherent property rights was provided by this sentence:

"Nothing in this act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books by any person not a citizen of the United States."

In other words, America's first copyright law explicitly authorized the piracy of foreign cultural works in order to promote widespread citizen access to the benefits of learning.

And that's exactly what Americans did, unabashedly pirating European culture and resisting for a century all attempts to alter what Europeans called its "obnoxious laws."

The first American to receive a U.S. copyright, one month after the Copyright Act was signed into law, was John Barry for his spelling book. The first woman granted a copyright was Mrs. Mercy Warren of Massachusetts for her *Poems, Dramatic and Miscellaneous*.



Figure 3.8 Portrait of Mercy Otis Warren (1728-1814), American writer and first woman in the United States to be granted a copyright. (credit: portrait by John Singleton Copley via Wikimedia Commons / Public domain)

Over the next decade, half of all copyrights went to proprietors, proving yet again that the law's concern was not chiefly with the rights of authors. Most of these were for practical books such as atlases, dictionaries, and textbooks, as one would expect in a society hungering for practical knowledge and lacking in homegrown literary works equal in sophistication to those of the Europeans.

The Pirates of Copyright

As late as 1835, 65 percent of science books, 92 percent of business texts, and 75 percent of law books published in the United States were written by Americans. But even then, a half century after independence, only a third of poetry and drama books published in America were written by Americans.^{viii}

"A nation of artificers and innovators, both as consumers and producers, American citizens were confident of their global competitiveness in technology, and took an active role in international patent conventions," explains Khan. "Although they excelled at pragmatic contrivances, Americans were advisedly less sanguine about their efforts in the realm of music, art, literature and drama."

According to Ainsworth Spofford, the Librarian of Congress from 1864 to 1897, "a group of publishing houses in the [U.S.], which made a specialty of cheap books, vied with each other in the business of appropriating English and continental trash, and printed this under villainous covers, in type ugly enough to risk a serious increase of ophthalmia among American readers."^{ix}

And not just "trash," either. America gained a notorious reputation internationally for its piracy of English and European literary classics—a practice greatly encouraged by the protectionist levying of tariffs as high as 25 percent on imported books.

viii Op. cit., Khan.

ix "The Question of Copyright," compiled by George Haven Putnam, G.P. Putnam's Sons, New York, 1896, courtesy of Zorina Khan.

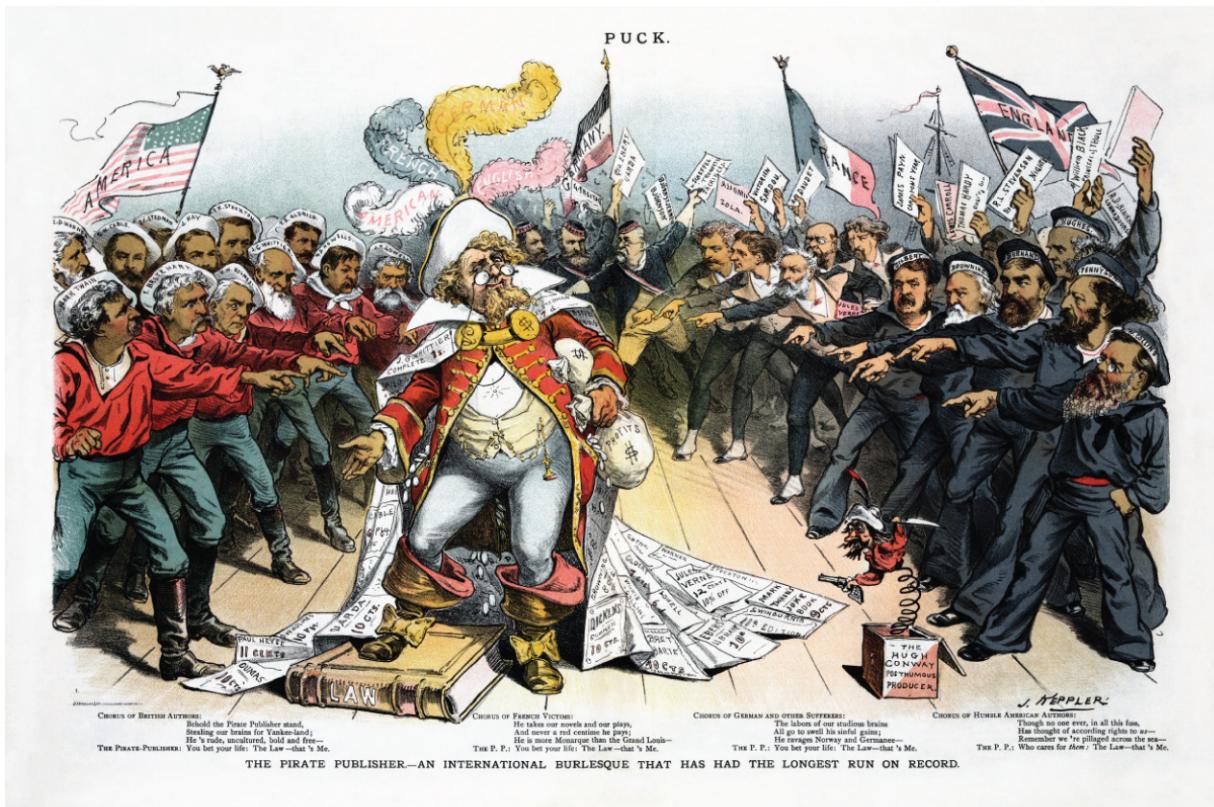


Figure 3.9 (credit: Original artist: Joseph Ferdinand Keppler (1838-1894) Restoration: Adam Cuerden via Wikimedia Commons / Public domain)

Put another way, America in those days was seen as a nation of technological innovators and cultural pirates.

Between 1790 and 1875, more than a hundred petitions were submitted to Congress to bring the United States in line with international copyright laws. All were defeated by publishers' and printers' lobbies. It wasn't until 1891 that the Chace Act granted copyright protection to select foreign authors—but only if their work was published in the United States on or before the publication date in their own countries, and only if the actual printing was done here. The United States failed to qualify for admission to the Berne Convention on copyright until 1988, an astonishing 102 years after the convention.

Such piracy had its costs, however—and not just to foreign authors and publishers. According to Arthur Schlesinger, "So long as publishers ... could reprint, or pirate, popular English authors without payment of royalty, and so long as readers could buy such volumes far cheaper than books written by Americans, native authorship was at a marked disadvantage."^x

Some believe this helps to explain why no great American novels were written in the early nineteenth century. Only in the mid-1800s, with the emergence of novelists like James Fenimore Cooper, Nathaniel Hawthorne, and Henry Wadsworth Longfellow did a change in the relative balance of authorship between Americans and foreigners begin to take place. More and more authors took up the pen and influenced American culture, including Harriet Beecher Stowe, who copyrighted Uncle Tom's Cabin in 1851. Nonetheless, it wasn't until the early twentieth century, after the United States began to comply with international copyright standards, that Americans became the majority of best-selling authors in the United States.^{xi}

^x Arthur M. Schlesinger, *The Rise of the City, 1878-1898*, McMillan, New York, 1933.

^{xi} Alice Hackett and James Burke, *Eighty Years of Best Sellers, 1895-1975*, Bowker, New York, 1971.

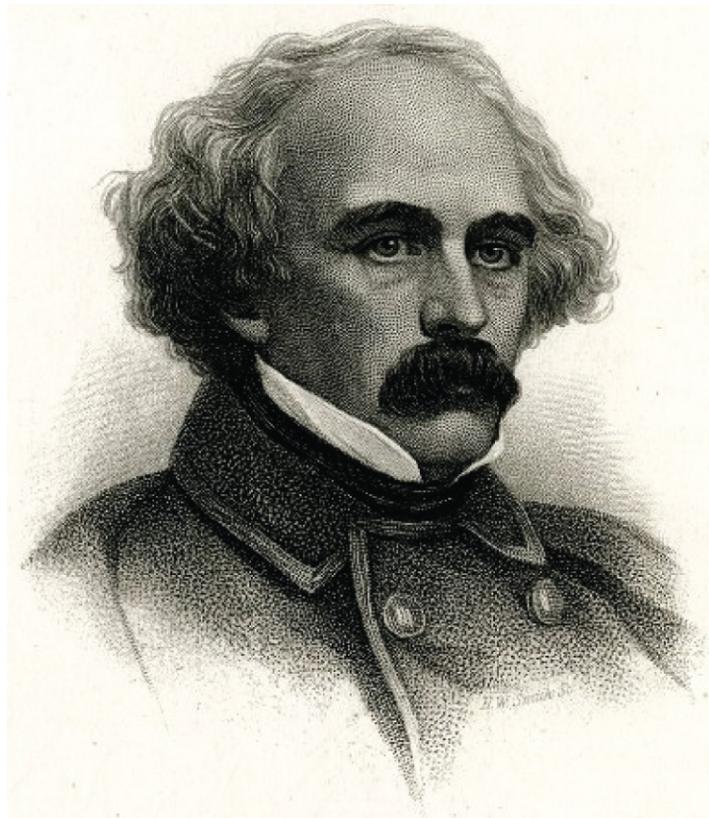


Figure 3.10 An engraving of Nathaniel Hawthorne made by H. W. Smith circa 1880. (credit: Wikimedia Commons / Public Domain)

It would be far too simplistic, of course, to ascribe the late-blooming of American literature simply to weak copyright laws and the prevalence of cheap pirated foreign literature. There are organic reasons why a young nation, and a new culture, needs time to develop its own literary voices. But it is also true, as research worldwide has repeatedly demonstrated, that where weak intellectual property protections exist in developing nations (like today's China or early nineteenth-century America), citizens have an excessive incentive to copy and insufficient incentive to invent and create for themselves.

3.4 Eligible Works



Figure 3.11 Parthenon Marbles, East Pediment. Photograph taken at the British Museum by Justin Norris via flickr / CC BY 2.0

Learning Objectives

After completing this section, you will be able to

- Know what kinds of creative work are eligible for
- Grasp the broad definition of "authors" and "literary works."

Can I Copyright That?

Before reading this section, please watch [this overview video \(<https://openstax.org/l/CanICopyright>\)](https://openstax.org/l/CanICopyright) covering the basics of copyright law—eligible works, the distinction between ideas and their expression, the rights granted to copyright owners, and is copyright term—life plus 70 years.

Title 17 of the United States Code Section 102 explicitly delineates eight categories of original works that are eligible for copyright.

This list, while broad, actually includes a far more extensive range of work than the average citizen might imagine. For example, copyrightable works also include software.

Copyrighting Software

Why is software copyrightable? It's because an appellate ruling in the 1983 case of *Apple v. Franklin* (https://openstax.org/l/Apple_v_Franklin) held that software was a kind of "literary work" and therefore eligible for copyright.

The court noted that the Copyright Act defined the term "literary work" as follows:

"Literary works are works, other than audiovisual works, [that are] expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied."^{xii}

Based on this definition, the court determined that a computer software program "is an appropriate subject of copyright."

Note, however, that copyright does not extend to the elements of works of authorship that are potentially

^{xii} *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240 (3d Cir. 1983) Retrieved from <http://bulk.resource.org/courts.gov/c/F2/714.F2d.1240.82-1582.html>.

patentable processes. And indeed, beginning in the 1990s, software companies began increasingly to patent those elements of their new software that could be described as patentable processes, precisely in order to secure the stronger protections of patent law.

In any event, software is but one example of how the courts have tended to interpret broadly the eight categories of eligible subject matter. Just as technology drove the expansion of eligible subject matter into ever new realms—e.g., first photographs and then motion pictures—the courts have also expanded the definitions of all eight categories of eligible subject matter to include maps, games, puzzles, toys, fabric design, and many other creations.

Ideas to Copyrightable Works

However, not everything is copyrightable—far from it. Just as patent law makes a sharp distinction between ideas and their application—i.e., you cannot patent an idea for a better mousetrap but you most certainly can patent a new, non-obvious, and useful apparatus that catches mice—so, too, does copyright law differentiate between ideas and their expression. You cannot copyright, for example, the idea of an epic space opera in which a mystical cadre of Jedi knights wielding laser swords battle galactic evil, but you can copyright the particular expression of that idea in the screenplay and motion picture *Star Wars*.

Because it is an abstract concept or idea, Einstein's formula $E = MC^2$ is also not copyrightable. It is true that Einstein was the first to derive the famous formula involving mass and energy, which at first blush seems to fit the requirement for creative authorship in a copyrightable work. But the formula was derived from observation of natural physical laws, and must remain in the public domain lest private intellectual property rights create a blockade that prevents scientists and mathematicians from continuing their research and teaching.

Also noncopyrightable are names, addresses, and other known facts that are not creatively compiled. That's why a phone book cannot be copyrighted, whereas the *creative compilation* of facts in a Chinese-American phone directory listing "Bean Curd & Bean Sprout Shops" may be under certain conditions, as a judge ruled in the 1991 case *Key v. Chinatown* (<https://www.openstax.org/l/KeyVChinatown>).

To be copyrightable, a creative work must not only be *expressed* in a tangible form that allows it to be seen or copied (i.e., put to paper or some other medium), but it must also be *original*. The requirement for originality in copyright has its parallel in the necessity for novelty in patents. But this parallel works only to a point, for a copyrighted work need not be novel in the strictest sense to be original.

As Arthur R. Miller and Michael H. Davis explain in their textbook on intellectual property for law students:

"The author's ideas and themes may have appeared in earlier works, Indeed, much of the expression may have been produced before. But copyright will be available to [this] second author if his is a work of independent creation."^{xiii}

To reiterate, a copyrightable work must not only fit under one of the eight broad categories of eligible subject matter, but it must also be:

- Independently created.
- Expressed or fixed on a tangible medium that can be seen or copied.
- Creatively authored or compiled.
- Not a fact or abstract idea.

^{xiii} Arthur R. Miller and Michael H. Davis, *Intellectual Property: Patents, Trademarks, and Copyright in a Nutshell*. (5th ed., p. 25). St. Paul MN: West Publishing Co., 2007.

3.5 Rights and Term

Learning Objectives

After completing this section, you will be able to

- Discern the specific rights granted to copyright owners.
- Understand the term of those rights as well as in some cases their limitations.

Just as common law property rights grant owners' exclusive powers of possession, use, and distribution, so, too, does copyright law provide for six roughly analogous exclusive rights:^{xiv}

1. The right to reproduce the copyrighted work
2. The right to prepare derivative works
3. The right to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
4. The right to perform the copyrighted work publicly
5. The right to display the copyrighted work publicly
6. The right to perform sound recordings publicly through a digital audio transmission.

These rights are exclusive to copyright owners—only they or those to whom they have legally assigned their rights can act upon them. Only the author of a copyrighted book, for example, can decide to make copies of (i.e., publish) the work and prepare derivatives of the book, such as a movie version of it. If any person other than the author and copyright owner were to make a movie based on the book, that person would infringe the copyright.

The term or time period of a copyright varies. For an individual, the term of a copyright is the life of the author plus 70 years after the author is deceased. For a work with two or more authors, the term expires 70 years after the last author's death. Finally, for works that are "made for hire," or anonymous or pseudonymous works, the copyright term lasts 95 years from the first publication or 120 years from the year of the work's creation, whichever comes first.^{xv} As examples, assume a musical artist writes a song that is published and performed under their name. The copyright will last 70 years beyond their death, and could conceivably be quite valuable to their heirs.

On the other hand, imagine that an anonymous Korean War soldier's diary, dated "December 1951" is discovered in an antique shop in the year 2013 and published that same year. Ordinarily, the copyright for an anonymous work would last for 95 years from the date of first publication, expiring in the year 2108. But because the date of creation is known to be 1951, the copyright would expire in 2071, or 120 years after it was written.

As noted earlier and discussed later in Section 3.9 of this chapter, these lengthy terms for copyright are controversial and opposed even by many supporters of copyright.

Work for Hire

According to U.S. law, a **work for hire** is:

"a work prepared by an employee within the scope of their employment, or a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire."^{xvi}

^{xiv} Derived from 17 U.S.C., § 106 Retrieved from <http://www.law.cornell.edu/uscode/text/17/106>

^{xv} Derived from 17 U.S.C., § 302 (c) Retrieved from <http://www.law.cornell.edu/uscode/text/17/302>

^{xvi} 17 U.S.C., § 101 Retrieved from <http://www.law.cornell.edu/uscode/text/17/101>

Imagine that you are an employee of a company, and you are asked to write one section of a white paper on a subject of interest to the industry. Or let's say you're a contractor hired to perform that same task under a "work for hire" arrangement. You will not own the copyright to that section of the white paper when it is completed, nor can you publish or use it if you leave the company and go to work for someone else. Although it is your creation, it is owned by the employer, who often uses your work product as part of an integrated project involving other contributors. The copyright for this particular white paper will last for 95 years from the year of first publication, or for 120 years from the year of its creation, whichever expires first.

First-Sale Doctrine

It is important to note, however, that an author's distribution rights (No. 3 above) are strictly limited by what is known as the first-sale doctrine, which terminates those distribution rights once he sells or distributes the work to someone else. For example, once the author of a copyrighted novel lets a publisher distribute copies of that novel to a bookstore, the author's distribution rights to those copies are ended and the bookstore can do whatever it wants with them—sell them, rent them, give them away, or throw them in the dumpster. The bookstore owner cannot, however, make additional copies of the book because the first-sale doctrine does not limit a copyright owner's *reproduction* right (the first right listed above).

The first-sale doctrine was first delineated in the 1908 Supreme Court case *Bobbs-Merrill Co. v. Straus* (<https://www.openstax.org/l/BobbsMerrillCoVStraus>). The Bobbs-Merrill Co. distributed copies of a novel titled *The Castaway* to retailers with the proviso that these be sold for exactly one dollar. Printed right in the book itself, in fact, right after the title page, was the following notice:

"The price of this book at retail is \$1 net. No dealer is licensed to sell it at a less price, and a sale at a less price will be treated as an infringement of the copyright."

Retailers, however, sold the book for less than a dollar and the Bobbs-Merrill Co. sued one of them. The high court found that once copies of the book were sold, the distribution rights of the author terminated as to those copies.^{xvii} The ruling came to be known as the first-sale doctrine and was codified into law as 17 U.S.C., § 109. The statute distinctly draws the line at distribution rights, leaving all other rights to the copyright owner.

It's the first-sale doctrine that explains why Amazon.com and eBay allow users to resell secondhand copies of printed books, music, and movies at prices of their own choosing—but only if those copies were legally obtained. It is still illegal to sell pirated works.

In 2011, however, a new case in the United States Court of Appeals for the Second Circuit—*John Wiley & Sons, Inc. v. Supap Kirtsaeng* (<https://www.openstax.org/l/SecondCircuit2011>)—waived the first-sale doctrine in cases where the copies of the copyrighted work were manufactured abroad.^{xviii} But in March of 2013, the U.S. Supreme Court overturned that ruling in a 6-to-3 decision that affirmed that Mr. Kirtsaeng's rights after first sale trumped the publisher's right to ban imports. He couldn't make unauthorized copies of the book. But just as with secondhand books or Gucci bags bought at a flea market, if the books had been bought legally (regardless of whether they had been imported or sold originally in the United States), Mr. Kirtsaeng had a right to sell them.

The first-sale doctrine was also limited by *Vernor v. Autodesk* (<https://www.openstax.org/l/VernorVAutodesk>), when an appeals court in 2010 ruled that software was not subject to the first-sale doctrine because purchasers of software were actually only licensees and therefore could not resell the software to others.

Does the first-sale doctrine apply to digital music, such as your iTunes library? In a case involving the start-up company ReDigi, U.S. District Court Judge Richard J. Sullivan ruled on March 30, 2013, that a resale of digital

^{xvii} Derived from *Bobbs-Merrill Co. v. Straus*, 210 U.S. 339, 350 (1908) Retrieved from <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=210&invol=339>.

^{xviii} *John Wiley & Sons, Inc. v. Kirtsaeng*, 654 F.3d 210, 99 U.S.P.Q.2d 1641, 2011 ILRC 2481 (2d Cir. 2011) [2011 BL 211086] Retrieved from <http://bit.ly/HOTFIb>.

music that involved creating a new copy on someone else's computer while erasing the copy on your computer actually concerned the reproduction right, not the distribution right, and the first-sale doctrine therefore did not apply. (You could sell your hard drive that has your music files on it, but most people would not want to do that!) But this decision is likely only the first round in what many feel will ultimately be a successful effort to create legal markets for secondhand digital goods.

First-Sale vs. Moral Rights

The first-sale doctrine does not affect an author's moral rights, which under U.S. copyright law are limited only to certain works of visual art but under European copyright statutes are more broadly applied to other kinds of copyrightable work. Derived from the French concept of droit d'auteur, these give authors the power to protect the integrity of their work as well as the right of attribution.^{xix} Preserving the integrity of a work means that the author has the right to prevent its intentional distortion, mutilation, or modification by others. Authors also have the right to control the use of their name in relation to the work.

Both of these rights, however, have limitations. Under U.S. law, because moral rights are *personal*, they exist only for the life of the author. Only the author can enforce those rights; they cannot be transferred by the author to heirs or anyone else.

As noted at the beginning of this chapter, registration is not required in order to enjoy copyright protection. Once an author puts words to paper, paint to canvas, or software code into a digital file, it is immediately protected by copyright and nothing more is required.

Although the requirement of registration as a condition of federal copyright protection was discarded over a century ago, when Congress passed the Copyright Act of 1909, the requirement that proper copyright notice be affixed to copies of published works survived much longer. It was only dropped in 1989, when the United States joined the Berne Convention and had to amend its copyright law to comply with the terms of that convention. Notice and registration of copyright are now discretionary, but recommended. Registration of a copyright provides a legal record of copyright ownership in cases where infringement is alleged, and in fact is required before the author can even file suit for infringement.^{xx} To register a published work, an author will usually need to submit two copies of the work to the U.S. Copyright Office.

3.6 Infringement and Remedies

Learning Objectives

After completing this section, you will be able to

- Discuss the specific requirements for proving copyright infringement.
- Understand how copyright is affecting a changing music industry.

What If Someone Infringes Your Copyright?

Before reading this section, please watch [this overview video \(<https://openstax.org/l/WhatIfInfringeCopyright>\)](https://openstax.org/l/WhatIfInfringeCopyright) covering what you can do if your novel, blog post, photograph, or song is used by another without permission, and what the famous "Blurred Lines" copyright trial means to you.

^{xix} Zemer, L. (2011). Moral Rights: Limited Edition. *Boston University Law Review*, 91(4), 1524. Retrieved from <http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume91>.

^{xx} 17 U.S.C., § 411

Derived from the common law of trespass, **infringement** of a copyright or any other intellectual property right occurs when a person violates the exclusive rights of its owner. The term gets its meaning from the word “fringe”—implying a boundary that cannot be crossed. As laid out in Sections 106 through 122 of Title 17 of the U.S. Code and subject to certain exclusions, infringement occurs when a person copies, distributes, performs, or displays all or part of a copyrighted work (or in the world of television, conducts a secondary transmission of a cable system without the express consent of the cable system owner). Copyright infringement requires proof of two things. First, it requires proof that the defendant actually copied from the plaintiff’s work. That makes it different than patent infringement, which can take place even if the defendant independently came up with the invention that was patented by the plaintiff. Proof of copying can be obtained either directly, by the defendant admitting the act, or, indirectly, by showing that he had access to the plaintiff’s work, and that there are similarities between the works that make independent creation unlikely. Second, infringement requires proof that the allegedly infringing work is substantially similar to the plaintiff’s work.^{xxi} The second requirement is there to make clear that not all copying amounts to infringement. For example, copying of a general theme, such as a detective solving a murder mystery, would not be considered infringement.

There are two ways to demonstrate the similarity of an allegedly infringing work and the original copyrighted work. “Fragmented literal similarity” may be shown by demonstrating that the infringing work contains specific copied elements of the original work. For example, suppose that one travel writer wrote a guide to Florida that contained a chapter on Key West, and a second writer copied that chapter and included it in their otherwise independently researched and written guide to Florida. In that case, we could point to specific sentences and paragraphs in the two works that were identical, even if other sentences and paragraphs were not.

Or, to take another example, in today’s music scene, certain genres of music use pieces or “samples” of previous sound recordings that are then mixed into a new sound recording. Unless the artist doing the sampling licenses the sound recording (and maybe the underlying musical work as well), the sampling could be considered infringing.

Copyright Infringement in the Music Industry

Take Kanye West, for example. He was recently sued for sampling Sly Johnson’s song “Different Strokes” and using it in a new song called “The Joy” on Kanye’s and Jay-Z’s *Watch the Throne Album*. The case was settled out of court for an undisclosed amount.

The second type of similarity—called comprehensive nonliteral similarity—involves the borrowing of patterns without necessarily borrowing specific elements. In the case of a novel, for example, one author might infringe by copying the plot of another novel, even though he used different words to describe the action taking place. Similarly, a composer of a song might write lyrics and music that closely borrowed patterns from another song, even though he did not use the exact same words and notes.

Again, take Kanye West. He was also recently sued by Vincent Peters, a local Chicago artist, not for sampling his music but rather for employing substantially similar concepts and wording in Kanye’s megahit “Stronger.” The judge did not agree, finding that Kanye’s song had actually used concepts and phrasing that were “common ideas” and in the public domain—specifically, Friedrich Nietzsche’s phrase, “That which does not kill us makes us stronger.”^{xxii}

But by far, the most significant copyright infringement case in recent years concerning music was the March 10, 2015, verdict against Robin Thicke and Pharrell Williams, the performer and primary songwriter-producer

^{xxi} Derived from *Computer Assoc. Int'l v. Altai, Inc.*, 982 F.2d 693, 701 (2nd Cir. 1992) Retrieved from homepages.law.asu.edu/~dkarjala/cyberlaw/ComputerAssocsVAltai.

^{xxii} Mitchell, D. (2011, November 28). *Kanye West Invokes Nietzsche in Copyright Battle*. Retrieved from <http://tech.fortune.com/2011/11/28/kanye-west-invokes-nietzsche-in-copyrightbattle/>.

of the 2013 pop hit “Blurred Lines.” A federal jury ruled that Thicke and Williams committed copyright infringement by using elements of the 1977 Marvin Gaye classic R&B hit “Got to Give It Up.” The jury awarded Gaye’s family \$7.3 million—a very significant penalty—but the Gaye family announced that they will also seek an injunction against further radio and concert performances of the song, which will certainly give them leverage in negotiating future royalties and songwriting credit.

The case is significant, even beyond the outsize monetary award, because it challenges the growing practice in contemporary music production of incorporating elements, features, themes, and even the “feel” and “mood” of the work of other artists and genres.

Larry Iser, an intellectual property lawyer who has represented artists like Jackson Browne and David Byrne, criticized the verdict. “Although [Marvin] Gaye was the Prince of Soul,” Iser told the *New York Times*, “he didn’t own a copyright to the genre, and Thicke and Williams’ homage to the feel of Marvin Gaye is not infringing.”

Despite the critics, musicians and producers will likely be more cautious in the future. In addition to the “Blurred Lines” case, singers Sam Smith and Tom Petty reached a settlement in 2015 granting songwriting credit and royalties to Petty on Smith’s song “Stay With Me,” which bore some resemblance to Petty’s hit “I Won’t Back Down.”

Actual and Statutory Damages

As we see in the above case, infringing a copyrighted work can carry very significant penalties. The copyright owner has the right to recoup damages and lost profits from infringement. There are two kinds of damages—actual and statutory. The copyright owner may only receive one or the other form of damages.^{xxiii}

The Recording Industry Association of America (RIAA), for example, was awarded major damages from Jammie Thomas in 2009 for her willful statutory infringement of 24 copyrighted songs that she had uploaded to the music sharing site Kazaa. Because the infringement was found to be willful, the court in its discretion raised the damages maximum from its usual \$30,000 per act of infringement to \$80,000 per infringement. That \$80,000, times 24 songs that were infringed, resulted in a damage award of \$1,920,000.^{xxiv} After several trials and appeals, however, the damages assessed against Thomas were reduced to \$222,000.

Take note, infringers—the risks can be very great, indeed.

Only the owners of registered copyrights may file for statutory damages. That’s another reason why it’s a good idea to register your copyright.

Sometimes, though, the copyright owner’s most important remedy for infringement will be an injunction that forces the infringer to stop illegal actions that cause continuing damage to their rights. The grounds for getting that injunction, however, have tightened in recent years and now require the plaintiff, or copyright owner, to provide substantial evidence of infringement that cannot be repaired without an injunction.

As the court of appeals for the ninth circuit put it in 2011:

“Our long-standing precedent finding a plaintiff entitled to a presumption of irreparable harm on a showing of likelihood of success on the merits in a copyright infringement case, as stated in *Elvis Presley v. Passport Video* and relied on by the district court, has been effectively overruled. In other words, ‘Elvis has left the building.’ Accordingly, we hold that even in a copyright infringement case, the plaintiff must demonstrate a likelihood of irreparable harm as a prerequisite for injunctive relief, whether preliminary or permanent.”^{xxv}

^{xxiii} Derived from 17 U.S.C., § 504 Retrieved from <http://www.law.cornell.edu/uscode/text/17/504>.

^{xxiv} Kravets, D. (2009, June 18). *Jury in RIAA Trial Slaps 2 Million Fine on Jammie Thomas*. Retrieved from <http://www.wired.com/threatlevel/2009/06/riaajury-slaps-2-million-fine-on-jammie-thomas/>

^{xxv} http://scholar.google.com/scholar_case?case=7153487234107458840&hl=en&as_sdt=2&as_vis=1&oi=scholarr

Individuals who infringe copyrighted material face not only restitution for damages and lost profits and impoundment and destruction of materials, but strict criminal penalties as well. To be subject to criminal penalties, the infringer must have willfully infringed the copyright. For those doing so for commercial advantage or private financial gain, the sentence may be up to five years for a first offense, and ten years for a second offense.^{xxvi}

We have focused solely on the federal penalties for infringement. That's because, with the passage of the 1976 Copyright Act, federal copyright law now preempts state laws. State laws governing breach of contract, violations of trust, trespassing, conversion, invasion of privacy, defamation, and deceptive trade practices still exist, however, and these may also be employed by a copyright owner seeking redress for other harms caused by infringing activity.

3.7 The Fair Use Defense

Learning Objectives

After completing this section, you will be able to

- Understand the nature of fair use and how it serves the public interest.
- Appreciate the continuing debate over just vagaries in what is considered fair use.

Is It Fair Use or Infringement?

Before reading this section, please watch [this overview video](https://openstax.org/l/FairUseOrInfringement) (<https://openstax.org/l/FairUseOrInfringement>) covering Fair Use is an enigma—indeed, no one even knows how many words of a copyrighted work one can legally copy as “fair use.” Here, at last, is everything you need to know about Fair Use.

Title 17 of the United States Code allows the copying and use of copyrighted material for specific **purposes**—including criticism, comment, news reporting, teaching (involving multiple copies for classroom use), scholarship, or research. The statute also describes four **factors** that draw on the precepts first discussed by Supreme Court Justice Story 150 years earlier to determine if the use of a copyrighted work is infringement or “fair use.”^{xxvii}

Based on these factors, which are not meant to be all inclusive, a judge must determine if the use of copyrighted material is within the bounds of fair use. What makes that determination sometimes difficult is the challenge of weighing a variety of purposes—was the work used for criticism, comment, news reporting, teaching, scholarship, or research?—in concert with various factors (such as how much was used, and whether it was for commercial gain or not).

In the crucial 1973 Supreme Court case of [*Williams & Wilkins v. United States*](https://www.openstax.org/l/WilliamsWilkinsVUS) (<https://www.openstax.org/l/WilliamsWilkinsVUS>), for example, the divided justices affirmed a lower U.S. Court of Claims decision that the benefits of freely distributing photocopies of medical journal articles to nonprofit government research libraries outweighed the reduction of potential revenue to the publisher of those journals.^{xxviii}

Parody

One of the purposes for which copyrighted work may at times be freely used is parody. As a federal court ruled in one 1993 case:

^{xxvi} Derived from 18 U.S.C. § 2319 Retrieved from <http://www.law.cornell.edu/uscode/text/18/2319>

^{xxvii} 17 U.S.C., § 107 Retrieved from <http://www.law.cornell.edu/uscode/text/17/107>.

^{xxviii} *Williams & Wilkins v. United States*, 487 F.2d 1345 (1973) Retrieved from http://fairuse.stanford.edu/primary_materials/cases/c487F2d1345.html.

"The heart of any parodist's claim to quote from existing material is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's work."^{xxix}

And the greater the "transformative" nature of the new work, the less likely it infringes the original work.

A case involving the Fox TV show *Family Guy* illustrates the point. In *Bourne Co. v. Fox* (<https://www.openstax.org/l/BourneCoVFox>), the court found that a *Family Guy* episode in which the character Peter Griffin sang a revised version of the song "When You Wish Upon a Star" called "I Need a Jew" was a parody and thereby a fair use of the original material. The outrageous if not offensive visuals and words employed in the *Family Guy* parody were so substantially different in character and form from the original use of the song in the Walt Disney movie *Pinocchio* that no one could ever confuse the two or fail to realize that Fox's use was a parody.

Transformative or Theft?

A very interesting case involving fair use was decided by the U.S. Court of Appeals for the Second Circuit on April 25, 2013. It overturned a 2011 district court ruling that artist Richard Prince had acted illegally by using another artist's photographs to create a series of collages and paintings. Such borrowing of another's work is considered fair use only if it is "transformative" in some substantial way, and the district judge held that it was not because the collages did not comment on the original work explicitly. The federal circuit disagreed, holding that explicit references to the original work are not required so long as the required "transformation" is manifested by "an entirely different aesthetic" in the secondary work.

According to the appeals court:

"Where [the original artist's] serene and deliberately composed portrait and landscape photographs depict the natural beauty of the Rastafarians and their surrounding environs, Prince's crude and jarring works are hectic and provocative."

Fair Use for Public Good

The fair use clause also allows libraries and archives that are open to the public, or researchers in a specialized field, to use copyrighted materials for the purpose of preservation and security of the material or as a deposit for research. These libraries and archives can keep up to three copies of a copyrighted work, but a copyright notice must be included on each copy. Libraries and archives will not be held liable for "unsupervised use of reproducing equipment located on its premises" if there is a notice on the equipment that a copy may be subject to copyright law.^{xxx} Any use of photocopied copyrighted materials must be specifically for private study, scholarship, or research, and any other use constitutes infringement. Photocopying copyrighted materials in a business setting is also infringing if used outside of research.

Academic institutions also are protected by specific rules regarding fair use, pursuant to an agreement between representatives of the publishing industry and of academic institutions negotiated in the 1970s. The photocopying of a copyrighted work for the classroom is permitted if it is limited to:

- A chapter from a book
- An article from a periodical or newspaper
- A short story, short essay, or short poem, whether or not from a collective work
- A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

^{xxxi}

xxix *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994) Retrieved from <http://www.law.cornell.edu/supct/html/92-1292.ZS.html>.

xxx 17 U.S.C. § 108 Retrieved from <http://www.law.cornell.edu/uscode/text/17/108>.

xxxi Library of Congress. (2009, November). Reproduction of Copyrighted Works By Educators And Librarians. Retrieved from

But even in the above academic uses, limitations apply regarding the size of both the audience and the content to be copied. For example, teachers may photocopy works only for students enrolled in the class. The photocopied material must also pass brevity, spontaneity, and other tests. "Brevity" means no more than 250 words of a poem, 2,500 words of a prose work, or 10 percent or 1,000 words of an excerpt of a prose work may be used. In addition, the decision to photocopy the material must be spontaneous; the photocopied material must be used only for one course and one class term; no more than one poem, article, story, or essay—and no more than two excerpts—may be copied from the same author; and such bulk photocopying must be limited to nine instances per class during one term. [xxxii](#)



Figure 3.12 Verbatim from source: "The President greets the cast and crew of 'Hamilton' after seeing the play with his daughters at the Richard Rodgers Theatre in New York City." (Official White House Photo by Pete Souza) (credit: Pete Souza via Wikimedia Commons / Public Domain)

Finally, copyrighted works may not be photocopied and used in educational settings as a substitute for required texts, photocopies may not be mandatory, and you cannot charge for the photocopied work (although you may recoup the costs of photocopying). [xxxiii](#)

3.8 Changes in Copyright Law

Learning Objectives

After completing this section, you will be able to

- See how copyright law has continually adapted to technological change.
- Note how digital entertainment industries in particular have been affected by changes in copyright law.

<http://www.copyright.gov/circs/circ21.pdf>.

xxxii Derived from The President and Fellows of Harvard College. (2008). *Copyright Law Guidelines* Retrieved from <http://hfs.fas.harvard.edu/copyright.html>.

xxxiii Copyright Law Revision (House Report No. 94-1476) Retrieved from <http://uscode.house.gov/download/pls/17C1.txt>.

Throughout the more than 226-year history of copyright in the United States, technological innovation and changes in consumer behavior have continuously forced Congress and the courts to embrace new forms of copyrighted media and new ways of distributing and consuming it.

The Copyright Act of 1976

As noted earlier, the nineteenth century saw copyright expand to include a variety of new technologies, such as mechanical reproductions of musical compositions (player pianos and phonographs), photography, and eventually motion pictures. But those changes were small compared with the enormous advances of the twentieth century. The invention of radio, broadcast television, cable television, the video cassette recorder (VCR), personal computers, computer software and video games, digital audio recorders, compact discs, the digital video recorder (DVR), the Internet, iTunes media players, and now the streaming of music and movies all offered consumers new forms of creative content—and offered creators a new means of reproducing and distributing it. Each of these required an adjustment in U.S. copyright law.

Take the advent of cable television in the 1960s and 1970s. Early court cases like *Fortnightly Corp. v. United Artists* (<https://www.openstax.org/l/FortnightlyVUnited>) in 1968 and *Teleprompter v. CBS* (<https://www.openstax.org/l/TeleprompterVCBS>) in 1974 held that the rebroadcast of broadcast television shows over cable television systems did not constitute a “performance” and therefore did not infringe the copyright in those shows. The **Copyright Act of 1976**—the most significant revision of copyright law since 1909—remedied this failure to see cable broadcasts as performances and extended copyright protection to works performed over cable TV.



Figure 3.13 A television studio with a greenscreen setup. (credit: photograph by Jorge Franganillo via flickr / CC BY 2.0)

The Copyright Act of 1976 made several other major changes to the law. It also codified “fair use” into the statutes rather than simply the common law, granted statutory copyright protection as soon as a work was reduced to a concrete form rather than only when registered, and began to bring the United States into compliance with international copyright law rather than continue to stand apart from it.^{xxxiv}

The Computer Software Rental Act of 1990

The next major copyright issue arose with the emergence of personal computer software in the 1980s. Software companies and independent developers lobbied Congress to curtail the illegal copying of copyrighted software. As a result, the Computer Software Rental Act of 1990 was passed, prohibiting the unauthorized rental, lease, or lending of a computer program for commercial gain. Individuals, however, could still make personal copies for their own use, and libraries were permitted to lend software.^{xxxv}

The hope was that this would curb the rampant software piracy then costing U.S. firms roughly \$1 billion per year in lost sales and rentals. The law probably did slow piracy inside the United States. But by 2010, software piracy worldwide had grown into a \$10 billion a year business.

The Audio Home Recording Act of 1992

Hoping to prevent similar piracy in the emerging digital audio field, the Audio Home Recording Act of 1992 amended copyright law to require manufacturers and importers of digital audio recording devices to install technology to prevent the illegal copying of copyrighted music. It also mandated that royalties be paid to copyright owners for every device sold.



Figure 3.14 Pirate Bay is one site known for directing users to unauthorized pirated copies of songs, movies, and other works. Despite many attempts to take down and/or block the site, proxies still spring up. (credit: The Pirate Bay via Wikimedia Commons / Copyrighted free use)

When it came to performance rights—one of the six exclusive rights of copyright owners—the last 150 years have witnessed major changes in the way musical performances are distributed and consumed. The American

xxxiv Arthur R. Miller and Michael H. Davis, *Intellectual Property: Patents, Trademarks, and Copyright In a Nutshell*. (5th ed., p. 25). St. Paul MN: West Publishing Co., 2007.

xxxv Library of Congress. (2003). *The Computer Software Rental Amendments Act of 1990: The Nonprofit Library Lending Exemption to the "Rental Right"*. Retrieved from http://www.copyright.gov/reports/software_ren.html

Society of Composers, Authors and Publishers (ASCAP) was formed in 1914 to develop a system whereby royalties could be obtained for composers whose songs were performed live—and later on, over the newly invented technology of radio. Today, 435,000 U.S. composers, songwriters, lyricists, and music publishers rely upon ASCAP to secure royalties for their work performed over TV, CD, and every new media that has come after radio.

The other three performing rights organizations are SESAC, formed in 1930; Broadcast Music, Inc. (BMI), formed in 1939; and SoundExchange, which in 2007 was granted the sole right by the Copyright Royalty Board to represent performers whose music airs on satellite radio (such as SIRIUS XM), Internet radio (like Pandora), cable TV music channels, and similar platforms for streaming sound recordings. The Recording Industry of America Association (RIAA), formed in 1952, represents record labels and music distributors and has played an important role in ensuring that their rights are respected even as new technologies for distributing recorded music have emerged.

The RIAA lobbied Congress to enact the **No Electronic Theft Act of 1997**, for example, which made it a criminal offense to reproduce or distribute music by electronic means (i.e., over the Internet). Nonetheless, by 2002, some 3.6 billion songs a month were still being downloaded illegally, thanks to music sharing sites like Napster, which had been launched in 1999 and at its peak facilitated the downloading (much of it illegal) of 80 million songs. Indeed, many college dormitory networks became overloaded with MP3 musical file transfers.

At the time, many Internet pundits, enthralled with the misquoted notion that “information wants to be free” online, insisted that downloading technology made it impossible for musicians and their labels to enforce their copyrights on the Internet. For its part, Napster claimed that they should not be held responsible for any illegal downloading committed by users.

But the RIAA and musicians brought suits for contributory infringement. In court cases like [A & M Records. v. Napster](https://www.openstax.org/l/AMVNapster) (<https://www.openstax.org/l/AMVNapster>) and [Metallica v. Napster](https://www.openstax.org/l/MetallicaVNapster) (<https://www.openstax.org/l/MetallicaVNapster>), judges and juries repeatedly found Napster guilty of infringement and it was forced into bankruptcy in 2002.

Music piracy still exists, of course. But in place of Napster, music consumers now have legal music download sites such as Apple’s iTunes music store that sell digital music with permission from, and appropriate royalties to, their copyright owners. Surveys show that most consumers don’t really want to steal music. They just want convenient, low-cost online access to it. Most consumers also appear to recognize that if music creators cannot make a living from their work, they won’t be able to keep making music.

Meanwhile, digital rights management (DRM) technologies had been developed that have the potential to limit the piracy of copyrighted content. Companies in various content industries lobbied Congress to pass the **Digital Millennium Copyright Act of 1998 (DMCA)**. This law made it a crime to disseminate technology or services that could circumvent DRM measures used to control access to copyrighted movies, music, and books. It also increased penalties for copyright infringement on the Internet.

But in an appropriate concession to online services that merely hosted user content, the DMCA limited the liability of online services for copyright infringement committed by their users, so long as they acted to remove the offending content once informed of it.

Viacom vs. YouTube

In 2007, however, Viacom filed suit against YouTube and its corporate parent Google for copyright infringement, claiming that the popular video-sharing site was committing “massive intentional copyright infringement” for not taking sufficient steps to prevent or remove some 160,000 unauthorized clips of Viacom’s entertainment programming posted by users. Google argued that the DMCA’s “safe harbor” provisions shielded them from liability for the actions of its users, and a district court judge ruled in favor of Google in 2010. But in April of 2012, a court of appeals vacated that decision and ruled that Viacom had

presented enough evidence to warrant a trial. Viacom was seeking more than \$1 billion in damages from YouTube, but in March of 2014, the parties quietly settled the seven-year-old case.

A key factor in spurring the settlement is that Google has in the interim addressed the concerns of content owners like Viacom by creating a system that allows them to track their content when posted on YouTube and then request it be taken down or run with ads.

Extending Copyrights

The same year that saw passage of the DMCA also witnessed the passage of the **Sonny Bono Copyright Term Extension Act**, which added an additional 20 years to the term of copyright—extending it for most works to the life of the author plus 70 years after the author is deceased. Critics called it the “Mickey Mouse Protection Act” because it effectively extended the copyrights of many of the characters and content of the Walt Disney Company, which lobbied strongly for the bill. They argued that copyright law was historically designed to serve a public purpose and ought to defer to the public interest, as it has throughout U.S. history. As the *New York Times* put it:

“When Senator Hatch laments that George Gershwin’s ‘Rhapsody in Blue’ will soon ‘fall into the public domain,’ he makes the public domain sound like a dark abyss where songs go, never to be heard again. In fact, when a work enters the public domain it means the public can afford to use it freely, to give it new currency.”

Even a staunch defender of intellectual property rights like Professor Richard Epstein of the NYU School of Law—he was rated one of the top legal thinkers of modern times by the journal *Legal Affairs*—believes that the copyright term of life- plus-70s years is too long.

“My own view is that no commercial property right should ever be tied to life, and the extra 70 years is far too long,” he argues. “It has the potential to create an anti-commons that deprives the public of its rights to freely access cultural works. Copyrighted works should pass into the public domain after 28 years, which was the approach of the Founders.”

The debate over the Copyright Term Extension Act, not surprisingly, continues.

In the international sphere, meanwhile, the late twentieth century also saw the United States finally agree to the **Berne Convention** in 1988, joining the following year. The purpose of the convention is to ensure fair and reciprocal copyright protection for member nations. Although it did not create an international copyright per se, it did require the United States to amend its copyright law to comply with certain Berne provisions, such as a ban on registration as a condition of copyright. But overall, the convention facilitated the reciprocal cross-border protection of creative works while leaving most details of each nation’s copyright laws to member states.

One proposed bill that didn’t make it into law was the *Consumer Broadband and Digital Television Promotion Act of 2002*. It attempted to deal with continuing piracy of copyrighted works by requiring every medium and every device for the consumption of copyrighted works to implement digital rights management (DRM) technology. But the bill was considered too draconian—too 1984, if you will—and failed to pass.

To be sure, many companies have voluntarily implemented elements of DRM technology, to the chagrin of many consumers. Some electronic book readers (e-books) limit the ability of users to read books only on those devices, preventing interoperability between Kindle and iPad e-book readers, for example. Some music labels install software on their CDs to prevent copying of the music. And some Blu-ray and DVD movie players do not allow for the creation of transformative copies. In fact, iTunes, a very popular way to manage music and other media, used to employ a DRM system that limited the transfer of songs to five authorized computers.

Groups like the Free Software Foundation argue that “The motive for DRM schemes is to increase profits for those who impose them, but their profit is a side issue when millions of people’s freedom is at stake.” But their argument is undercut by the simple reality that if content creators can’t make a living from it, most will

stop creating and take day jobs to pay the rent. This has always been the copyright bargain in America—protection for the rights of creators but only so long as it serves the public interest. And enabling creators to keep creating is clearly in the public interest.

E-Books

A more legitimate concern regarding DRM is that, whatever its perceived benefits for publishers and distributors, it is holding back innovation and consumer rights in digital content industries. This is especially evident in the burgeoning e-book market, which exploded from barely 10 percent of U.S. book sales in 2011 to 30 percent of all book sales by 2013. But a growing number of e-book publishers have now concluded that unless they meet consumer demands to ease these DRM anti-piracy provisions, further growth could be constrained.

According to Microsoft's Chief Intellectual Property Strategy Counsel Tom Rubin, a leading voice on this issue, that's because DRM makes the e-book reader experience much less enjoyable and useful than that for printed books. According to Rubin:

"When I buy a printed book, I can choose where to buy it—whether from a small neighborhood bookstore, a large chain bookstore, a grocery store, drug store, other retail establishment, or an online retailer. I can even buy books at a steep discount by going to second-hand stores, garage sales, and flea markets. "You can't do that with an ebook. "Then after I buy a print book and bring it home, I can write notes in the margin, share those passages or even the whole book with friends and colleagues, and even photocopy a few pages for my book club. "You can't do that with an ebook."

Rubin says the fault here lies not in the technology, which already exists to enable these capabilities in e-books and also augment them with rich audio, video, and social media. Rather, it lies in the business arrangements underlying the publication and distribution of e-books.

The e-book you buy, for example, is often available from only one source—and usually only readable on one proprietary device. You can't access it from any device you want, nor can you use the e-reader app of your choice. This balkanization of the market diverts resources from enhancing the user experience into defending the turf of incumbent players.

But it's not just the balkanization of the market that hinders competition and innovation. Some publishers now believe that the digital rights management (DRM) controls they employ to prevent piracy are actually preventing many consumers from fully embracing e-books. After all, as many book buyers have angrily noted, you can't even download the digital version of a print book that you've already purchased unless you pay a second time.

Publishing DRM Free

"The consumer ebook market is an emerging and changing one, and we want to offer customers as many choices as possible."

-Elsevier spokeswoman Suzanne BeDell

In response to consumer complaints, some publishers have dispensed with DRM controls. *Harry Potter* author J. K. Rowling has launched her own website, *Pottermore.com*, to sell her e-books DRM free, enabling readers to enjoy them on any device they choose. Interestingly, the piracy of *Harry Potter* books has declined by 25 percent since DRM was dropped in 2012.

Also in 2012, Tor Books, a major science fiction publisher owned by MacMillan, went DRM free as well, with no apparent harm to its sales—and to the delight of its customers.

Then there's the big U.S. tech publisher O'Reilly, which has been DRM free since its inception. O'Reilly, which has one of the most loyal customer bases in publishing, signed a deal on April 16 of 2013 with Elsevier, the

world's largest publisher of scientific and health information, to distribute more than 1,200 titles DRM free. (It also distributes all Microsoft e-books DRM free.)

"The consumer ebook market is an emerging and changing one, and we want to offer customers as many choices as possible," explained Elsevier spokeswoman Suzanne BeDell.

And finally, although the prestigious Harvard Business Press still sells its books on Amazon with DRM restrictions, it recently started selling books on its own site DRM free.

These early publisher moves to dispense with DRM restrictions parallel what happened in the digital music industry a decade ago. For the first few years after the launch of the iTunes music store in 2003, piracy-wary music publishers required Apple to sell its songs with DRM controls that limited the kind and number of devices consumers could play them on.

But on February 6, 2007, Apple CEO Steve Jobs wrote an open letter to the industry urging music publishers to let iTunes sell music DRM free:

"DRMs haven't worked, and may never work, to halt music piracy. If such requirements were removed, the music industry might experience an influx of new companies willing to invest in new [music distribution systems]."

This, said Jobs, would obviously be "positive for the music companies."

And sure enough, once publishers agreed to license digital music DRM free later that same year, the market exploded. In 2013, iTunes announced the sale of its twenty-fifth billionth song!

Ultimately, argues Rubin:

"Success [for ebook publishers] can only come with the satisfaction of legitimate consumer needs—most especially the need for an ebook experience that is every bit as good or better than that of their beloved printed books."

Recent Copyright Laws

The debate over DRM in e-books is likely to be center stage in the copyright debate in coming years. In the meantime, it's worth mentioning three other copyright-related laws that were passed during the last decade or so.

One, the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 enabled educators to use certain copyrighted performances and displays for educational purposes.^{xxxvi} The bill was focused on the fast-growing arena of distance education, whose students number 12 million and are growing rapidly.

Also that year, the Small Webcaster Settlement Act of 2002 eased royalty burdens for small webcasters who don't have the resources of the major content distributors.^{xxxvii}

Finally, the Family Entertainment and Copyright Act of 2005 mandated fines and possible imprisonment for the unauthorized recording of motion pictures in theaters. It also enabled consumers to use new technologies to screen out or skip over some 14 different categories of objectionable content in movies played on DVD players and other devices.^{xxxviii}

^{xxxvi} Technology, Education, and Copyright Harmonization (TEACH) Act of 2002, Div. C, Tit. III, Subtitle C of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758, 1910 (Nov. 2, 2002) Retrieved from <http://thomas.loc.gov/cgi-bin/query/z?c107:S.487.ES>.

^{xxxvii} Derived from Small Webcaster Settlement Act of 2002 (SWSA), Pub. L. No. 107-321, 116 Stat. 2780 (Dec. 4, 2002) Retrieved from <http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.5469.ENR>.

^{xxxviii} Family Entertainment and Copyright Act of 2005, Pub. L. No. 109-9, 119 Stat. 218 (Apr. 27, 2005), codified at various sections of Titles 17 and 18 U.S. Code. Retrieved from <http://www.copyright.gov/legislation/pl109-9.html>.

3.9 New Technology Challenges to Copyright



Figure 3.15 (credit: photograph by Ivailo Djilianov via flickr / CC BY 2.0)

Learning Objectives

After completing this section, you will be able to

- See how a changing music industry has been affected by copyright.
- Appreciate the challenges that continued technology advances may pose for copyright in the future.

One of the newest technology challenges facing copyright law concerns royalty rates for streaming music online. As it stands, royalty rates are much lower for music played over satellite and cable radio outlets like Sirius XM than they are for music streaming services like Pandora.

Music Streaming

Rates are set by the federal Copyright Royalty Board (CRB), a three-judge panel, but currently they apply a different rate for streaming music than they do for satellite and cable music. Sirius pays about 8 percent of its revenue to record companies and artists. Pandora, however, claims it must pay a rate per song streamed that amounts to 44 percent of revenue. So it pushed for the introduction in September 2012 of the Internet Radio Fairness Act, which would make the rates for Internet radio companies the same as those for satellite and cable radio.

This bill was opposed not only by many musical artists and their organizations, but by many copyright experts as well. In November of 2012, a who's who of musicians and singers—including stars from Motown, rock and roll, country, rap, and jazz—published an open letter in *Billboard* magazine opposing Pandora's plan to cut artists' pay and make more money, as they put it in the letter, "on the backs of hard working musicians and singers."

In November of 2013, Pandora quietly abandoned efforts to seek legislation that would help reduce the royalties paid to rights holders. Instead of pursuing legislation, Pandora said it will focus its efforts on lobbying

the CRB.

In early December 2015, the music industry waited breathlessly for the CRB's decision on royalty rates. Pandora had petitioned the CRB to reduce the current statutory rate of 14 cents per 100 songs to 11 cents per 100 songs starting in 2016. But music labels and artists represented by a royalty collection organization called SoundExchange wanted the statutory royalty rate raised to 25 cents per 100 songs—an 80 percent increase—and then by 1 cent every year after that until 2020. Collectively, music streaming services have a combined listenership of 100 million people and are the fastest-growing revenue source for artists and music labels.

On December 16, 2015, in a victory for record labels and artists, the CRB ruled that online radio firms will have to pay 17 cents per 100 plays of songs through 2020.

TV Streaming

Another new technology challenge to copyright involved television broadcasters and an upstart television service called Aereo that at one point rented dime-sized antennas for \$8 per month that act like long-range rabbit ears to people with digital video recorders, enabling them to watch and record over-the-air network channels like NBC or Fox without paying the much-larger fees for cable or satellite service.

TV broadcasters argued that Aereo violated their copyrights by rebroadcasting their TV signals. Aereo, however, claimed that it was the subscribers who were doing the transmitting, and that Aereo merely rented a tool that enabled people to watch a private performance—much like they do when they tape a TV show and watch it in their living room.

The case, which had the TV and technology industries on edge, was decided in their favor on June 25, 2014, by the U.S. Supreme Court, which ruled that Aereo had infringed the rights of copyright holders. Five months later, Aereo declared bankruptcy.

3.10 Alternative Forms of Copyright



Figure 3.16 (credit: Kristina Alexanderson via flickr / CC BY 2.0)

Learning Objectives

After completing this section, you will be able to

- Understand how alternative forms of copyright are emerging in today's increasingly digital ecosystem.

Up to now, we have focused on traditional copyright situations in which an author usually pursues some sort of monetary gain in exchange for the use of their creative work as well as situations in which the author also wants to prevent any alteration of their work. But what if an author simply wants to get their work out before the broadest possible readership and monetary gain is not an issue? What if an author would welcome others adding to the original work? In these cases, there are new kinds of copyright licenses that may be employed by authors.

Creative Commons

The development of the **Creative Commons** represents a voluntary private sector alternative to traditional copyright that coordinates the creation and consumption of content among a wide variety of individuals and institutions—all without a hint of government intervention. In doing so, Creative Commons captures a whole section of the market for which broad dissemination of content and not financial gain is key, which is something that could not be done as effectively by either traditional copyright or the public domain.

The Creative Commons License is currently available in six flavors:

All of these licenses require the work to be copyrighted because the Creative Commons license is based on copyright. Although Creative Commons licenses can provide authors with added opportunities to have their work distributed and used, these licenses do not allow authors to limit any of the rights otherwise available under copyright law, such as fair use.

Creative Commons licenses also cannot be revoked, which means that if copies of your work are distributed under a Creative Commons license, they will always be distributed that way. If, for example, you distribute your amazing new video under a Creative Commons license and it generates five million page views on YouTube—and then 20th Century Fox offers you a seven-figure deal for exclusive rights to distribute your video—you will not be able to prevent everyone on the planet from continuing to distribute your video for free on the Internet.

Open Access

Another alternative copyright approach is called open access, founded by the Budapest Open Access Initiative in 2002. Open access encourages scholars to provide the fruits of their research online without expectation of payment.^{xxxix} The aim here is to open up scholarly research far more widely than is currently the case, but open access adherents face a key challenge in the fact that many scholarly articles are published in expensive journals as “works made for hire.” This means that the rights belong to the journals, not the authors. But open access supporters are working with publishers to try to overcome this limitation and create more opportunities for scholarly research to be made more widely accessible at lower cost.



Figure 3.17 (credit: art designer at PLoS, modified by Wikipedia users Nina, Beao, and JakobVoss via Wikimedia Commons / CC0)

Finally, open source software licensing also offers an alternative to traditional copyright. An open source license for computer software allows the source code to be used, modified, and/or shared under certain defined terms and conditions set by the Open Source Initiative, an educational, advocacy, and stewardship organization formed in 1998. An open source license allows end users to modify the source code for their own purposes. Open source licensed software is mostly available free of charge, though this does not always have to be the case.

3.11 Copyright in a Changing World

Learning Objectives

After completing this section, you will be able to

- Understand how copyright law is showing signs of strain today.
- Realize that it may very well need to adapt to an increasingly mobile world.

^{xxxix} Chan, L., Cuplinskas, D., Eisen, M., Friend, F., Genova, Y., Guedon, J., Hagemann, M., Harnad, S., Johnson R., Kupryte, R., Manna, M., Rev I., Segbert, M., Souza, S., Suber, P., & Velterop J. (2002, February 24). *Budapest Open Access Initiative*. Retrieved from <http://www.soros.org/openaccess/read>.

Comprehensive copyright reform may soon be on the horizon. On March 20, 2013, Register of Copyrights at the United States Copyright Office Maria A. Pallante testified before the House Judiciary Committee that the time had come for a comprehensive review and updating of the Copyright Act.

According to Pallante:

"The law is showing the strain of age and requires your attention. [People] increasingly are accessing content on mobile devices and fewer and fewer of them will need or desire the physical copies that were so central to the 19th and 20th century copyright laws."

The list of issues requiring attention is long, involving everything from copyright term and digital rights management restrictions on digital content to the legality of developing secondary resale markets for digital content as exist with traditional printed content.

The debates may be contentious, as they always are when intellectual property rights are involved. But U.S. copyright law has throughout our history demonstrated a remarkable ability to adapt to new economic, social, and technological realities, and there is no reason to doubt that it will continue to do so.



Assessment Questions

1. A copyright gives authors, artists, dramatists, architects, and other artistic creators the exclusive right to control what?
 - A. How their work is published, reproduced, performed, or displayed.
 - B. The price at which their work is sold, performed, or displayed.
 - C. Whether or not the work becomes a classic on art, theater, or literature.
2. Copyright is made possible by Article 1, Section 8, Clause 8 of the U.S. Constitution, which also gives Congress the authority to do what?
 - A. Declare war.
 - B. Grant patents.
 - C. Make all laws necessary and proper to enforce copyrights.
3. Congress and the courts have interpreted the terms “authors” and “writings” very broadly to include which of the following as eligible for copyright? (Choose all that apply)
 - A. Graphic works.
 - B. Novel, non-obvious and useful inventions.
 - C. Architectural works.
4. When is a work considered copyrighted?
 - A. Once it is officially registered with the U.S. Copyright Office.
 - B. Once the U.S. Copyright Office grants an official copyright.
 - C. Once it is expressed in a tangible form that allows it to be seen or copied.
5. There is an extensive examination system for getting a patent approved. Why is there not a similar system in place for copyrights?
 - A. The merit of an artistic or literary work is a wholly subjective determination.
 - B. Merit has nothing to do with whether or not a creative work is copyrightable.
 - C. Patent examiners can all agree that an invention is novel, non-obvious and useful, but art critics may never all agree that any one painting is beautiful.
 - D. All of the above.
6. Which two public policy goals are served by granting copyrights? (Choose all that apply)
 - A. By protecting the property rights of artists to their creations, the wellsprings of creation do not dry up for lack of incentive.
 - B. Copyrights ensure that artists and writers won’t be taken advantage of.
 - C. Cultural creativity serves the public good and promotes literacy and learning.
7. How were copyrights viewed very differently from patent rights in terms of the interests of the general public?
 - A. Copyrights were thought to be in less conflict with the public interest.
 - B. Copyrights were enforced with the same diligence as patent rights.
 - C. Patent rights were seen as more beneficial to the public than copyrights.