



# *Copyright Basics*

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## *Legislative Background*

- **United States Constitution**  
Article 1, Section 8
- **Title 17 – United States Code**
- **Major Legislation**  
1909, 1976, 1988 (Berne), 1998 (DMCA)
- **The Federal Courts**



## *Definition of Copyright*

### **Section 102(a) of Copyright Act:**

- Copyright protection subsists, ..., in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.



## *Definition of Copyright*

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- Key elements: original work and fixed in a tangible medium of expression.
- Copyright ownership begins as soon as a work is created and fixed in tangible form.
- Ownership vests with the author, except in cases where the work has been created under a 'work made for hire'.



## *What's Protected*

### **Section 102(a) of Copyright Act:**

- Literary Works (including compilations)
- Musical Works (including accompanying words)
- Dramatic Works (including accompanying music)
- Pantomime & Choreographic Works
- Pictorial, Graphic, & Sculptural Works
- Motion Picture & Other Audio Visual Works
- Sound Recordings
- Architectural Works
- Computer Programs (generally considered literary works)



## *What's Not Protected*

### **Section 102(b) of Copyright Act:**

- works not fixed in a tangible form of expression
- titles, names, short phrases, slogans, familiar symbols or designs (these items may be protected under trademark or service mark laws)
- listings of ingredients or contents
- ideas, procedures, methods, systems, processes, concepts, principles, discoveries, devices (these items may be protected under patent law)
- standard calendars, rulers, lists or tables taken from public domain documents or sources and other works containing no original authorship



## *Exclusive Rights of Copyright*

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### **Author's exclusive rights under Copyright (Section 106 of © Act):**

- reproduce the work
- prepare derivative works
- distribute copies publicly
- perform the work publicly
- display the work publicly
- sound recordings



## *Limitations of Exclusive Rights Fair Use*

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Uses generally recognized as eligible for fair use defense under Section 107:

- criticism
- comment
- news reporting
- teaching (NOTE: not all teaching uses constitute fair use)
- scholarship
- research



# *Limitations on Exclusive Rights Fair Use*

## **Four factors to consider in determining if use is fair use:**

- purpose and character of use
  - nature of work
  - amount and substantiality of portion used
  - effect of use on potential market for value of copyrighted work
- **Note** – *USSC upheld fair use argument in Sony (1984); similar type of argument not persuasive for 9<sup>th</sup> Circuit in Napster (2001). Sony also distinguished by USSC in MGM v. Grokster (2005). The Sony case dealt with home use of VCR's, held to be non-infringing.*



## *Duration of Copyright*

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Under current law:

- When vested in the author – life of the author plus 70 years.
- When work for hire or in scope of employment – 95 years or 120 years from date of creation (whichever expires first).

*Note – There have been a number of increases in duration since 1790. Most recent update (CTEA of 1998) has been reviewed by Supreme Court in Eldred v. Ashcroft, a challenge to CTEA.*



## *Public Domain*

- **Public Domain**
  - U.S. government works
  - Works published before 1978 w/o proper © notice
  - Works dedicated to the public domain by their creator
  - Works whose copyright term has expired



## *Major ACS Pubs. © Policies*

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- ACS requires transfer of copyright
- Permission required for certain uses, consistent with Exclusive Rights
- No posting of full articles on the Internet
- Policy pertaining to ACS authors and permitting Internet access
- No e-mailing of articles, or any other type of electronic distribution



## *Why Transfer Copyright?*

- Allows peer-review process to work to fullest extent; protect the integrity of the work
- Simplifies permissions process
- Ensures maximum exposure for content via publication, marketing, etc.; distribution across various media for wide accessibility
- Ensures a source of revenue for ACS, which as non-profit, relies upon
- Authors reap benefit of ACS's reputation
- To pursue all available remedies against infringement



# ACS Copyright Status Form

- Paragraph A – lists rights that ACS grants back to authors
- Paragraph B – lists rights that ACS grants back to employers of authors
- Paragraph C – whenever ACS receives a request to use text, or more than three figures from the author's paper, ACS requires that permission also be obtained from the author
- Paragraph D – ACS claims only copyright, and not other rights
- Paragraph E – applies to U. S. Gov't contractors
- Paragraph F – ACS can use inside figures on publication covers
- US Gov't section – certifies paper is a work of U.S. Gov't
- Crown Copyright box – authored by employees of governments of the UK, Canada, or Australia



## *Quick Primer on Permissions*

- In a nutshell, to avoid risk of infringement!
- Be as specific as possible regarding material to be used, how it will be used, where, etc.
- Always include complete contact information and deadline date
- When in doubt, it can never hurt to ask for permission!
- Most publishers have pre-printed forms



## *Major Publishing Issues with copyright implications*

- Open Access and its effect on STM publishers
- ACS Policy relative to NIH Policy for papers receiving funding from NIH
- ACS Policy permitting authors to provide own access to articles





## Copyright Basics

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- Contact information:  
<e\_slater@acs.org>  
202-872-4367
- Resources:  
ACS – <http://pubs.acs.org>  
AAP – <http://www.publishers.org>  
US © office – <http://www.copyright.gov>

**Thank you!!**