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- Know the differences between:
  - Patent
  - Trademark
  - Plagiarism
  - Copyright

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### **Copyright**

- What is Copyright?
  - Form of protection provided by U.S. to authors of “original works.”
  - Includes literary, dramatic, musical, artistic and other intellectual work.
  - Protection is available whether or not published.
  - It is not a right to publish; it is a right to exclude

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### **Sources of law for copyright**

- English origins- Copyrights earliest origins come from the Stationer’s Company efforts to control information.
- Intellectual property is recognized by the Constitution (Art.I Sec. 8).
  - Grants authors or creators exclusive control over creation for a fixed period.
  - Congress shall have Power...To promoted 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.

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- First U.S. copyright statute- May 1790
  - Started with protection of books and maps
  - Prints (1802)
  - Musical compositions (1831)
  - Photographs (1885)
  - Paintings (1870)

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- Copyright Act 1976 -
  - makes it easier for author to control how work is used by others esp. in light of new technologies.

- Preempts state copyright laws and provides a uniform criteria.
- 1988 U.S. joins the 102 year old Berne Convention - international copyright agency
- Sony Bono Copyright Extension Act
- Common law - court opinions as a source of information about copyright.

6  **What can be copyrighted?**

- Literary works (computer programs)
- Musical works
- Dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works (maps)
- Motion pictures and other A/V works
- Sound recordings
- Architectural works

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- Does the work have to be unique? Good?
- Can it be obscene? Fraudulent?
- Computer work copyrightable?
- Are collections/anthologies of previously published articles copyrightable?
- Are paperback versions of a book “copyrightable”?
- Are databases, or trivia books copyrightable?
- Are telephone books copyrightable? Feist v. Rural Telephone, 111 S. Ct. 1282 (1991)
- Yellow Pages?

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- News events?
  - Facts can't be copyrighted
  - Do journalists have exclusive rights to a story?
  - Can other journalists report on what was revealed in an interview?
  - Can the interview be rebroadcast in its entirety?
- Miller v. Universal Studios (1981)

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- What can't be copyrighted?
  - Works not fixed in a tangible form
  - Titles, short phrases and slogans, familiar symbols or designs, listing of ingredients, lettering or coloring
  - Ideas, procedures, methods, processes, concepts, principles, discoveries or devices
  - Works consisting ENTIRELY of information that is common property (standard calendars, height/weight charts, tape measures, lists or tables taken from public records....)

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- Who owns the copyright?
  - The first person to register a work has a strong legal claim to ownership.
  - Unregistered works are protected but ability to seek damages is limited - it
  - Internationally infringers can be held liable for unregistered works. This was done to dissuade the illegal pirating of music and videos.
  - With registered works you can sue for lost sales and for profits the infringer illegally gained. You can also ask the court to stop further infringement.
  - Even better... a properly registered work allows you to sue for statutory damages (\$100,000 for willful infringement w/o ever showing financial harm) and attorney's fees.

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- How do you register?
  - Register and deposit copies with Copyright office in D.C.
  - The copyright notice: © 2000 Nancy Cornwell let's people know they need permission to reproduce the work.
  - Prior to 1978, the formal process of registration and notice were required. Pre-1978 material without this entered the public domain.
  - Today, a lack of formal copyright, does not mean the work is in the public domain. As a result of the Berne Convention notice is not required to protect the work. You need to assume that almost any work you may find anywhere is

copyrighted.

12  **How long does copyright last?**

- Not forever- remember the Constitution says that control over intellectual property should last for a limited time.
  - The term of copyright originally was 28 years, but was extended with the
    - Copyright Act of 1976 and the.....
  - 1998 Sonny Bono Copyright Extension Act added 20 more years – now life plus 70 year for works after 1/1/78. Before 1/1/78 straight 95 years regardless of how long the creator lives.
    - Eldred v. Ashcroft (2003) Ginsburg - extension was within power of legislature.
    - Disney cartoon characters and retroactive extension

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- Works for Hire
  - Work prepared by an employee within the scope of employment
  - Work specially ordered or commissioned if the parties expressly agreed in writing that the work is for hire.
  - Protected for 95 years after publication
- Government and Copyright
  - Federal statute does not allow federal employees to copyright work they have created as part of their job. Private firms working for the government may copyright with permission.

14  **Rights of Copyright Holders**

- Exclusive right to do the following:
  - To reproduce the work.
  - To prepare derivative works based upon the work
  - To distribute copies of work to the public by sale or transfer of ownership, rental, lease or lending.
    - Harper & Row v. Nation Enterprises, 471 U.S. 539 (1985)
    - Bourne v. Walt Disney (1995)
    - Cohen v. Paramount (1988)

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- To perform or display or transmit the work publicly
- Right to display copyrighted work publicly
- Right to perform audio work by means of digital transmission.
  - Solar Music v. Gap stores (1981)
- Licenses:
  - Master Use License
  - Mechanical
  - Performance rights
  - Synch rights
  - Print rights
  - ASCAP, BMI, SESAC, Harry Fox Agency
- Happy Birthday

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### **Infringements**

- 1st prove you are original copyright holder and that the work is original
- Prove infringer had access to work - it is possible that it was just a wild coincidence...
- Prove copy is substantially similar to original
  - Universal Studios v. Film Ventures (1982)
  - Warner Bros. v. ABC (1981)

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### **Fair Use**

- Balance between access and right to control
- No need to ask permission or pay royalties
- No clear definition
- Depends on circumstances of each case.
- Fair use applies to:
  - Criticism
  - Comment
  - News reporting
  - Teaching
  - Scholarship
  - Research


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- Law offers 4 factors for evaluating fair use:

- Purpose/character of use
- Nature of copyrighted work
- Amount and substantiality of portion used in relation to the whole work
- The effect of the use on the potential market for or value of the work.

19  **Purpose/character of use**







- Congress favors noncommercial use
  - Italian Book Corp v. ABC (1978) use is incidental to a news story
  - Belmore v. City Pages (1995) use for purposes of review or criticism
  - Campbell v. Acuff-Rose Music (1994) Pretty Woman parody
  - Sony v. Universal Studios, 464 U.S. 417 (1984)
    - Fair use for personal entertainment
    - Recording off air programs
    - Didn't have to be transformative - noncommercial was enough

20  **Nature of copyrighted work**

- Not yet published?
  - Harper & Row Publishers, inc., v. Nation Enterprises, 471 U.S. 539 (1985).
    - “the unpublished nature of the work is a key, though not necessarily determinative, factor, tending to negate a defense of fair use.”
- Out of print publications
- Nonfiction v. fiction
- Consumable

21  **Amount of Copying**

- Qualitative and quantitative.
- No exact measures
- Quantity - length of work compared to amount used
- Qualitative - did you take the essence?

- 22  **Effect on market/work's value**
- Could be the most important criteria
  - If purpose is education, effect is harder to show.
  - If your purpose is commercial, then the effect is presumed.
    - In the Nation case it was not that the excerpts made it so no one would buy the book. It was a loss to Harper because Time cancelled its contract worth \$12,500.
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- Conclude?
    - Most short quotes from published works in a scholarly publication constitutes fair use.
    - More quotes raise more questions.
- 24  **Four fair use cases**
- Basic Books, Inc. v. Kinko's Graphics Corp., 758 F. Supp. 1522 (S.D.N.Y. 1991) (in your book)
- 25 
- To help navigate character/purpose of use the Congress provided the following guidelines for fair use:
- Brief
  - Spontaneous
  - Doesn't have more than 9 times a term
  - Carry copyright notice
  - Not be a substitute for purchase of original work
- 26  **Internet**
- DMCA
    - Vicarious liability,
    - protection for ISPs,
    - takedown notice and procedure.
  - Filesharing:
    - Napster
    - Grokster
- 27  **Napster**

28  **Grokster. Ltd**