

Copyright

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U.S. copyright is as old as the Constitution

Article I, Section 8, clause 8: "The Congress shall have power ... To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;"

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Things have changed since the first Copyright Act

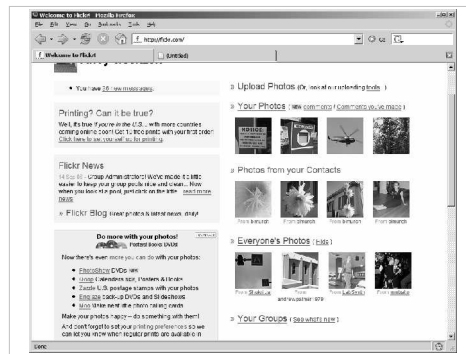
- Copyright has gotten longer
 - 14 years, renewable once -> author's life plus 70 years
- Copyright has gotten wider
 - Right to publish or vend books, charts, and maps -> right to copy, distribute, create derivative works, publicly perform or display
- Copyright infringement has gotten easier / Copyright covers more
 - Manual copying -> digitized copying machines
 - Only printers could copy a book -> anyone can copy with a computer

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How many "copies" have you made today?

- Have you browsed a website?
- Have you forwarded an email?
- Have you taped or TiVo'd a television show?
- Have you played a song on an iPod or MP3 player?
- Have you used the library's photocopier?
- Have you run a program on your computer?

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Why copyright?

- Utilitarian law and economics
- Labor-desert theory
- Personality theory, moral rights
- Cultural theory
- How well does each explain existing law?
- How well does each explain what the law should be?

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Utility

- “To promote the progress of science and useful arts”
 - Give authors and artists an incentive to create and publish, so the public gets access
- Hardy’s copyright pie



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Labor-desert

- John Locke, “Whatsoever [one] then removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*.”

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Personality theory

- Radin, “[T]o achieve proper self-development – to be a *person* – an individual needs some control over resources in the external environment.”
- An artist who feels her self-conception is bound up in her artwork may feel hurt by some uses or abuses of the work.

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Cultural planning theory

- Fisher: “deliberate efforts to craft or construe rules in order to advance a vision of a just and attractive culture.”

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Utilitarian theory

- Provide adequate incentives for the creation of public goods.
- What’s the right balance between private incentive and public benefit?
 - IP is both input and output
 - Public welfare (consumer surplus) is lowered when IP creators can monopolize works

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Is any information “property”?

- Excludable?
 - real property can be fenced or locked up
 - IP can be locked as embodied in tangible items
- Rivalrous?
 - real is - my sheep graze on the commons, yours don't have so much grass
 - IP isn't - I read your story, my neighbor can enjoy it as much (perhaps more)

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Public Goods



• Photo by Shoreline, on Flickr

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Statutory Basis

- Copyright comes from statute, Title 17 U.S.C.
 - 1790, first Copyright Act
 - 1909 overhaul
 - 1976 Act, updated the framework and set the modern categories
 - More recent updates include Sonny Bono Copyright Term Extension, anticircumvention, webcasting license, explicit inclusion of computer software

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What is “intellectual property”?



Not Copyright

- “Can you copyright my name for me?”
 - “Coca-Cola”
 - “The Greatest Show on Earth”
- Names and brands that serve as designations of source are protected by trademark, if at all

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Not Copyright

- “Can you help me copyright my idea?”
 - The Wii-killer gamebox
 - A better mousetrap
- Ideas, machines, and processes are protectable by patent or trade secret, not copyright.

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Where to go for more information

- Course homepage:
<http://wendy.seltzer.org/brooklaw/07copyright>
- Course wiki:
http://cyber.law.harvard.edu/brooklaw/Copyright_Law
- Treatises: *Nimmer on Copyright*, *Goldstein on Copyright*
- Office hours: Tuesdays 3-5, Room 701
- phone/email: 718-780-7961,
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Evaluation

- 8-hour take-home exam
- Participation can boost your grade, and will help you learn the material

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Copyright

- **What is protected?**
- How do you get protection?
- What rights does it convey?
- What infringes?
- What defenses are available?

- What is the source of law?
- What is the policy behind it?

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