

April 12, 2018



Copyright Triage, Part One
Nancy Sims, University of Minnesota

<http://ntl.bts.gov/networking/roundtable.html>
Audio call-in number: 877-336-1274; Access code: 5759713

Bob Cullen:

We all deal with copyright issues on a regular basis. This was something extensively talked about during August's open discussion, and several participants strongly recommended at that time that we have at least a couple of TLRs to help address and untangle the challenges surrounding copyright use.

Leighton and I therefore invited Nancy Sims, the Copyright Program Librarian at the University of Minnesota, to give a presentation on this important topic. She graciously accepted our invitation. (Leighton and I greatly appreciate those of you who highlighted Nancy as a potential speaker during the open-discussion forum, with special thanks to Sheila Hatchell for also facilitating my initial communications with Nancy earlier this year.)

Nancy Sims brings a wealth of expertise and insights when it comes to exploring how copyright challenges can impact our work as librarians. Along with being a librarian who serves as the specialist on copyright issues at the University of Minnesota, Nancy is a lawyer. This combination of library and legal experience -- she characterizes herself

as a “lawyerbrarian” -- has given her a broad and unique perspective on the prevalence of copyright concerns in our everyday lives. For more information on Nancy and her background, please visit:

<https://www.lib.umn.edu/about/staff/nancy-sims>

For her presentation to our group, Nancy plans to use what she calls a “Copyright Triage” approach. She will discuss the basics of copyright use, focusing on the ways in which copyright is indeed all around us (bringing into play everything from how one becomes a copyright owner to the length of time for a copyright) and also how contracts affect all aspects of copyright.

For the second part of her presentation, Nancy plans to zero in more on both how copyright ownership does not mean absolute control and what we each need to keep in mind when it comes to such considerations as existing works and fair use.

Copyright Triage



Nancy Sims
University of Minnesota Libraries




Big tendency to want to do “what’s mine is MINE” AND “what’s yours is mine”. People need to be aware that everyone has both interests, and only if you have a ton of money behind you can you be all about protection and control and not at all about pub dom, access, and openness.

Copyright Triage: Three key concepts

Copyright is EVERYWHERE.

Contracts affect copyrights.

Copyright is NOT absolute.



Key Concept #1

COPYRIGHT IS EVERYWHERE!

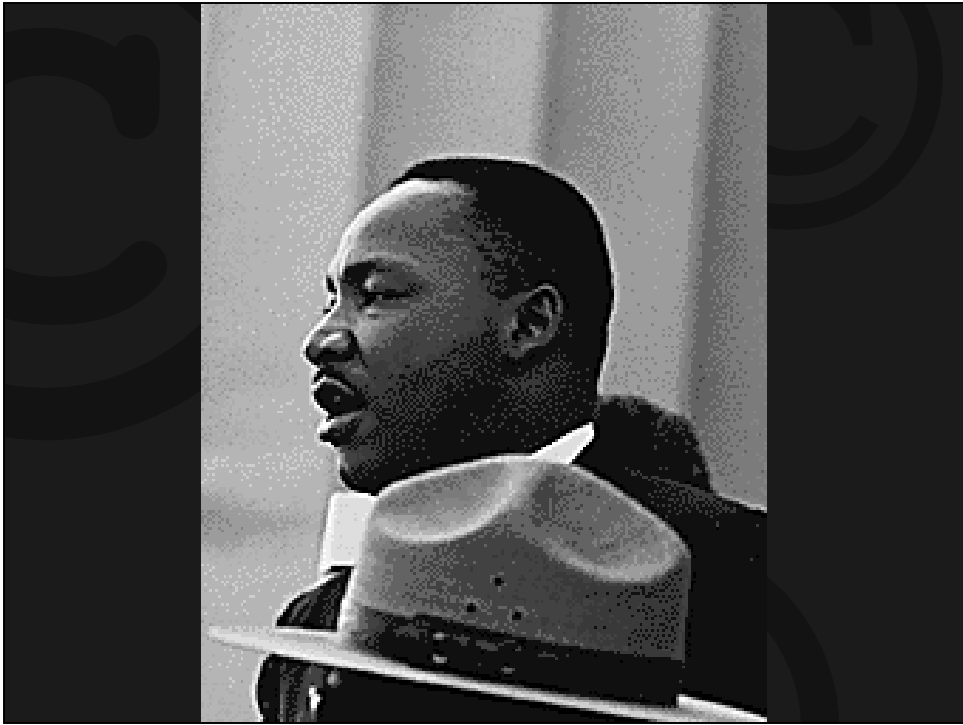


Back Porch Painter c by Mo Riza

C is automatic, from moment of creation.

“But it has to have a © sign!”

“And it has to be registered!”



Copyright owners have...

Rights to do/authorize others to: 17 USC § 106

- Reproduce (make copies)
- Distribute (sell, rent, lend copies)
- Perform or display publicly
- Prepare derivative works (translations, adaptations)



Optic c BY-SA Germán Meyer

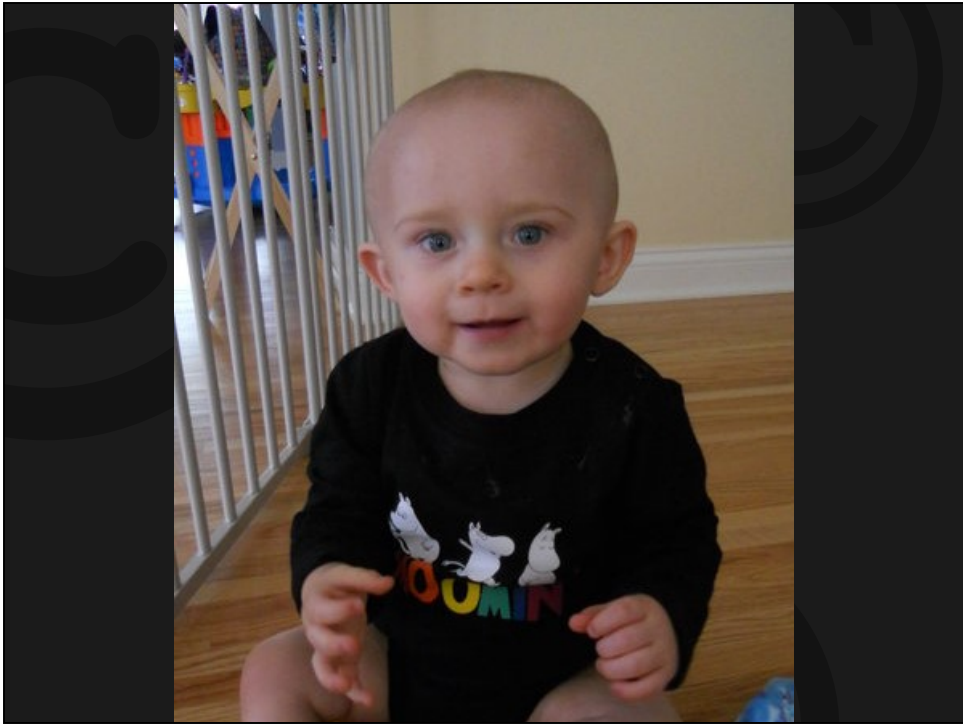
If you create a work today, and die in 2035,
when will the copyright in that work expire?

1. 2039

2. 2067

3. 2085

4. 2105



What kinds of things are copyrightable?

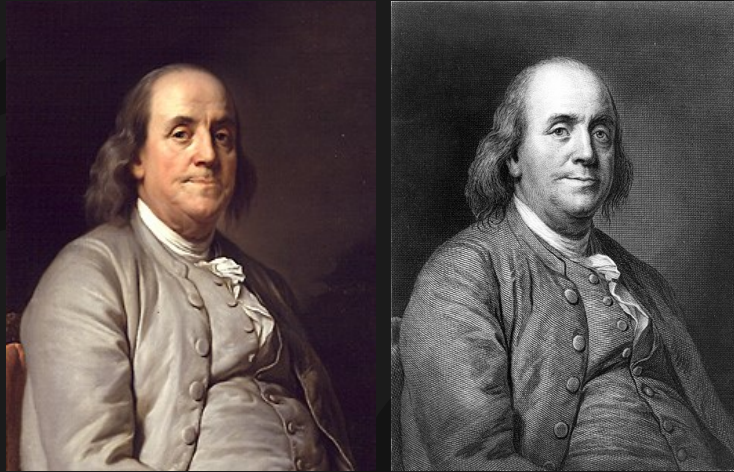
- “Original works of authorship” 17 USC § 102(a)

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works



Also – FIXED – improv doesn't count.

- “Original works of authorship”



“Original” works of authorship

Photos: pose, lighting, framing, etc. NOT “mere mechanical reproductions”

Painting by J.A. Duplessis in 1783; Engraving by H.B. Hall in 1868

Also not sweat of brow.

But technically “modicum” pretty damn small.




Burrow-Giles Lithographic Company v. Sarony, 111 U. S. 53 (1884)

“mere mechanical reproduction”

Bridgeman Art Library v. Corel Corp., 36 F. Supp. 2d 191 (S.D.N.Y. 1999)

“slavish copies”

Burrow-Giles – est that photos could be CP-able, but only because of the authorial choices of lighting, pose, composition, etc! Some photos are “mere mechanical reproductions” and fail originality.



Reproductions are
not independently
copyrightable.

Why does this matter?



Minnesota Reflections - Item Viewer - Mozilla Firefox

http://reflections.mndigital.org/cedm/item_viewer.php?CDSCRROOT=/ad66C150F1R=676C1508001168EC=10

Minnesota Reflections : Item Viewer

12.5%

Coon Rapids Dam

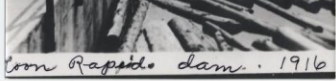



Country United States

Contributing Institution Anoka County Historical Society, 2135 Third Avenue North, Anoka, MN 55303

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Local Identifier Mississippi River 2.42



Coon Rapids Dam - 1916

Title Coon Rapids Dam

Description Dead heads piled up against Coon Rapids Dam after completion in 1916. A sluiceway through the dam permitted logs to be floated through after 1916 when this photo was taken of

Date of Creation 1916

Dimensions 18.3 x 25.2

Physical Format Black and white photograph

General Subject Business and industry

Local Subject Coon Rapids Dam

Geographic Feature Mississippi River

Minnesota City/Township Coon Rapids

Minnesota County Anoka

State Minnesota

Country United States

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Metadata and use of digitized copies.

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17 USC § 102(b)

Copyright excludes

In no case does copyright protection for an original work of authorship extend to any idea, **procedure, process, system, method of operation**, concept, principle, or discovery, regardless of whether such idea, procedure, process, system, method of operation, concept, principle, or discovery is described, explained, embodied in such work.

17 USC § 102(b)



These are the kinds of things we think about as patentable; long since decided that patent & copyright serve different purposes, & shouldn't overlap. (Except for software, where we're just confused.)

Image, incidentally, is from a 1913 Russian book called "Physics for Entertainment" by Yakov Perelman, turned into clipart by "Johnny_Automatic" on site openclipart.org

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In no case does copyright protection for an original work of authorship extend to any **idea**, procedure, process, system, method of operation, **concept, principle, or discovery**, regardless of the form in which it is described, explained, illustrated, or embodied in such work.


17 USC § 102(b)

These are things we think shouldn't be subject to gov't-granted monopoly at all (though under certain cases, protectable via trade secret or patent)

Plagiarism related but separate issue, governed by complex cultural norms abt attribution and borrowing. IDEAS/FACTS NOT PROTECTED BY US LAW most of the time.

Key Concept #2

**CONTRACTS AFFECT
COPYRIGHTS**

A photograph of a large stack of papers and books, with a dark grey rectangular box overlaid in the center. The text inside the box is white and reads: "Contracts and licenses can change the copyright game for creators *and* for users." The background shows the edges of many pages and some book spines.

Contracts and licenses can
change the copyright game for
creators *and* for users.

Day 47/365 - Dead Tree Graveyard c by-nc-nd Kevin H.



FOR CREATORS:



Employment can have an immediate effect on ownership, BTW

U of M Copyright Policy – Nuts & Bolts

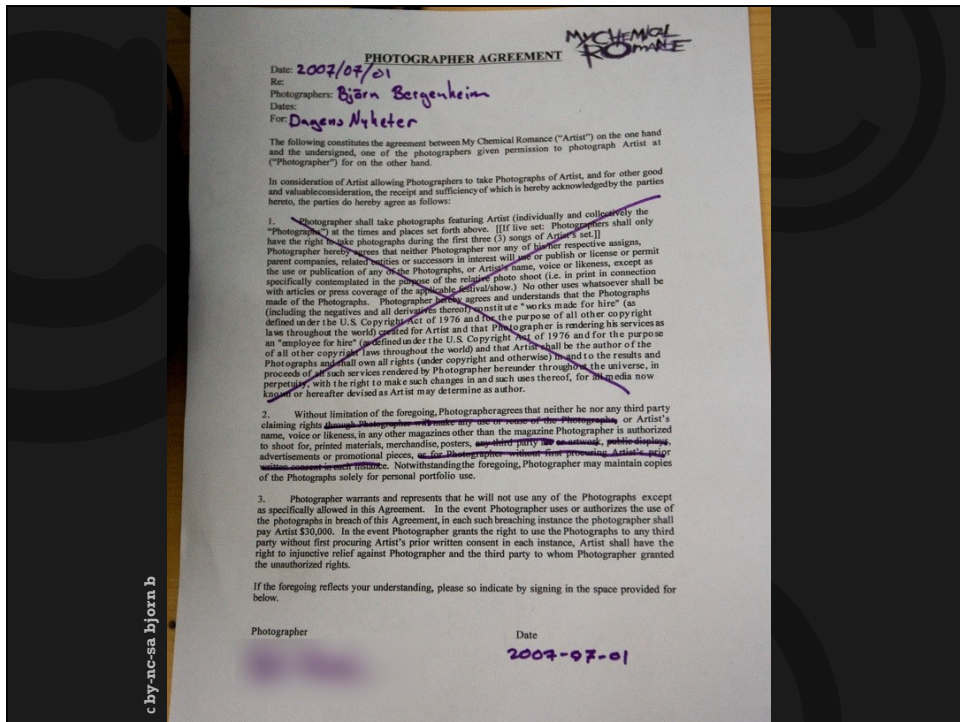
- Faculty and faculty-like individuals own their academic works.
 - Works produced “on the clock” by non-faculty individuals are owned by the University.
- University owns all administrative works.



Lots of flexibility for unit-level determinations. (Default rule is employer owns!)



They can restrict your rights to use things – assuming every work in the gallery in question was public domain to begin with, the museum can, by contract/license, restrict your right to reuse.



But they are not an all-or-nothing game. Can also share rights among parties – many authors negotiate contracts to be able to share their work.

FOR USERS:




“You already have permission.”

And they can also create new/additional rights!

USAGE RULES

- (i) You shall be authorized to use iTunes Products only for personal, noncommercial use.
- (ii) You shall be authorized to use iTunes Products on five iTunes-authorized devices at any time, except for Content Rentals (see below).
- (iii) You shall be able to store iTunes Products from up to five different Accounts at a time on compatible devices, provided that each iPhone may sync one iTunes Product with only a single iTunes-authorized device at a time, and syncing an iPhone with a different iTunes-authorized device will cause one iTunes Product stored on that iPhone to be erased.
- (iv) You shall be authorized to burn an audio playlist up to seven times.
- (v) You shall not be entitled to burn video iTunes Products or one iTunes Product.
- (vi) iTunes Plus Products do not contain security technology that limits your usage of such products, and Usage Rules (ii) - (v) do not apply to iTunes Plus Products. You may copy, store, and burn iTunes Plus Products as reasonably necessary for personal, noncommercial use.
- (vii) You shall be able to manually sync a movie from at least one iTunes-authorized device to devices that have manual sync mode, provided that the movie is associated with an Account on the primary iTunes-authorized device, where the primary iTunes-authorized device is the one that was first synced with the device or the one that you subsequently designate as primary using iTunes.
- (viii) An HDCP connection is required to view content transmitted over HDMI.



Your institution agrees to
contracts on behalf of itself
and its users.

Library subscription licenses
usually authorize *only* personal
use by individuals.

Day 47/365 - Dead Tree Graveyard c by-nc-nd Kevin H.



True for stuff on public web, AND via library subscriptions.

Making *copies*
may violate contracts
even where copyright
laws would allow it.



True for stuff on public web, AND via library subscriptions.

What kinds of restrictions on our own rights, and those of our users, are we agreeing to in our contracts?



Thank you for attending!
Join us May 10, 2018



Copyright Triage Part 2
Nancy Slms

For Past Episodes, Visit the TLR Archive at:
<https://ntl.bts.gov/networking/tlrchive/index.html>