

Copyright: Mine, Yours and Ours

- We will discuss the copyright law:
 - that you own what you create in its various forms, and
 - how and why you can protect and register your work.
- How do you use the work of others
 - With permission with licenses and contracts
 - Without permission is it copyright infringement or is the use a fair use?

The US COPYRIGHT LAW

- **Protects:** Artistic works, literary works, computer code, etc.
- **Vesting:** Upon the creation of an original work of authorship
- **Registration:** Not required, but registration with the Copyright Office is recommended
- **Ownership:** Usually in the creator unless the work is a “work made for hire” or by transfer or assignment.
- **Rights:** Exclusive Right to Reproduce, Distribute, Create Derivative Works, Public Display/Perform
- **Term:** Usually life of author plus 70 years
- **Infringement:** Unauthorized exercise of the above rights (with identical copy or a substantially similar copy)

Copyright: the law and sculpture. In *CCNV v Reid* who gets to decide if the work can be displayed?





Jeff Koons bought Art Roger's photo note card and instructed his team with instructions on the reverse side to make the sculpture on the right without permission.

He lost this copyright infringement lawsuit.



Sculptor Frank Gaylord made the Korean War Memorial sculpture on display in Washington DC. A photograph of the sculpture after it snowed moved the post office to make a stamp honoring the Korean War veterans. The USPS did not ask the sculptor for permission. The case was settled.

Any work is eligible for copyright protection – it must be original. The copyright protects that expression but not the idea.



The Rights that are included in Copyright

- Exclusive right to (or authorize others to)
 - Reproduce (copy) a work
 - To modify or make derivative works
 - Distribute copies
 - Publicly perform
 - or display a work

How to Register a Copyright?

- Info at www.copyright.gov
- Within three months of creation.
- Fill out the online form copyright.gov/eco
- Pay the fee. Deposit a copy of the work with the Copyright Office
- Wait six months for certificate to arrive.
- There are incentives to registration.

There are bonuses for registration in infringement lawsuits

- If the work is registered before its infringed you:
 - Get the legal presumption that the work is yours;
 - You can file a lawsuit.
 - You can ask the court for presumed damages up to \$150,000 per infringement
 - You can ask to get your attorney fees paid
 - You can ask for an injunction to stop them.

Licenses or infringement

- The copyright owner may license (grant a right) or assign (grant ownership) of any or all of the above, together or separately (bundle of rights)
- You can grant a license orally. But its easier to enforce if you have something in writing.
- Violation of one of the exclusive rights is the basis for copyright infringement

The Copyright Balance

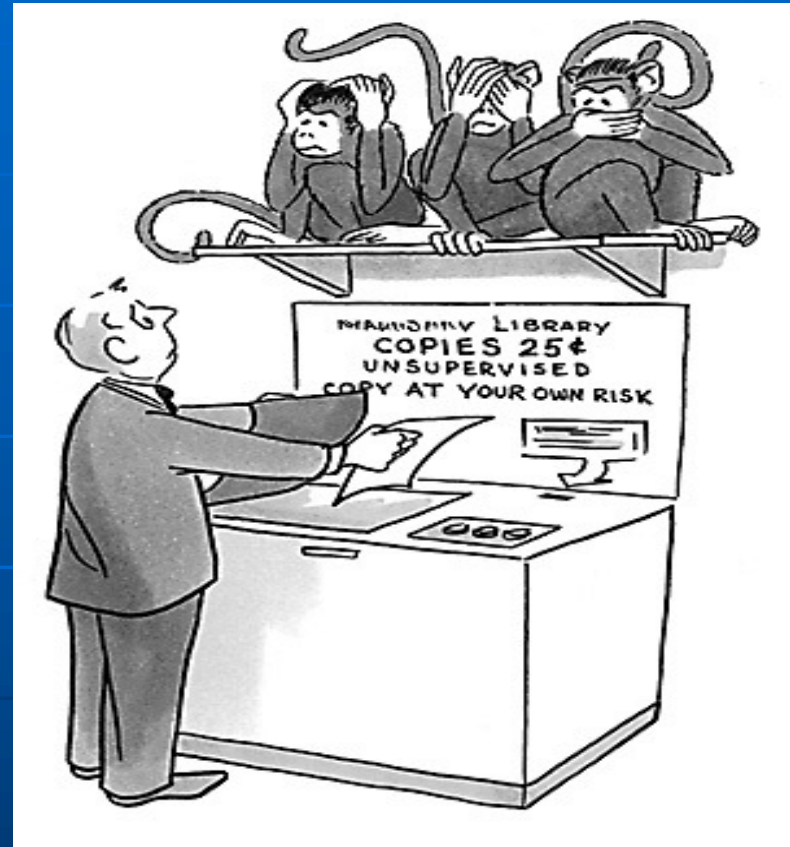
REWARD FOR LABOR, INCENTIVE. Author's right to benefit from labor; incentive for authors to create new work

SOCIAL GOOD. Social right to benefit from free flow of information; stimulation of new ideas, inventions, creations; "progress of science and useful arts"

If the work you borrow is not in the public domain
you'll consider defenses to Infringement

Fair use usually resides
in news reporting,
educational uses,
parody, satire,
commentary, scholarly
work and criticism.

This is why artists take
their own photographs
for reference material



The “fair use” law

Considerations:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Commentary?



7

For a parody to also be a “fair use” it must be transformative of the original. Its very helpful if the new work comments on the original .

