

Copyright

US Constitution: art. 1, § 8, cl. 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."

Copyright Act - Fair Use

Sec. 107 - Limitations on exclusive rights: fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -

- (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.

Public Domain

Term of Copyright

- **1909 - 28 years + 28 year extension**
- **1976 - Life of author + 50 years**

The Sonny Bono Copyright Term Extension Act of 1998

- Corporations = 95 years
- Individuals = life of the author plus 70 years.
- Spearheaded by Disney - Mickey Mouse was about to enter the public domain.

No Electronic Theft Act of 1997

- **NET Act, in case you missed the acronym**
- Intent - to prosecute persons who, without authorization, and without realizing any commercial advantage or private financial gain electronically access copyrighted materials or encourage others to do so.

Digital Millennium Copyright Act of 1998

- **DMCA - Don't Make Content Accessible**
- **The law makes it illegal to circumvent any effective technological protection measure (e.g. a password or any form of encryption) used by a copyright holder to restrict access to his/her material, as well as prohibiting the manufacture of any device, or the offering of any service, primarily designed to defeat such technological protections.**
- **A new owners' right to control access - the legal basis for selling encrypted DVDs and DRM-encoded music files, which restrict access to and use of products that users already own.**

Napster, 2001

- Successfully sued for
“contributory and vicarious infringement.”
- Legal Standard - Sony VS Universal
 - The Betamax case, 1984
 - “substantial non-infringing uses”
- Napster connected users
- No Safe Harbor - Not defined as an ISP

Grokster, 2005

- Meets Sony standard at district and appellate court levels
- US Supreme Court sets a new standard
 - "purposeful, culpable expression of conduct"
 - Sends case back to appellate court
- Grokster never found guilty, but website goes dark

Individual lawsuits

- Since 2003, the US Music Industry has sued more than 19,000 individuals
- Only one case has gone to trial
- 3,700 people have settled out of court
 - Perception of guilt
- New revenue stream - \$18 million

Globalization

- World Intellectual Property Organization
 - WIPO is charged with developing treaties for protecting the rights of intellectual property owners.
- World Trade Organization – WTO
- TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement

Summary

Since the 1990s, corporate capital expanded its hold over intellectual property rights by

- outlawing even non-commercial uses,
- effectively eliminating the public domain,
- narrowing the terrain of fair use,
- creating new intellectual property rights,
- shifting the terms of the debate to trade-related arguments.

