Copyright Basics: Crash Course Intellectual Property #2 Transcript

Hi. I'm Stan Muller, this is Crash Course Intellectual Property, and today we're going to be talking about copyright law. As you might have guessed, the law of copyright relates to the right to copy, the copyright as it relates to copies of copyrightable works. You copy?

[Theme Music]

Right. So, the right to copy or reproduce copyright protected works is only one of the exclusive rights granted by the law of copyright. We're also gonna discuss what types of things can actually be copyrighted, what we call the subject matter. But first, let's talk a little bit about the history of copyright law in the United States. Why the United States? Not because the US is exceptional and not because I'm a cultural imperialist trying to erode the identity and fabric of foreign nations. Mostly it's just because we're making this video in the United States and copyright law is territorial.

So, in 1709, England passed the Statute of Anne, which is widely considered to be the first copyright law. The Statute of Anne was the first law to grant ownership rights to individual authors rather than to publishers or printers. Throughout the 18th century, several of the American colonies adopted copyright and copyright-like laws based on the Statute of Anne. The drafters of the US Constitution inserted what is commonly called the intellectual property clause in Article 1, Section 8, Clause 8 and reads, "The Congress shall have the power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings."

So listed right up there with Congress's power to lay and collect taxes and to declare war and gather armies is the power to promote the progress of learning and knowledge through the grant of a limited monopoly to authors and inventors in the form of copyrights and patents. It is, without question, the coolest of the Congressional powers. Stan, does that seem biased? Oh, I'm Stan, oh, uh, Mark, does that seem biased? No? Good.

The law has undergone several major revisions in the past 225 years, and it's currently in the process of a major review. So let's talk about what types of works are eligible for copyright protection and what rights authors or owners have in those works. Copyright law protects original works of authorship. Originality in the context of copyright means only that the work owes its origin to the author. That is, it's independently created and isn't copied from other works.

How creative do these original works have to be though? Not very, at all. For a work to be copyrightable, there only needs to be a minimal amount of creativity. Adult judges in

court have described it in court as a scintilla, a dab, even a glimmer. So why is the bar for creativity set so low? Well, it's because lawmakers and judges probably aren't the best people to decide what types of creative works promote the progress of knowledge. Supreme Court Justice Oliver Wendell Holmes said, "It would be a dangerous undertaking for persons trained only to the law to constitute themselves judges of the worth of pictorial illustrations outside of the narrowest and most obvious limits." Holmes may have been speaking specifically about pictorial illustrations in this case, but the principle applies to any type of creative work. Anyway, Holmes clearly feels that judges don't necessarily make the best art critics.

So what does Holmes mean by "narrow and obvious limits"? Well, words and short phrases like names (John Green), titles (like The Fault in Our Stars), slogans ("one sick love story"), fonts, coloring, mere listings of ingredients or contents, familiar symbols or designs (like an 8-ball), none of this is protectable under copyright law. Are they protected by any other branch of intellectual property? Ask again later.

One quick note: In order for a work to be protected by copyright, it need not in and of itself promote the progress of science. From literary novels to the most graphic pornography, it's probably protectable. The courts have concluded that it isn't a question of whether a work promotes the progress of knowledge but that all works are granted equal protection. In this way, the law encourages people to create a diverse array of stuff. At the end of the day, it's the system that promotes the progress of science and not the individual works.

Copyright law protects original works of authorship. Works of authorship fall into any of the eight categories that are listed in the copyright act. Literary works are basically anything that can be embodied by letters or numbers, including novels, blogs, computer programs, websites, databases, and possibly really creative tweets. Musical works refers to the actual musical notation of a song by say, T-Swizzy. Sound recordings are the actual music embodied in the record or the CD or an MP3 that extends to things like audiobooks. That's what you actually hear. Dramatic works, which are basically stage productions like *Wicked* or *Cats* or *Waiting for Godot*. Pantomimes and choreographic works. Pictorial, graphic, and sculptural works. Motion pictures, and even architectural works, all of these are considered to be writings.

Congress has indicated that this list isn't exhaustive, and it's vague on purpose, because humans are coming up with new ways to express themselves all the time. Believe it or not, this is not the apex of human creativity. So imagining the Guggenheim or a mime routine as writing can feel like a stretch. In order for any of these works to be considered bona fide writings in the Constitutional sense, they must be fixed in any tangible medium of expression, be that a book, an MP3, source code, choreography, a blueprint, or whatever. The only requirement for a tangible medium of expression is that we as humans either on our own or by using a computer or some other device be able to perceive it in the form of a copy or record.

This brings up a widely misunderstood aspect of copyright: copyright protection extends to the intangible material, the literary work, not the physical copy of the work. You may own the copy of the book, but you don't own the copyright. Also, copyright extends only to expression and not to ideas. If you come up with a million dollar idea for the best movie ever made or the greatest novel in history, until you actually write these masterpieces and fix them in a tangible medium, copyright law doesn't protect you. And you can't copyright facts. Let's say you do some research and discover that Matthias Buchinger was born in Germany on June 3, 1674 without hands or legs. He was a famous artist, calligrapher, and magician. He was called "The Little Man of Nuremberg" and "The Greatest German Living", and he was married four times, fathered at least 14 children by eight different women. Even if you spend your entire academic career uncovering these fascinating facts, facts alone aren't copyrightable. A biography of Buchinger would qualify for copyright protection, but only the narrative expression would qualify. Subsequent biographers could use the facts you uncovered in your research but would be prohibited from expressing those facts using your words. They'd have to make up their own.

"Scènes à faire" or scenes that must be done are not copyrightable either. These are well-worn storylines like a pair of star-crossed lovers from feuding families or fables or folklore. This sounds to me like a cliche. You can't copyright stuff like the idea of a dastardly villain tying a damsel to a train track.

Finally, works created by the Federal Government can't be copyrighted. That's why we can show you this and this and this, no charge. Thanks, federal employees!

So who can get a copyright? Well, according to the 1976 Copyright Act, ownership initially goes to the author or authors of the work. One of the only limits to this rule is that the individual author has to be a human being. If the work is created by an entity other than a human, like say a monkey or a mindless automaton or an employee, that creator is not an author. I'm kidding, okay? Employees are humans, but that does bring us very nicely to the idea of works made for hire. Let's go to the Thought Bubble.

So, if your boss tells you to create something, then your boss or the company you both work for, is considered to be the author of that something. A work made for hire can be a work prepared by an employee within the scope of his/her employment, or certain works that are specially ordered or commissioned. Many employment contracts spell out what constitutes work made for hire. If they don't or if there's no clear employee/employer relationship, courts look at things like whether the employee used the employer's computer, created the work during normal work hours, or was directed by a supervisor during the creation process. If it seems that there was an employer/employee relationship and the employee created the work while acting within the scope of that employee's duties, it probably was a work made for hire. So in these cases, the employer is considered to be the author. The actual people who created the

work have no economic rights in the work, other than the fact that they were compensated for their efforts. This video is a work for hire. Frank's script, my performance, Mark's directions, Zulaiha's script supervision, Brandon's editing, Thought Café's animations, Jason's music, these are all components of this motion picture work and they all belong to the company we work for.

One interesting question here is what rights, if any, you may have if you support Crash Course via Patreon. Are you as a paying supporter functioning as our employer? Did you commission this work? Is this a work made for hire, authored by tens of thousands of supporters? If you participate in a crowdfunding scheme where subscribers vote on or suggest the direction of the creative work, are you joint authors? Magic-8 Ball? Huh. Better not tell you now. Thanks, Thought Bubble.

So authors have a bundle of exclusive rights in their copyrighted works. They get these rights at the moment the work is created. Authors don't have to register their works to be protected, but there are benefits to registration. For example, authors can't go to federal court to enforce their copyrights unless they've registered it. The reproduction right is, put simply, the right to copy. Under US law, reproduction relates only copying the producer's copy or photo records, which, as we just learned, have to be fixed, tangible, and intelligible. In a lot of ways, our modern digital world is just an intricate network of copying. Think about how this video got from me to you. I don't even know where the actual copy of this work resides. We have a master copy on a hard drive in the closet over there, but the copy you're viewing has been uploaded and copied to Google's servers and then it gets transferred and copied from server to server across the Internet until it reaches you, where an intricate sequence of copying takes place in your device's processor and memory so that you can stream it and view it. So in this system where damages pile up for every instance of infringement and statutory damages can be as much as $150,000 every time an infringing copy is made, get out the confetti cannon, because we are rich!

What? Most of these temporary copies aren't fixed or tangible? Are you sure? We're not rich? Let's get an employee or a mindless automaton in here to clean up all this confetti. Hey, a Roomba! Roomba is a registered trademark of the iRobot Corporation.

Okay, so, the adaptation right means that copyright owners have the exclusive right to create or authorize, "any translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which the work may be recast, transformed, or adapted." Under the distribution right, copyright owners have the right, "to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership or by rental, lease, or lending." This seems pretty straightforward until the Internet happened.

In the digital world, what counts as a distribution? Things like streaming video services, torrent sharing, even the idea of licensing media for marketplaces like iTunes are fairly new, and the law has struggled to keep pace with the emerging technology. Really, all we can do is ask our trusty liquid filled dye agitator. Reply hazy, ask again later. You know, I don't think this thing is magic at all. These answers are ambiguous and they seem to be arbitrary and I don't think you should make your decisions based on this.

But anyway, the public performance right allows copyright owners, "to recite, render, play, dance, or act any copyright protected work, either directly or by means of any device or process." The Supreme Court recently ruled that Aereo, an online video service, made an illegal public performance when it let customers view broadcast television over the Internet. Aereo argued that since each of their customers were assigned an individual antenna, when they would transmit the over-the-air broadcast to each user, it was a private performance. The court disagreed. Under the public display right, copyright owners have the exclusive right to display their works.

In 1995, a sixth right, digital audio transmission was created. This is what comes into play whenever you stream music on Spotify or Pandora. Under the most recent version of the US Copyright Law, these exclusive rights last for the lifetime of the author plus 70 years. For works made for hire, terms last for 95 years from publication or 120 years from the date of creation, whichever is shorter. So that means this video won't end up in the public domain until January 1, 2111. That is a long time. A lot of people think that's too long. Some people think that's not long enough. What do you think?

Tell us in comments, and we'll see you next week.

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The greatest reward, though, is helping people learn stuff. Thanks for watching, and we'll see you next week.