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## Just the FAQs Ma'am Copyrights Demystified

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## DISCLAIMER!

- This may be boring
- You may not learn anything
- If you learn something, it'll probably be enough to make you dangerous
- This is **NOT** legal advice

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## IDEAS AND CONCEPTS

- Are *not protectable* in and of themselves
- Legal protection extends to the *tangible expression* of ideas and concepts
- This tangible expression is known as *Intellectual Property* ("IP")



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## Can I Patent a Trademark For a Copyright?

**NO**, because:  
Terms *patent*, *trademark* and *copyright* are not synonyms, but distinct intellectual property rights

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## Intellectual Property...

- Transportation Analogy
  - Cars drive on land 
  - Ships sail on water 
  - Planes fly in air 
  - Hydroplanes travel on water and in air 

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## Intellectual Property...

- **Patents** → Inventions or Discoveries
- **Trademarks** → Indicators of Source
- **Copyrights** → Original Works
- **Trade Secrets** → Confidential Information

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## COPYRIGHTS

- **What?**
  - *Original works of authorship* fixed in any *tangible* medium of expression

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## Copyrights...




**COPY** <sup>(v.)</sup> **RIGHTS** <sup>(n.)</sup>

≠

**Copy** <sup>(n.)</sup> **Write** <sup>(v.)</sup>


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## Copyrights...

- **Works?**
  - **Literary** works 
  - **Musical** works  (including any accompanying words)
  - **Dramatic** works  (including any accompanying music)

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## Copyrights...

- **Works...**
  - **Pantomimes and Choreographic** works 

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## Copyrights...

- **Works...**
  - **Pictorial, Graphic and Sculptural** works 
  - **Motion Pictures**  and other **Audiovisual** works 

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## Copyrights...

- **Works...**
  - **Sound Recordings**  
  - **Architectural Works**  

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## Copyrights...

- **Rights?**
  - Exclusive **Right<sup>s</sup>**
    - *Reproduce* the work
    - *Prepare* derivative works
    - *Distribute* copies
    - *Perform* publicly
    - *Display* publicly

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## Jurisdiction

- **Where?**
  - **National** Border
  - **International** Reciprocity

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## Copyrights...

- **Acquisition of Rights?**
  - Upon *creation*
  - US Copyright Office *registration*
  - [Poor Man's Copyright]

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## Copyrights...

- **Acquisition of Rights...**
  - *Registration not required, but* provides
    - Proof of *ownership*
    - Public *record*
    - Prerequisite to *filing suit*

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## Notice

- **Marking?**
  - *Copyright*
    - Symbol (©)
    - Word (Copyright)
    - Abbreviation (Copr.)
  - *Year* of Creation or Publication
  - *Author* Name

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## Notice...

- **Marking...**
  - *Visually Perceptible Copies*
    - © 2011 Author Name
    - Copyright 2011 Author Name
    - Copr. 2011 Author Name

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## Notice...

- **Marking...**
  - *Sound Recordings*
    - © 2011 Author Name

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## Term...

- **How Long?**
  - *Individual*: Life of author plus 70 years

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## Term...

- **How Long?**
  - *Joint Work*: Life of last-surviving author plus 70 years

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## Term...

- **How Long?**
  - *Anonymous Work*
  - *Pseudonymous Work*
  - *Work for Hire*
    - Earlier of
      - 95 years from publication
      - 120 years from creation

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## Term...

- **How Long?**
  - Until becomes *Public Domain*
    - *Expiration* of term
    - Available for all to use
    - All works *published* in the US *before* January 1, 1923

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## Term...

**CAVEAT:**

Public Availability  
≠  
Public Domain

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## Ownership

- **Owner**
  - Author/Creator
  - Work for Hire
    - Employee/Employer
    - Order or Commission for contribution to:

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## Work for Hire...

1. Collective work
2. Motion picture or audiovisual work
3. Translation
4. Supplementary work
5. Compilation
6. Instructional text
7. Test
8. Answer material
9. Atlas

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## Work for Hire...

- **AND**
  - Parties agree in a prior, signed, written instrument
- Anything else needs...
  - Assignment of ownership

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## Ownership...

- **Assignee**
  - Ownership transfer after creation
    - Independent Contractors
    - Third Parties

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## Copyrights...

- **Enforcement of Rights**
  - There are no Copyright Police
  - Registration required to bring *civil suit*
    - File within 3 months of *Publication* (Best Practice)

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## Copyrights...

- **Enforcement of Rights...**
  - Damages
    - Actual
    - Statutory (\$750-\$30,000/\$150,000)
  - Attorneys Fees
  - Injunction
  - Impound and destroy
  - Commercially Viable? Register!

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## Infringement

- **What?**
  - **Access** to original work  
and
  - **Substantial similarity** to original work

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## Infringement...

- **Copyright Myths:**
  - **Attribution** is sufficient
  - Without **remuneration**
  - Author **promotion**

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## Infringement...

- **Copyright Myths...**
  - Use of **X number of words** or **Y%** of a work is permissible
  - **Transformation** by **Z%** is not infringement

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## Infringement...

- **What is okay?**
  - **Express permission**

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## Rights & Permissions

- **What?**
  - **Third party elements**
- **Examples?**
  - *Photos*
  - *Illustrations*
  - *Maps*
  - *Excerpts*
  - *Lyrics*

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## Licensing

- **What?**
  - **Permission** to use per terms
  - Any or all copyrights
    - *Time*
    - *Territory*
    - *Payment*
    - *Number of Copies*
    - *Etc.*

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## Without Licensing

- What is okay?
  - Fair Use Defense Purposes
    - Criticism
    - Comment
    - News Reporting
    - Teaching
    - Scholarship or Research

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## Fair Use...

- Fair Use Defense Factors
  - Purpose and character of use
  - Nature of the copyrighted work
  - Amount and substantiality
  - Effect on the potential market

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## Miscellaneous

- PARODY
- SATIRE
- CREATIVE COMMONS
- DIGITAL RIGHTS MANAGEMENT
- DIGITAL MILLENNIUM COPYRIGHT ACT

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## Parody



- What?
  - Parody: A work or performance that imitates another work or performance with ridicule or irony



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## Satire

- What?
  - Satire: A literary technique of writing or art which principally ridicules its subject, often as an intended means of provoking or preventing change

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## Creative Commons

- What?
  - a nonprofit organization that develops, supports, and stewards legal and technical infrastructure that maximizes digital creativity, sharing, and innovation
  - Copyright Licenses and Tools
  - <http://creativecommons.org>





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## Digital Rights Management (DRM)

- **What?**
  - Means to **prevent copying** of digital materials
  - **Civil** and **Criminal** penalties



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## Digital Millennium Copyright Act (DMCA)

- **What?**
  - Online copying
  - Insulation of ISPs
  - **Take down notice** to Designated Agent

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## QUESTIONS

- **ANSWERS**
  - The Answer to Life, the Universe and Everything is **"42"**
    - Douglas Adams, *Life, the Universe and Everything* (*Hitchhiker's Guide to the Galaxy* Trilogy)
  - **"It Depends"**
    - Universal legal answer

