Copyright Essentials for Student-Authored Works

BYU Copyright Licensing Office | February 6, 2019
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In 2002, Harvard students Tyler Winklevoss, Cameron Winklevoss and Divya Narendra developed the idea of creating a social networking website for college students.

In 2003, they allegedly entered into a verbal contract with Harvard classmate Mark Zuckerberg to help them develop the website in exchange for equity.

In 2004, Zuckerberg launched Facebook.

After learning of Zuckerberg’s actions, the Winklevosses sought redress from the Harvard administration.
“This idea [Facebook] is potentially worth millions of dollars.”

“Millions? You might just be letting your imaginations run away with you.”

• In 2004, after failing to reach resolution through Harvard, the Winkelvosses and Narendra formed ConnectU and filed a lawsuit against Zuckerberg and Facebook.

• In 2008, the parties settled the case, at a reported valuation of $65 million.
Copyright Foundations
Constitution & Copyright

“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”

US Constitution, Article I, Section 8 (1787)
Categories of Copyright

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
Categories of Copyright

- Pictorial, graphic and sculptural works
- Motion Pictures and other audiovisual works
- Sound recordings
- Architectural works
Copyright: Works NOT Protected

Entry Form
Name: ____________________________
Address: __________________________
City: ____ State: ___ Zip: ________
Phone: ____________________________
Email: ____________________________

Words and short phrases
Blank Forms
Ideas
Calendars, height and weight charts, rulers, etc.

Times New Roman

Typeface

copyright.byue.edu
"We see protectable creative insight in Lippitt’s arrangement and choice of expression…. These expressive choices push Lippitt’s diagram into the realm of copyrightability."
Professors Ho and Taflove were colleagues at Northwestern University.

A graduate student working for Ho published data in her master’s thesis relating to an original atomic model and equations developed by Ho.

Taflove published articles including figures from the thesis.

While copyright may protect the expression of an idea, it cannot protect the substance of mathematical equations and figures.
Copyright: Term

- Works published before 1978
  - 95 years after publication
  - Works published before 1924 are in the public domain
- Works published after Jan. 1, 1978 OR unpublished works
  - Life + 70 years, OR
  - 120 years after creation
Public Domain

- Works published before 1924
- Works published in 1923 entered the public domain on Jan. 1, 2019
- United States government works
Exclusive Rights
Exclusive Rights

1. Reproduce the copyrighted work

2. Prepare adaptations (derivative works) based on the copyrighted work

3. Distribute copies or phonorecords of the work
Exclusive Rights

4. **Perform** the copyrighted work *publicly*

5. **Display** the copyrighted work *publicly*

6. **Publicly perform** sound recordings by means of *digital audio transmission*

- Robert Solomon, a graduate student at Tufts University and protégé of the late artist Joseph Stapleton, decided to write his master’s thesis and a potential book on Stapleton.
- Solomon received full access to thousands of Stapleton’s drawings from his heirs, the O’Connors.
- After a disagreement over editorial control of the works, Solomon alleged that the O’Connors refused permission to include the drawings in Solomon’s thesis and manuscript.
- Solomon filed suit; the parties settled after 6 months.
MMAS Research v. Univ. of California (C.D. Cal. 2018)

- Dr. Donald Morisky, a former UCLA professor, developed the Morisky Medication Adherence Scale (MMAS)
- MMAS Research licenses the MMAS, which includes questions designed to measure a patient’s adherence to prescribed medication
- Linda Park and Selena Kuo, UC graduate students, used MMAS questions during research studies that were later published
- Dr. Morisky and MMAS Research sued UC in November 2018 for allegedly unlicensed used of the MMAS survey tools during the students’ research studies
Plagiarism and Attribution
Copyright Infringement vs. Plagiarism

- Plagiarism relates to **providing attribution** to original source materials
- Copyright relates to **obtaining permission** (when needed) to use protected works
- Plagiarism is often governed by honor codes and standards of academic integrity
- Copyright is governed by federal law
- Plagiarism disputes are often resolved through proceedings conducted internally by schools, publishers, etc.
- Copyright disputes are often resolved in federal courts
Lollipops vs. Candy

Which Venn diagram represents the correct relationship between these two things?

A. 

B. 

C. 

D.
Lollipops vs. Candy

Which Venn diagram represents the correct relationship between these two things?

B.
Copyright Infringement vs. Plagiarism

Which Venn diagram represents the correct relationship between these two things?

A.  
B.  
C.  
D.
Copyright Infringement vs. Plagiarism

Using content: (a) without permission; **AND** (b) passing it off as your own (e.g., copying a classmate's essay without permission).

C.
Copyright Infringement vs. Plagiarism

Passing off another's work as your own, with their permission (e.g., submitting an essay purchased online).

C.
Copyright Infringement vs. Plagiarism

Using content: (a) without permission; **BUT** (b) giving credit to the source (e.g., “no copyright infringement intended”).

C.
Copyright Infringement vs. Plagiarism

Takeaway:
Giving credit is **NOT** a valid substitute for obtaining permission.
Israel v. University of Utah (D. Utah 2015)

- Esther Israel, a doctoral student at the University of Utah, alleged that:
  - She was denied access to a computer lab where her original research materials were stored
  - Faculty and graduate students used her materials on publications without her permission
  - Court dismissed the case on sovereign immunity grounds, without reaching the merits
Copyright Ownership
Copyright Ownership

- Copyright vests initially in the author
- Authors of a joint work are co-owners
- Works made for hire: employer is considered the author
- Many universities have policies granting faculty and students copyright ownership over traditional academic works
Copyright Registration

- Required for litigation
- Register with U.S. Copyright Office (copyright.gov)
- Benefits
  - Prima facie evidence in court (if within 5 years)
  - Maximum statutory damages available if:
    - Registered within 3 months after publication or
    - Prior to an infringement ("separate-accrual" rule applies)
  - Not required to prove monetary harm
Park v. Skidmore, Owings & Merrill (S.D.N.Y. 2017)

- Jeehoon Park, a former graduate student at the College of Architecture at the Illinois Institute of Technology, alleged that One World Trade Center was based on his thesis design.

- Park’s thesis advisor was a partner at the architectural firm that designed One World Trade Center.
Creative Commons
Creative Commons

- Creative Commons
  - Nonprofit organization that provides a variety of simple, standardized licenses
  - All CC licenses have specific terms (attribution, non-commercial, etc).
- License/Publication agreement with copyright owner
- **Use must adhere to individual licensing terms**
CC Google Image Search

Labeled for noncommercial reuse
Creative Commons Attribution

TITLE of the copyrighted work

AUTHOR of the copyrighted work

SOURCE of the copyrighted work

LICENSE of the copyrighted work
Asserting Copyright

• Note: copyright may not extend to research outputs included in theses or dissertations
• Data is only thinly protected by copyright
• Consider designating a CC license to accompany datasets (e.g., CC0)
Copyright Exemptions
Copyright Exemptions

- Library exemption for preservation copies, patron copies, interlibrary loan, etc.
- Face-to-face classroom teaching exemption
- TEACH Act exemption for distance education
Fair Use

"[T]he fair use of a copyrighted work … for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."
Fair Use Factors

P

PURPOSE and character of the use, commercial or nonprofit educational purposes

A

AMOUNT and substantiability of the portion used in relation to the copyrighted work

I

IMPACT – the effect of the use upon the potential market/the value of the work

N

NATURE of the copyrighted work
N. Jersey Media Grp. v. Pirro (S.D.N.Y. 2015)
Publication of Student-Aauthored Works
Digitization of Theses and Dissertations

- Are pre-1978 theses and dissertations in the public domain?
- Can universities publish theses and dissertations under an implied license from the student authors?
- Does fair use apply?
Diversey v. Schmidly (10th Cir. 2013)

- A former graduate student alleged that a University official sent a copy of his dissertation to the University library, without his knowledge or consent.
- The Library made the copy available to patrons and refused to return it upon request.
- The court found that the Library’s use of the dissertation did not qualify as fair use.
BYU Copyright Resources
(Shameless Plug)
Decision Trail

Use the BYU Copyright Decision Trail to find out if your work requires copyright licensing

START NOW
2018 BYU Copyright & Trademark Symposium

J. Scott Evans
Director of Trademarks, Copyright, Domains & Marketing at Adobe

This Year’s Key Note Speaker

BYU COPYRIGHT TRADEMARK SYMPOSIUM 2018
OCTOBER 18-19 | ASPEN GROVE
“Emerging Copyright Issues in the Digital Age”

Additional Resources

- Annual Copyright & Trademark Symposium – Fall 2019
  copyrightsymposium.byu.edu

- Free online copyright tutorial
  copyright101.byu.edu

- Free online copyright decision trail
  decisiontrail.byu.edu
Questions?

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