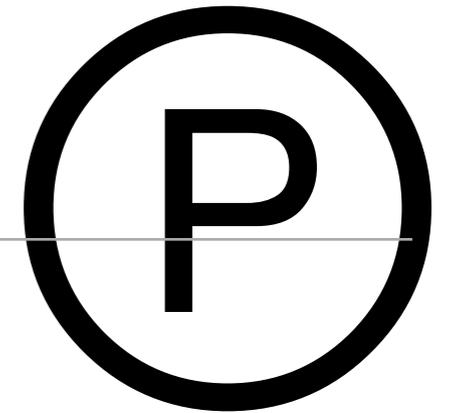




# Copyright Law in the Digital Age

---

CS3610 / CSCI E-6  
November 29, 2007



“All rights reserved”

“I say to you that

**the VCR is to the American film producer and the American public**

**as the Boston strangler is to the woman home alone.”**

Mr. Jack Valenti,

President

Motion Picture Association of America

Testimony before the US Congress

April 12, 1982

# Studio revenues, circa 2004

---

Total 2004 revenue: \$9.5 billion (1.5 billion tickets sold)

- 26% from box office sales (first two weeks)
- 28% TV distribution (HBO, Showtime)
- 46% VHS & DVD sales

That's some strangler.



# Article I, Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

**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;**

**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~~;**

---

The Constitution gives Congress the power:

- **To promote progress of Science and useful Arts**
- **securing for limited Times**
- **to Authors**
- **exclusive Right**
- **to their Writing**

This “exclusive Right” is called “Copyright.”

It’s a right of “Authors.”

It’s controlled by Congress.

# Copyright 1.0\*

Signed by George Washington May 31, 1790

(published July 17, 1790)

“An ACT for the Encouragement of learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the Times therein mentioned.”

- Protection for 14 years; renewable once.
- Penalty: 50 cents/sheet & destruction of materials.
- Right of suit within 1 year of offense.

<http://www.earlyamerica.com/earlyamerica/firsts/copyright/>

\*Copyright 0.1 was England's Statute of Anne (1710)



CONGRESS OF THE UNITED STATES: AT THE SECOND SESSION, Began and held at the City of New-York, on Monday the 4th of January, 1790.

AN ACT FOR THE ENCOURAGEMENT OF LEARNING, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the Times therein mentioned.

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passing of this act, the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof, or resident within the same, his or their executor, administrator or assigns, who hath or have not transferred to any other person the copy-right of such map, chart, book or books, shall or shall be entitled to the same, as if he or she were the author or proprietor thereof; and any other person or persons, being a citizen or citizens of these United States, or residents therein, his or their executor, administrator or assigns, who hath or have purchased or legally acquired the copy-right of any such map, chart, book or books, in order to print, reprint, publish or vend the same, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the term of fourteen years from the time of recording the title thereof in the Clerk's office, as is herein after directed: And that the author and authors of any such map, chart, book or books already made and composed, and not printed or published, or that shall hereafter be made and composed, being a citizen or citizens of these United States, or resident therein, and his or their executor, administrator or assigns, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the like term of fourteen years from the time of recording the title thereof in the Clerk's office, as is herein after directed: And if, at the expiration of the said term, the author or authors, or any of them, be living, and a citizen or citizens of these United States, or resident therein, the same exclusive right be continued to him or them, his or their executor, administrator or assigns, for the further term of fourteen years: Provided, he or they shall cause the title thereof to be a second time recorded and published in the same manner as is herein after directed, and that within six months before the expiration of the first term of fourteen years aforesaid.

And be it further enacted, That if any other person or persons from and after the recording the title of any map, chart, book or books, and publishing the same as aforesaid, and within the times limited and granted by this Act, shall print, reprint, publish or import, or cause to be printed, reprinted, published or imported, from any foreign kingdom or state, any copy or copies of such map, chart, book or books, without the consent of the author or proprietor thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be printed, reprinted or imported, shall publish, sell, or expose to sale, any copy of such map, chart, book or books, without such consent first had and obtained in writing as aforesaid, then such offender or offenders shall forfeit all and every copy and copies of such map, chart, book or books, and all and every sheet and sheets, being part of the same, or either of them, to the author or proprietor, or such map, chart, book or books, who shall forthwith destroy the same: And every such offender and offenders shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his or her possession, either printed or printed, published, imported or exposed to sale, contrary to the true intent and meaning of this Act, the one moiety thereof to the author or proprietor of such map, chart, book or books, who shall sue for the same, and the other moiety thereof to and for the use of the United States, to be recovered by action of debt in any court of record in the United States, wherein the same is complained: Provided always, That such action be commenced within one year after the cause of action shall arise, and not afterwards.

And be it further enacted, That no person shall be entitled to the benefit of this Act, in cases where any map, chart, book or books shall or have been already printed and published, unless he shall first deposit and in all other cases, unless he shall before publication deposit a printed copy of the title of such map, chart, book or books, in the Clerk's office of the district court where the author or proprietor shall reside: And the clerk of such court is hereby directed and required to record the same forthwith, in a book to be kept by him for that purpose, in the words following, (giving a copy thereof to the said author or proprietor, under the seal of the court, if he shall require the same) to wit: Be it remembered, That on the \_\_\_\_\_ day of \_\_\_\_\_ 1790, the year of the independence of the United States of America, A. B. of the said district, hath deposited in this office the title of a map, chart, book or books, (as the case may be) the right whereof he claims as author or proprietor, (as the case may be) in the words following, to wit: [here insert the title] in conformity to the act of the Congress of the United States, intitled, 'An act for the encouragement of learning, by securing the copies of maps, charts and books to the authors and proprietors of such copies during the times therein mentioned.' C. D. Clerk of the District of \_\_\_\_\_ For which the said clerk shall be entitled to receive fifty cents from the said author or proprietor, and fifty cents for every copy under seal actually given to such author or proprietor as aforesaid. And such author or proprietor shall within two months from the date thereof, cause a copy of the said record to be published in one or more of the newspapers printed in the United States, for the space of four weeks.

And be it further enacted, That the author or proprietor of any such map, chart, book or books, shall, within six months after the publishing thereof, deliver, or cause to be delivered to the Secretary of State, a copy of the same, to be preserved in his office.

And be it further enacted, That nothing in this Act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books, written, printed or published by any person not a citizen of the United States, in foreign parts or places without the jurisdiction of the United States.

And be it further enacted, That any person or persons who shall print or publish any manuscript, without the consent and approbation of the author or proprietor thereof, first had and obtained as aforesaid, (if such author or proprietor be a citizen of or resident in the United States) shall be liable to suffer and pay to the said author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this Act, in any court having cognizance thereof.

And be it further enacted, That if any person or persons shall be sued or prosecuted under or by virtue of this Act, he or they may plead the general issue and give the special matter in evidence.

FREDERICK AUGUSTUS MUSELLER, Speaker of the House of Representatives.  
JOHN ADAMS, Vice President of the United States, and President of the Senate.  
Approved, May the 31th, 1790.

George Washington, President of the United States.  
THOMAS JEFFERSON, Secretary of State.

The great and increasing consumption of window-glass and bottles, in this country, should operate as a powerful motive for encouraging the glass-manufactories already established in some of these States, and for promoting the speedy establishment of similar works in other parts of the Union.—The glass-manufactories on the Patowmack, it is said, gives employment to five hundred persons.

The printing of calicoes, cotton, and linens, may be expected to increase in proportion as we extend the manufactures of these articles: And the milliners and white calicoes imported from India, will likewise give employment to our calico printers.—Mr. John Hewson, and Mr. Robert Taylor, both in the neighbourhood of this city, are industriously working in this branch: The former obtained a premium from the manufacturing society for the best specimens of printed goods.

In the state of Pennsylvania, there are twenty-one powder mills, capable of making six hundred and twenty-five tons of powder, per annum.—This is estimated at five dollars per quarter, of 25 lbs; and is offered for sale in larger quantities under sixteen dollars per cwt.—The English price, after deducting the bounty of 4/6, is 7/3/4 sterling, or, about sixteen dollars and seventy-eight cents, per cwt.—Independently of the importance of this article, as a means of national defence, the manufacture of it in this state is worth two hundred thousand dollars per annum.—It is said, that the largest gunpowder works existing any where, are those at Frankford, near Philadelphia—now the property of Mr. Joseph J. Miller.—The mill-work is conducted on the plan of Mr. Rumley's improvement of Barker's mill: Mr. Miller having purchased a license from the patentee.

So much is done by the sugar refiners at Philadelphia, that although the medium of the annual import of brown sugar, into this port, is 6,000,000 lbs, the amount of loaf sugar imported there is only 44,800 lbs.—This business is also carried on at other places in the Union.

The annual amount of molasses, imported at Philadelphia, averages about 5,000,000 gallons; a great proportion of which is converted into spirits, in our distilleries: But, in the eastern states, this manufacture is much more extensive; inasmuch that, the New-England rum is a considerable article of the American commerce. It is not to be expected, that the use of ardent spirits will ever be entirely dispensed with; and, therefore, we may wish success to our distilleries.

The culture and manufacture of silk are yet in their infancy, with us. In Connecticut indeed, this valuable article has obtained a respectable footing; through the skill and perseverance of Mr. Nathaniel Alpinwall (who may be truly styled the promoter of the silk culture in that state), and under the patronage of the venerable and public spirited Dr. Sillars. The writer of this article has observed, with pleasure, the laudable endeavours of Mr. Alpinwall, to promote the culture of silk in Pennsylvania and New Jersey: this indefatigable person has propagated many thousand of the Italian white mulberry-trees, in the vicinity of this city: And there is good reason to expect, that, in a few years hence, the citizens of this state will derive ample profit from their labours. The mulberry-tree, independently of its furnishing the best food for the silk worms—is a valuable timber for

NOTES.

From the Bill of March 1781, to the 17th of March 1785, there were imported to Philadelphia 1,400,000 lbs. of brown sugar, and 28,750 lbs. of loaf sugar. Of the former, were exported 667,687 lbs; and, of the latter, 10,800 lbs.—The imports of brown sugar to Philadelphia, from the 1st of November 1786, to the 31st of October 1787 (inclusive) amounted to 5,610,000 lbs; and, of loaf sugar, but 2,000 lbs. 487,500 lbs. of the brown sugar were re-exported. In the year 1786, 63,750 lbs. of loaf sugar were exported from the port of Boston. The progress that is making in the manufacture of Maple sugar, will greatly lessen the demand for foreign sugar.

The New England rum exported from Boston, in the year 1787, is estimated at 100,000 gallons.

# Wheaton v. Peters 33 US 591 (1834)

---

## Issue:

- Henry Wheaton was the third US Supreme Court Reporter.
- Wheaton sold a 24-volume set of annotated US Supreme Court opinions.
- Richard Peters was the fourth US Supreme Court Reporter
- Peters published an abridged 6-volume set of Wheaton's decisions.
- The Reporter's salary was supplemented by the sale of the books.
- Wheaton sued & lost in Pennsylvania
  - Wheaton had not followed the rules.
  - Wheaton appealed to US.

# Wheaton v. Peters 33 US 591 (1834)

---

## **Conclusion:**

- **No common law right to copyright.**
- Therefore, Wheaton must follow the rules (and he didn't)

Once a copyright expires, the work is in the **public domain.**

# Copyright is a an **exclusive** right....

---

To produce a copy.

To sell a copy.

To import a copy.

To export a copy.

To create a derivative work.

To perform or display the work in public

To sell or assign these rights to others.

“Exclusive” means that you can prevent others from exercising the right.

# The Copyright Act of 1976 reconciled previous statutes with judgements & new technology.

---

## 17 USC:

- 106 - Core Rights
- 106A - limited moral rights
- 107 - fair use
- 109 - first sale
- 110 - exempt performances
- 117 - computer programs
- 302 - duration of notice
- 401 - copyright notice
- 411 - registration
- 504 - damages for infringement
- 506 - criminal violations



# Copyright subject matter & term

---

## **You can copyright:**

- Anything that is in a fixed, tangible form.

## **You can't copyright:**

- Facts, Ideas & Thoughts
- A recipe or a process (this is for patents)
- Works in the public domain (but you can copyright derivative works)
- Works whose copyright has expired
- Page numbers of the law

## **Copyright Term:**

- 70 years after the death of the last surviving author
- 95 years for corporations.

# There are two important limitations on copyright.

---

## **Fair use doctrine**

- Some copying is in the public interest.
- For criticism, comment, news, teaching, research
- Political uses are the most highly protected
- Too much copying is not protected. (353 pages of a 12-volume biography is too much)

## **The first-sale doctrine.**

- If you buy something, you can resell it.
- Applies to books, individual CDs, second hand books.

# Fair Use is codified in 17 USC 107

---

“[T]he 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.”

“such as” means that this is not an exhaustive list.

# 17 USC 107 defines a 4-part test for “Fair Use.”

---

- (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.

“The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

<http://www4.law.cornell.edu/uscode/17/107.html>

# 17 USC 109 - First Sale Doctrine

---

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

- The owner of a “particular copy... is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.”

# The First Sale Doctrine:

Bobbs-Merrill Co. v. Straus 210 US 339 (1908)

---

Bobbs-Merrill Company sold *The Castaway* (a novel)

“The price of this book retail is \$1 net. No dealer is licensed to sell at a lower price, and a sale at a lower price will be treated as an infringement of the copyright.”

R. H. Macy & Co purchased lots of books and sold them at 89 cents/copy.

Isidor Straus & Nathan Straus were partners as R. H. Macy & Company.

# The First Sale Doctrine:

Bobbs-Merrill Co. v. Straus 210 US 339 (1908)

---

**“Does the sole right to vend (named in 4952) secure to the owner of the copyright the right, after a sale of the book to a purchaser, to restrict future sales of the book at retail, to the right to sell it at a certain price per copy, because of a notice in the book that a sale at a different price will be treated as an infringement, which notice has been brought home to one undertaking to sell for less than the named sum?”**

We do not think the statute can be given such a construction, and it is to be remembered that this is purely a question of statutory construction. There is no claim in this case of contract limitation, nor license agreement controlling the subsequent sales of the book.

- No license required to use copyrighted material.

# Important Copyright Cases

---

Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984)

- Home video recording is fair use (time shifting)
- Products that can violate copyright can be sold, provided there is a substantial non-infringing use.

Feist Publications, Inc. v. Rural Telephone Service Co. 499 US 340 (1991)

- Telephone listing numbers cannot be copyright
- Lower courts were wrong to create a “sweat of the brow” doctrine.

Publications International, Ltd., v. Meredith Corporation 88 F.3<sup>rd</sup> 473 (1996)

- Recipes cannot be copyright (DISCOVER DANNON)

# Page numbers and other legal guides are not copyrightable.

---

## West v. Mead 799 F.2d 1219 (1986)

- West Publishing brought suit against Mead Data Central “based on MDC’s proposed introduction of “star pagination” keyed to West’s case reports.”
- Court ruled “West has shown that it will probably succeed on the merits of its claim at trial.”
- “We add a word about the procedure posture of this case ... This case has yet to be tried. We trust it will be tried soon.”

## Matthew Bender & Co. v. West Publishing Co. 158 F.3d 674 (1998)

- “It is true that neither novelty nor invention is a requisite for copyright protection, but minimal creativity is required.”
- “The district court did not clearly err in concluding that the elements of West’s case reports that HyperLaw seeks to copy are not copyrightable.”

# Public Performances: Be careful

---

“It is, for example, technically against the law for Girl Scouts to sing "This Land Is Your Land" and "Puff, the Magic Dragon" around a campfire without paying royalties.” — Jonathan Zittraine, *The Copyright Cage*, Legal Affairs, July/Aug 2003

# This is no joke!

---

1996 - ASCAP advised Girl Scouts that they could not sing copyrighted songs around campfires without paying a license fee.

- Letters sent to 8,000 summer camps.
- ASCAP initially demanded \$1200 per season per camp
- Demand lowered to \$250
- Girl Scout Camps in California removed *Puff* from their song book.

Today: Girl Scouts pays a \$1/year fee to ASCAP for the right.

# What about photocopying and fair use?

---

Williams & Wikins Co. v. United States 487 F.2d 134 (1973)

- Photocopying for library research is fair use.

*but...*

Basic Books, Inc., Harper & Row Publishers, Inc., John Wiley & Sons, Inc., McGraw-Hill, Inc., Penguin Books USA, Inc., Prentice-Hall, Inc., Richard D. Irwin, Inc., and William Morrow & Co., Inc., Plaintiffs, v. Kinko's Graphics Corporation, Defendant 758 F. Supp. 1522 (1991)

- Kinko's may not photocopy excerpts from books, compile them into course "packets," and sell them.
- \$510,000 judgement; \$1,875,000 paid.

# Basic Books et. al v. Kinko's (1991)

---

Kinko's had argued:

- Fair use specifically provided for in § 107
- The publishers had misused their copyrights “by trying to create an industry standard beyond that established by congress.”
- The publishers had known about this for 20 years and hadn't done anything about it.
- In two cases, the publishers had failed to record their copyright prior to filing the complaint.

“This court finds and concludes that defendant did violate the Copyright Act, that plaintiffs did not misuse their copyrights nor are they estopped from asserting their rights under the copyrights.” Copyrights “validly asserted.” “Kinkos didn't show that it was a fair use. This court ... awards plaintiffs injunctive relief, ... statutory damages in the amount of \$510,000, attorneys fees and costs.”

# Copyright Laws

---

The Copyright Act of 1976

Audio Home Recording Act of 1992

- Serial Copy Management System required in consumer product (but not professional products)
- Established a 2 $\frac{5}{8}$  % tax on blank DATs (107 § 1001 (7)(A))
- Basically killed DATs.

The Digital Millennium Copyright Act of 1998

The Copyright Term EXtension Act (CTEA) of 1998

- (The Sonny Bono Copyright Term Extension Act)
- (The Mickey Mouse Protection Act)
- Extended copyright by 20 years
- Eldred v. Ashcroft 537 US 186 (2003) (failed)



Eric Eldred.

[Joi Ito](#) from Inbamura, Japan; cropped by [Padraic](#)

# DRM: Digital Rights Management (Digital Restrictions Management)

---

**Goal: Allow specific uses; prevent others.**

**Some problems seen to date include:**

- Software immaturity (crashes)
- Quality degradation
- Usability
- Restricts rights that consumers feel entitled too.

**Apple iTunes is the most successful DRM system to date. Why?**

**Interesting fact: A 3-minute song costs 99¢ ; a 30-second ringtone \$2.50**

# Other terms you may come across

---

## **Sweat of the Brow Doctrine**

- If you work to create something, you have a copyright in it.
- Doesn't apply in the US

## **Perpetual Copyright**

- A right of control that never expires.
- Example: Works of the Church of England (but only in the UK)
  - The Book of Common Prayer
  - King James Bible.
  - See *A Brief Guide to Liturgical Copyright, Third Edition*  
<http://www.cofe.anglican.org/worship/downloads/litcopy.rtf>

# So what's wrong with copyright law? Plenty.

---

- We all violate it every day by doing things like:
  - Forwarding email messages.
  - Singing popular songs.
  - Viewing web sites.
- Copyright law doesn't reflect common sense or technical realities.
- Control over “characters” seems to be impeding authors more than incentivizing them.
- Statutory damages in the file sharing cases seem far too high.
- Copyright law is increasingly proving to be a burden to:
  - Making movies; publishing books; preparing presentations.
- Orphan works problem.

# References

---

Keith Winstein's 8-hour course Introduction to Copyright Law is online at MIT:

- <http://ocw.mit.edu/OcwWeb/Electrical-Engineering-and-Computer-Science/6-912January--IAP--2006/CourseHome/index.htm>

FindLaw's annotation of Article I 8:

- <http://caselaw.lp.findlaw.com/data/constitution/article01/39.html>

Wikipedia's List of copyright case law:

- [http://en.wikipedia.org/wiki/List\\_of\\_leading\\_legal\\_cases\\_in\\_copyright\\_law](http://en.wikipedia.org/wiki/List_of_leading_legal_cases_in_copyright_law)

US Copyright Office:

- <http://www.copyright.gov/>