Basic Principles of International Copyright Law

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Presentation Outline

I. Why is Intellectual Property Important?
II. Sources of International Copyright Law
III. The “Subject Matter” of Copyright Protection
IV. Criteria for Eligibility for Copyright Protection
V. The Term of Copyright Protection
VI. Exclusive Rights Provided by Copyright Law
VII. Limitations on Exclusive Rights
The Economic Importance of “Intellectual” Property

Colossus Mark II (1944)  
MacBook Air (2008)
Sources of International Copyright Law

- Berne Convention for the Protection of Literary and Artistic Works (1886)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) (“TRIPS”)
- WIPO Copyright Treaty (1996)
- WIPO Performances and Phonograms Treaty (1996)
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EU Copyright Law

- Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access
U.S. Copyright Law

- U.S. Copyright Act of 1976, as amended

The “Subject Matter” of Copyright Protection

- “Literary and artistic works” (Berne Art. 1)
- “Every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression” (Berne Art. 2)
The "Subject Matter" of Copyright Protection

• "Literary and artistic works" (Berne Art. 1)
• "Every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression" (Berne Art. 2)

Berne Art. 1

Article 1

[Establishment of a Union]¹

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Berne Art. 2(1)

(1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings, lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.
The “Subject Matter” of Copyright Protection

- Literary works
- Musical works
- Pictorial works
- Maps and technical drawings
- Sculptural works
- Photographic works
- Audiovisual works
- Choreography
- Computer programs
- Sound recordings
- Databases

- Books
- Novels
- Shorts stories
- Poems
- Plays
- Articles in newspapers, magazines, journals
- Lectures
- Advertising Copy
The “Subject Matter” of Copyright Protection

- Literary works
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- Books
- Novels
- Shorts stories
- Poems
- Plays
- Articles in newspapers, magazines, journals
- Lectures
- Advertising Copy
- Computer programs (WIPO Copyright Treaty Art. 4)

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- Literary works
- Musical works
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- Maps and technical drawings
- Sculptural works
- Photographic works
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- Computer programs
- Sound recordings
- Databases

- Songs
- Choruses
- Symphonies
- Operas
- Musicals
The “Subject Matter” of Copyright Protection

- Literary works
- Musical works
- Pictorial works
- Maps and technical drawings
- Sculptural works
- Photographic works
- Audiovisual works
- Choreography
- Computer programs
- Sound recordings
- Databases

- Drawings
- Paintings
- Etchings
- Lithographs

- architectural plans
- blueprints
- diagrams
- electrical and mechanical drawings

Musical works

- Pictorial works
- Maps and technical drawings
- Sculptural works
- Photographic works
- Audiovisual works
- Choreography
- Computer programs
- Sound recordings
- Databases
The “Subject Matter” of Copyright Protection

- Literary works
- Musical works
- Pictorial works
- Maps and technical drawings
- **Sculptural works**
- Photographic works
- Audiovisual works
- Choreography
- Computer programs
- Sound recordings
- Databases

- Sculptures
- Architectural works
- Designs, “applied art”

The “Subject Matter” of Copyright Protection

- Literary works
- Musical works
- Pictorial works
- Maps and technical drawings
- Sculptural works
- Photographic works
- **Audiovisual works**
- Choreography
- Computer programs
- Sound recordings
- Databases

- Motion pictures
- Television shows
- Instructional videos
The “Subject Matter” of Copyright Protection

- Literary works
- Musical works
- Pictorial works
- Maps and technical drawings
- Sculptural works
- Photographic works
- Audiovisual works
- **Choreography**
- Computer programs
- Sound recordings
- Databases

- Not the music, words or sounds, but the recording of the music, words, or sounds
- Sound recordings
- Databases
The “Subject Matter” of Copyright Protection

- Literary works
- Musical works
- Pictorial works
- Maps and technical drawings
- Sculptural works
- Photographic works
- Audiovisual works
- Choreography
- Computer programs
- Sound recordings
- Databases

- WIPO Copyright Treaty, Art. 5

The “Subject Matter” of Copyright Protection

- Literary works
- Musical works
- Pictorial works
- Maps and technical drawings
- Sculptural works
- Photographic works
- Audiovisual works
- Choreography
- Computer programs
- Sound recordings
- Databases
- Performances

- WIPO Performances and Phonograms Treaty (1996)
Copyright Law Does Not Protect:

“Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.” (TRIPS Art. 9(2))

Copyright Law Does Not Protect:

Idea/expression dichotomy

A story about:

- an orphan
- an orphan who attends a wizard school
- an orphan who attends a wizard school and has two friends, one a girl, the other a boy
- an orphan who attends a wizard school and has two friends, one a very clever girl, the other a somewhat befuddled boy
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Requirements for Eligibility

- The work must be “original” expression: the author must have independently created the work
- The work must be “fixed” (required by some countries, optional under Berne Art. 2(2))
- Notice?
  - The “©” is not necessary: “The enjoyment and the exercise of these rights shall not be subject to any formality” (Berne Art. 5(2)).
Term of Copyright Protection

• Berne Minimum: life of the author plus 50 years (Berne Art. 5(1))
  – In practice, life of the author plus 70 years (e.g., EC Term Directive, Art. 1(1); U.S. Copyright Act of 1976, Section 302)
• Duration of related rights:
  – Performers’ rights: 50 years from date of fixation/publication
  – Sound recordings and motion pictures: 50 years from date of fixation/publication

Exclusive Rights Provided by Copyright Law

• Reproduction right
• Adaptation right
• Distribution right
• Performance right
• Display right
• Moral rights
Exclusive Rights Provided by Copyright Law

- Reproduction right
- Adaptation right
- Distribution right
- Performance right
- Display right
- Moral rights

The right to authorize/prevent the making of copies of the work

Exclusive Rights Provided by Copyright Law

- Reproduction right
- Adaptation right
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- Performance right
- Display right
- Moral rights

The right to authorize/prevent the making of adaptations:
- novel to screenplay
- translation
- change in medium
Exclusive Rights Provided by Copyright Law

- Reproduction right
- Adaptation right
- **Distribution right**
- Performance right
- Display right
- Moral rights

- The “first sale” right: the distribution right is typically "exhausted" after first sale
- Rental right
  - Sound recordings
  - Computer programs
  - Motion pictures

Exclusive Rights Provided by Copyright Law

- Reproduction right
- Adaptation right
- Distribution right
- **Performance right**
- Display right
- Moral rights

The right to authorize/prevent others from **publicly** performing, broadcasting, transmitting the work
  - on stage
  - on television
  - on radio
  - over the internet
Exclusive Rights Provided by Copyright Law

- Reproduction right
- Adaptation right
- Distribution right
- Performance right
- Display right
- Moral rights

The right to authorize/prevent others from publicly displaying the work
- on television
- over the internet

Exclusive Rights Provided by Copyright Law

- Reproduction right
- Adaptation right
- Distribution right
- Performance right
- Display right
- Moral rights

- Right of integrity
- Right of attribution
- Right of disclosure/withdrawal
Limitations on Exclusive Rights

- Berne/TRIPS Three-Step Test
- Fair Use
- Compulsory Licenses

- "Members shall confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights holder."
  --TRIPS, Art. 13

Limitations on Exclusive Rights

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- quotation for purposes of criticism or review
- reproduction in news reporting
- reproduction for educational purposes
- use for purposes of caricature or parody
Limitations on Exclusive Rights

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U.S. Four Factor analysis
- Purpose and character of defendant's use
- Nature of plaintiff's work
- Amount and substantiality of defendant's taking
- Effect on value of or market for plaintiff's work

- quotation for purposes of criticism or review
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- reproduction for educational purposes
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Article 5, EU Copyright Directive
Limitations on Exclusive Rights

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Examples
- “Fair compensation” under EC Directive on copyright and the information society
- U.S. “mechanical license”

Further information: http://www.wipo.int/copyright