 Law Offices  
**Caesar, Rivise, Bernstein, Cohen & Pokotilow, Ltd.**  
Patents, Trademarks, Copyrights

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**COPYRIGHT PRIMER**  
By: **Manny D. Pokotilow**  
©2011

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**COPYRIGHT**

- Right of an author to protect original work from copying.
- Original means not copied from anyone else's prior work.

  
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**COPYRIGHT DURATION**

1. The life of the author plus an additional 70 years.
2. For a joint work, 70 years after the last surviving author's death.
3. Anonymous and Pseudonymous works and works made for hire 95 years from the year of the first publication, or 120 years from the year of creation, whichever expires first.

  
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**CREATION OF COPYRIGHTS**

**17USC §102(a)**

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

  
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**COPYRIGHTABLE WORKS OF AUTHORSHIP**

Works of authorship include the following categories:

1. literary works;
2. musical works, including any accompanying words;
3. dramatic works, including any accompanying music;
4. pantomimes and choreographic works;
5. pictorial, graphic, and sculptural works;
6. motion pictures and other audiovisual works; and
7. sound recordings.

  
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**ADDITIONAL WORKS OF AUTHORSHIP**

1. Compilation
2. Derivative Work
3. Computer Programs
4. Architectural

  
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**WHAT COPYRIGHTS DO NOT PROTECT**

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.



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**COPYRIGHTS PROTECT**

➤ Expression of the author of the ideas, procedures

**The following are not protected:**

- Raw data
- Facts
- Scientific Principles
- News



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**OWNERSHIP OF COPYRIGHT**

1. Initially vests in Author.
2. If Author is an employee, owned by employer, as "Work Made for Hire".



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**WORKS MADE BY CONSULTANT**

- In absence of a writing to the contrary, consultant owns the copyright.
- Specially commissioned works with agreement may be "Work Made for Hire".



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**REGISTRATION**

1. Required to enforce copyright.
2. Filing cost is \$35.
3. Published vs. Unpublished
  - Even if Copyright Office refuses registration, suit may be filed.
  - Author or owner must file copyright application.



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**BENEFITS OF PROMPT REGISTRATION**

1. In a lawsuit, an owner of copyright is entitled to seek attorney's fees and statutory damages if application for registration of an unpublished work is filed before infringement commences.
2. If application for registration is made within three months after the first publication of the work, owner of work of copyright is entitled to seek attorney's fees and statutory damages if the copyright infringement commenced after first publication.



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**STATUTORY DAMAGES**

1. Minimum of \$750.
2. Maximum of \$30,000.
3. Court may increase the amount to \$150,000 for willful and deliberate copyright infringement.




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**COPYRIGHT NOTICE**

1. No longer required.
2. Unless used, damages may be reduced.
3. Form of Copyright Notice – © or Copyright, year of 1<sup>st</sup> publication and Author.

i.e., © 2010 Manny Pokotilow




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**EXCLUSIVE RIGHTS OF COPYRIGHT OWNER**

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. 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;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.




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**SALE OF COPYRIGHTED WORK**

- 1. Whether a copy or the original, copyrights not transferred.
- 2. New owner has no right to copy.



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**MORAL RIGHTS OF VISUAL ARTISTS**

- 1. Attribution and integrity.
  - A. Right to claim authorship
  - B. Right to prevent use of name
  - C. Right to prevent distortion, mutilation or modifications prejudicial to author
- 2. Does not protect other types of writings.  
Protects only:
  - >Paintings
  - >Sculptures
  - >Drawings
  - >Prints and photographic images for exhibition only



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**COPYRIGHT INFRINGEMENT**

Proved By Showing

- 1. Ownership
- 2. Copying



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**HOW DO YOU PROVE COPYING?**

- Direct Evidence of Copying
- Circumstantial Evidence
  1. Access to the copyrighted work
  2. Substantial similarity to the work



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**FAIR OR PROTECTED USE**

...the 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.



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**JUDICIALLY DETERMINED FAIR USES**

1. Home video taping.
2. Classroom use.
3. Parody.
4. Law briefs.
5. Reverse engineering of computer software permitted for the purpose of developing compatible software.



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**FAIR USE FACTORS**

1. The purpose and character of the use, including whether such use is of commercial nature or for non-profit 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
4. The effect of the use upon the potential market for or value of the copyrighted work



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**COPYRIGHT MYTHS**

- If I copy only 10% or less it will be a fair use.
- If it appears on the internet it is free to be copied.
- If it doesn't have a copyright notice it is not copyrighted.



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**PURPOSE AND CHARACTER OF USE**

1. Is the work for criticism, comment, news reporting, teaching, scholarship or research?
2. If so, courts still examine whether particular use was necessary and all four of the factors.
3. Was the infringing use transforming?
4. Is the work commercial?



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**NATURE OF COPYRIGHTED WORK**

1. Some works are closer to the core of copyright.
2. Creative works are normally deemed more worthy of protection, i.e., fine arts, novels, etc.
3. Works of diligence are less worthy of protection, i.e., indexes, tables, catalogues.



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**AMOUNT AND SUBSTANTIALITY OF USE OF THE COPYRIGHTED WORK IN RELATION TO THE COPYRIGHTED WORK AS A WHOLE**

1. The more taken of a copyrighted work, the less likely there was fair use.
2. Where the essence of a copyright work is taken even a small % of entirety is less likely to be a fair use.



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**EFFECT OF THE SECONDARY USE UPON THE POTENTIAL MARKET FOR OR POTENTIAL VALUE OF THE COPYRIGHTED WORK**

This factor aimed at copier who attempts to usurp demand for the copyrighted work.



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**USEFUL ARTICLES**

Two and three-dimensional art is considered a pictorial, graphic or sculptural article only if it can be identified separately from the utilitarian aspects of the article.



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**COMPUTER SOFTWARE**

1. An exception in copyright law. It protects functional products
2. Non-literal elements of software
  - A. Program Architecture
  - B. Translation into another program language
  - C. Menu trees and interfaces
  - D. Screens
  - E. Audio/visual aspects



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**UTILITARIAN NATURE OF SOFTWARE**

➤Limits its copyright scope

➤Limits scope as to non-literal elements

When a patentable process is inextricably in the steps of program then the process merges with the expression.



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**ARCHITECTURAL WORKS**

- Protects designs of building
- Does not protect architectural details
  1. Windows
  2. Doors
  3. Chimneys
  4. Woodwork
  5. etc.



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**INTERNET**

- Downloading a work to your computer = copyright infringement.
- Linking to the same work = No copyright infringement.



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