



Copyrights

Class 7

Exclusive Rights Granted by Copyright Law - §106

- §106 of Title 17 tells you what rights are given to the copyright holder
- All of these rights belong to the holder of the copyright, but each right stands alone →
A copyright holder can sue for infringement even if only one of these rights is violated!!
- Any one of these rights can be transferred via contract without having to transfer all the rights.
- There are some limitations in these exclusive rights (§§107-120)
 - (Stay tuned for "fair use!!") ☺

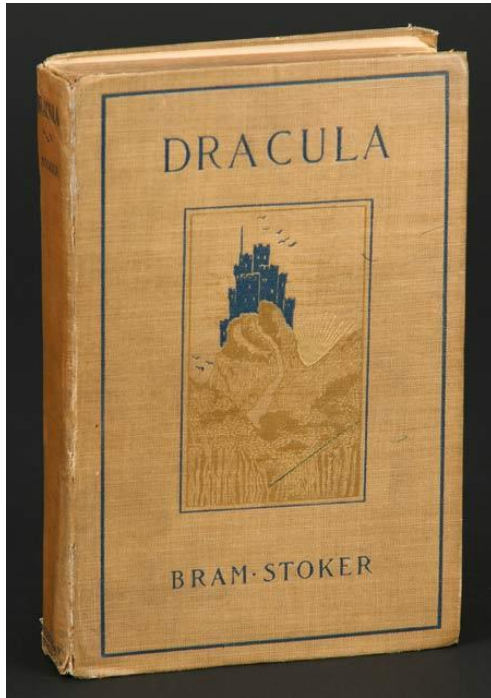
The Exclusive Right to Reproduce - §106(1)

- Every © owner has the right to reproduce his original work
- An exception to this is §115 - the compulsory license exception
- Oddly enough, this is an incentive for © owners to license the work on their own (rather than have the compulsory license kick in).

The Exclusive Right to Prepare Derivative Works - §106(2)

- You must have the author's permission if you want to create a derivative work.
- For a book, a derivative work would be something in the form of a movie/play/show based on the book.
- If someone comes along and creates a Broadway show based on the book, and produces the show, he has infringed the copyright of the author.

The Exclusive Right to Prepare Derivative Works - §106(2)



The Exclusive Right to Distribute Copies - §106(3)

- This section focuses on what happens when something is done with copies that are already in existence
- A copyright owner has the exclusive right to *distribute* copies of the copyrighted work
- §109 puts some limitations on this exclusive right
 - "First Sale Doctrine" - Kirtsaeng v. John Wiley & Sons (2013)
 - Gray market goods
 - Do these two contradict...?

The Exclusive Right of Public Performance & Display - §106(4) & (5)

- "Performance" can be an on-stage play, and it can be a recorded song played on the radio
- §110 puts some limitations on this exclusive right, such as performance or display for:
 - (a) Certain educational uses;
 - (b) Religious services;
 - (c) Certain non-profit uses.
- "Performance Rights Societies" - ASCAP & BMI
 - "Blanket licenses"

Copyright Infringement

- Proving that there was illegal copying. How?
- Merely proving that a copy exists is not enough.
- Must prove that the copy was improper under the statute
 - Example of something that would *not* be improper: Copying material that is in the public domain
- 2 tests to prove copying:
 - Similarity - Look at just how closely the two works resemble each other (keeping in mind that copyright does not protect against independent creation)
 - Access - it's unlikely that there was copying if the alleged infringer never saw the copyrighted work
- © infringement is a strict liability offense - even if you didn't intend to copy...

Remedies for Copyright Infringement

- “Cease and Desist” letter
 - *Letter requests that the alleged infringing STOP!*
 - Chilling effect
- Injunctions - §502
 - *Court order to STOP!!!*
 - Preliminary injunction
 - Temporary Restraining Order (TRO)
- Impoundment - §503
- Money Damages - §504
 - Actual damages
 - Damages set by statute
- Attorney Fees - §505
 - Judge will award when appropriate

Licensing Agreements & Assignment Agreements

- Licensing Agreement
 - The exclusive rights granted in §106 are separable
 - Non-exclusive license vs. exclusive license
 - Contract for an option to buy a license at a later date
 - Another option to negotiate - outright sale of the property
- ALWAYS MAKE SURE YOUR CLIENT'S RIGHTS ARE PROTECTED!

Licensing Agreements & Assignment Agreements

- Assignment Agreement
 - To buy the exclusive rights to use an existing book to make a movie, these are some of the documents needed:
 - Option Agreement for Purchase of Literary Material
 - Purchase Agreement for Purchase of Literary Materials with Standard Terms and Conditions
 - Consultant Employment Agreement
 - Publisher's Release
- ALWAYS MAKE SURE YOUR CLIENT'S RIGHTS ARE PROTECTED!

Fair Use - §107

- Fair use is a *defense* against a claim of infringement!
- Fair use allows someone to use a protected work without the © holder's permission.
 - Examples: criticism, news reporting, parody...
- 4 factors which must be considered in determining whether a particular use was a *fair use*:
 - 1. The purpose and character of the use
 - 2. The nature of the copyrighted work
 - 3. The amount and substantiality of the work used
 - 4. The effect the use has on the work's value
- A court may take other factors into account as well.
- Fair use example: Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984). (Betamax video tape recorders)