Intellectual Property in the University Setting

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Intellectual Property

- Copyright
- Trademark
- Patent
Copyright at a Glance

- Original work into a “fixed medium of expression”
- Attaches immediately
- Allows copyright owner limited control over the use of that work; grants owner exclusive rights
# Copyright Duration

## Copyrights of works first published in US

<table>
<thead>
<tr>
<th>Year of first publication</th>
<th>Copyright duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>* before 1923</td>
<td>Work has entered US public domain</td>
</tr>
<tr>
<td>* during 1923-63: without notice, or with notice but not renewed within 28 years of first publication</td>
<td></td>
</tr>
<tr>
<td>* during 1964-77: without notice</td>
<td></td>
</tr>
<tr>
<td>* from 1978 to March 1, 1989: without notice and without registration within 5 years of first publication</td>
<td></td>
</tr>
<tr>
<td>* during 1923-63: with notice and renewed</td>
<td>Copyrighted for 95 years after first publication</td>
</tr>
<tr>
<td>* during 1964-77: with notice</td>
<td></td>
</tr>
<tr>
<td>* from 1978 to March 1, 1989: pre-1978 creation with notice, or without notice but registered within 5 years of first publication</td>
<td>If author is known, copyrighted until the later of either 70 years pma or Dec 31, 2047. If author is unknown or corporate authorship, the earlier of 95 years after first publication or 120 years after creation, but not earlier than Dec 31, 2047.</td>
</tr>
<tr>
<td>* from March 2, 1989 to 2002: pre-1978 creation</td>
<td></td>
</tr>
<tr>
<td>* from 1978 to March 1, 1989: post-1977 creation with notice, or without notice but registered within 5 years of first publication</td>
<td>If author is known, copyrighted for 70 years pma. If author is unknown or corporate authorship, the earlier of 95 years after first publication, or 120 years after creation.</td>
</tr>
<tr>
<td>* from March 2, 1989 to 2002: post-1977 creation</td>
<td></td>
</tr>
<tr>
<td>* unpublished before 2003 (i.e. first published after 2002)</td>
<td></td>
</tr>
</tbody>
</table>

**Glossary:**

* pma: post mortem auctoris, or “after the author’s death”
Copyright at a University: Creation

- **Scholarly works.** From the MSU IP Policy: Scholarly or Creative Works…may result from usual activities of faculty and Nominal Use of University resources. Because there is no specific assignment for faculty to develop such Scholarly or Creative Works…these works are not considered work for hire but professional activities wherein the copyright is vested with the creator who is entitled to income derived from such works.

- **University Assigned Efforts.** From the MSU IP Policy: Ownership of Intellectual Property developed as a result of an assigned University effort or a commission to undertake a creative project shall reside with MSU.
Copyright at a University - Consumption

- Websites

- Teaching
  - Classroom exemptions
  - Distance Learning (TEACH Act)
  - Fair Use
Classroom Exemption (F2F)

- According to § 110(1), the use of copyrighted material in the classroom is not infringement if the following requirements are met:
  - An instructor or pupil is using the material during the
  - face-to-face teaching activity of a
  - non-profit educational institution in a
  - classroom or similar place devoted to instruction and
  - a legal copy of the copyrighted work is being used.
Copyrighted works can be used in distance learning as well, with some extra restrictions:

- the copyrighted material being transmitted must be **directly related** to the teaching content, and
- the reception of the transmission must be limited to **enrolled students** with no re-transmission or retention of the copyrighted material permitted
- The school must also institute copyright **policies**; **educate** students and faculty about compliance with copyright laws; and provide **notice** to students that the materials used may be subject to copyright protection.
- If all of the above rules are followed, an **entire non-dramatic or musical work** can be displayed. Only reasonable and **limited portions of dramatic** works, however, can be displayed.
<table>
<thead>
<tr>
<th>Factors to Be Balanced</th>
<th>Factors Anti Fair Use</th>
<th>Factors Pro Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose &amp; Character of Use</td>
<td>Commercial Use</td>
<td>Scholarly, Private Use</td>
</tr>
<tr>
<td>Type of Copyrighted Work</td>
<td>Fiction/Original</td>
<td>Factual</td>
</tr>
<tr>
<td>Amount Used</td>
<td>Entire Work</td>
<td>Small Portion</td>
</tr>
<tr>
<td>Effect of Use on Potential Market</td>
<td>Complete Devaluation</td>
<td>None</td>
</tr>
</tbody>
</table>
Copyright Resources

- The Mississippi State University Libraries

- Mississippi State University Internal Audit Department

- The United States Copyright Office
Trademarks

- Distinctive symbol that an organization attaches to its products to differentiate those products from other organizations’ products.
- Mark owner has right to prevent confusion.
- Affirmative duty to protect.
Patents

- A patent is a government-created set of rights that gives the creator of a new and useful invention exclusive control over the manufacture, sale, and development of that invention. In exchange, the owner must fully disclose the nature of the invention through a formal application process.

- The Bayh-Dole Act of 1980 allows universities to retain patent ownership of inventions created with federal funds in exchange for complying with several statutory requirements.
Patent Ownership at Universities

- Most universities retain patent ownership of patents created with university resources.
- Unlike private sector, however, universities have generous plans to allocate licensing proceeds.
- **MSU’s policy**: After expenses have been reimbursed; all subsequent income shall be distributed as follows:
  - First $5000: 100% to inventor
  - $5000 - $100,000: 50% to inventor, 25% to department, 10% to development fund, 15% to MSU Office of Technology Commercialization
  - Above $100,000: 40% to inventor, 30% to department, 20% to development fund, $10 to MSU Office of Technology Commercialization
Questions?

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