



Copyright Licensing Issues

November 9, 2017

Summary

- Categories of a Copyright Owner's Rights
- Copyright Duration
- Policies for Use of Third Party Materials
- Open Source Licensing
- Creative Commons Licensing

Categories of a Copyright Owner's Rights

Copyright Owner's Rights

- “Copyright” is a discrete bundle of rights
- Each of the rights can be individually licensed or transferred

Copyright Owner's Rights

- Right to make copies
- Right to publicly distribute the work
- Right to make derivative works
- Right to perform the work publicly
- Right to display the work publicly
- Right to perform sound recordings by means of digital audio transmission

Copyright Owner's Rights

- Enumerated in 17 U.S.C. 106
- Each right is the owners UNLESS it is transferred
 - Transfer must be made in writing

Copyright Duration

Copyright Duration

- Short Answer: Life of the Author + 70 Years
- Depends on date of creation and date of publication
 - Creation/fixation
 - “Published” is specifically defined

Copyright Duration

- Created on or after January 1, 1978:
 - Known Author?
 - Life of the Author + 70 years
 - Works for Hire?
 - 95 years from year of first publication OR
 - 120 years from date of work's creation
 - Whichever is first

Copyright Duration

- Works registered or “published” before January 1, 1978 have a term of 95 years regardless of authorship
- “Published” before January 1, 1923?
 - In the public domain

Copyright Duration

- What about pre-1978 unpublished works?
 - If published on or after January 1, 1978 but before December 31, 2002, protection extends until December 31, 2047.

Copyright Duration

- In all cases, protection lasts through the end of the calendar year.

Policies for Use of Third Party Materials

Third Party Materials

- Copyright is a strict liability tort.
- Assume that everything you find online is covered by copyright.
 - Do your employees (or your client's employees) know how to stay out of trouble?
 - The Copyright Act provides statutory damages up to \$150,000 per work infringed, plus attorneys' fees.

Copyright Compliance Policies

- How can companies educate their employees to avoid copyright infringement liability?
 - Intranet guidelines and other resources
 - Contact person for questions
 - Training for key personnel in each department

DMCA, 17 U.S.C. § 512

- If a website allows any sort of interactivity, the client should name a “Designated Agent” to receive notices of copyright infringement.
- Once a Designated Agent has been appointed, the Digital Millennium Copyright Act (“DMCA”) provides a safe harbor against liability so long as certain conditions are met.
- <https://www.copyright.gov/dmca-directory/>

Open Source Licensing

Open Source Initiative



- Open Source software makes source code available to others to use, adapt, and add to.
- Using open source software requires entering into a license.
- Generally, modifications made by licensees must be shared with all under the same terms as the original license.
- A popular license type is the GNU General Public License (or “GPL”). Linux is an example.

Open Source, con't

- Unlike the downstream restrictions in the GPL, some open source licenses are more permissive, such as the BSD (Berkeley Software Distribution).
- A list of open source licenses is available at <https://opensource.org/licenses/category>.

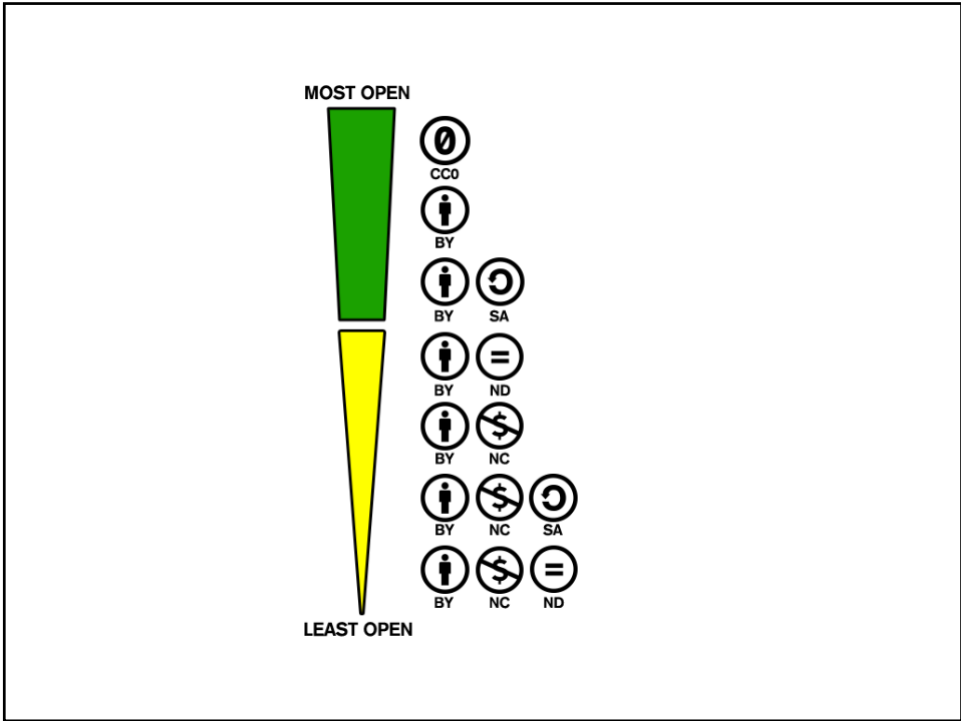
Jacobsen v. Katzer 535 F.3d 1373 (Fed. Cir. 2008)

- Open source licenses are binding and enforceable.
- “The lack of money changing hands in open source licensing should not be presumed to mean that there is no economic consideration” because “[t]here are substantial benefits, including economic benefits, to the creation and distribution of copyrighted works under public licenses that range far beyond traditional license royalties.”

Creative Commons Licensing

Creative Commons Licensing

- “Creative Commons” copyright licenses aim to balance the protective aspects of copyright with allowing a collaborative environment.
- Creators (or “licensors”) may ***retain copyright*** while allowing others to copy, distribute, and use their work
- Various standard permutations of the license are available, and a licensor is free to add additional terms using CC+.
- <https://creativecommons.org/licenses/>



Questions?

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