



**Patents, Copyrights,  
and Trademarks**

| **Class 6**

# Term of Copyright under the 1909 Act

- The **Statute of Anne** (1710) gave a 14-year term from the date of first publication and a second 14-year term if the author was still alive when the first term ended.
- The 1909 Act had a similar setup, but the 1976 Act went a different route and used the author's life as the determining factor for the term of copyright protection, rather than the work itself (either creation or publication).
- Under the 1976 Act, while an author is still alive, we have no idea when that author's work(s) will enter the public domain.



# Term of Copyright under the 1909 Act (cont.)

- A work received protection as soon as it was created and was protected by "common law" copyright.
- If the work was not published, that protection lasted forever.
- If the work was published, and had valid notice, there was a 28-year term that began at publication.
- A renewal term of 28 years was sometimes available, and then only if very rigorous rules were met.



# Logistics of Ownership and Registered Copyrights

- Works Created on or after January 1, 1978
  - Works affected by this date (1/1/78) are a result of the **1976 Copyright Act**
- §302 sets the duration of copyright for works created on or after 1/1/78.
- Not really a 'fixed' term because copyright ownership is tied to the author's lifespan.
  - Until October of 1998, a copyright lasted until 50 years after the author's death (aka "life + 50")
  - Today, it's been extended to life + 70.
    - Life + 70 refers to a single-author work
    - For joint work: 70 years past the death of the last surviving author



# The Sonny Bono Term Extension Act of 1998

- The **Sonny Bono Term Extension Act** of 1998 is responsible for the extension from 'life + 50' → 'life + 70.'
- Extended §302 works by 20 years as well ("anonymous works, pseudonymous works, and works for hire")
- As of now, §302 grants either 95 years from first publication or 120 from creation, whichever is shorter.
- The Sonny Bono Act applies to works created before the Act went into effect (those protected under the 1976 Act) as well as those created afterwards.
- The Act even extends the term of some works protected by the 1909 Act!



# Benefits and Detriments of Fixed Term vs. Term Based on the Author's Life

With a fixed term, other people can make the most advantageous use of the copyrighted material - we protect initially to encourage creation, but we allow it to enter the public domain to encourage new & creative uses.

While a fixed term is good for other people, it's not as good for the authors who may lose the protection of a monopoly during their lifetime, which *would* inhibit creativity in the first place...

With a term based on the author's life, we attempt to encourage creativity by telling authors that they will not lose protection during their lifetime. They *know* now that they have life + 70.

While a term based on the author's life is good for the author, it's not as helpful for others, who have no idea when the term of coverage will end, as it is unknowable while the author still lives.



# Benefits and Detriments of Fixed Term vs. Term Based on the Author's Life (cont.)

- Debatable as to whether benefit or detriment:
  - With a fixed term, all the copyrights of an author expire at different times, depending on the date of the first publication (by the time an author receives a copyright later in life, an earlier one may have already expired...) [Avoids flooding of the market]
  - With a term based on the author's life, all of the author's works will enter the public domain at the same time; after the Sonny Bono Act, that's 70 years after the author dies. [This helps to avoid confusion if someone seeks to use multiple works from one author]
- **These days (as a result of the 1976 Act), creation of the work determines the beginning of the term of protection, and life + 70 determines the end.**



# Registering Copyrights

- Copyright *ownership* attaches upon creation
- Registration of the copyright is optional
- Want to file an infringement claim? **Need registration**
- Want help establishing a timeline? **Registration**
- "Poor man's copyright"
- Cost of registration starts at about \$30 per work, but that can add up quickly if an author has many works



# Transferring Copyrights

- If done correctly, a copyright may be sold/transferred by the owner to someone else
- All sales/transfers are best done in writing (to prevent Statute of Frauds issues...)
- If a copyright is transferred by law (ex: to a surviving spouse upon the death of the copyright owner) there does not need to be a writing



# Transferring Copyrights (cont.)

- A copyright differs from a tract of land in its inability to be touched (it is intangible) and this may affect the terms of the sale/transfer
- The 1976 Act addressed (in §202) how a physical object may be sold, and how that physical object can be separated from the copyright in that object.
- *The transfer of the physical object does NOT automatically include the transfer of the intellectual property rights along with it. (Remember the Bad to the Bone tapes and the IP rights that were separate from the tapes...)*



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# Termination of Copyright Transfers

## [§203 & §304(c)]

- **§203** applies to transfers executed on or after 1/1/78, regardless of when the work was created
- **§304(c)** discusses transfers executed before 1/1/78
- How does termination operate, assuming that a copyrighted work, with one author, was transferred?
  - There's a 5-year window of opportunity, beginning 35 years after the transfer is executed, during which to terminate the transfer of rights
  - Adequate notice must be served, as provided for in §203(a)(4)
  - The notice must be given at least 2 years before, but not more than 10 years before, the effective date of termination
  - The author and certain others (examples: a surviving spouse, a child) may terminate the transfer of rights
  - An authorized derivative work is unaffected by the termination of transfer



# Movies, Music, & Computer Software Rights

- Musical Works – §102(a)(2)
  - For a musical work involving lyrics, each component is protected, both the music and the lyrics.
    - Even if just the lyrics are copied, that constitutes infringement.
  - In order to receive copyright protection, the work must be **ORIGINAL** and **FIXED**. The issue of **FIXED** (in a tangible medium of expression) is more of an issue with musical works than with literary works.



# Movies, Music, & Computer Software Rights (cont.)

- Sound Recordings – §102(a)(7)
  - 3 groups of people to protect:
    - (1) the authors of the original music;
    - (2) the artists who perform the music that is being recorded (fixed in a tangible medium); and
    - (3) the producers of the music.
  - "Compulsory license for making and distributing phonorecords"
    - Under certain circumstances, copies can be made of recorded music as long as the copyright holder is paid a royalty
  - Artists and producers (groups 2 & 3, above) cannot prevent others from playing the recording, but the owner of the underlying work (group 1!) does maintain certain rights (think: royalties)



# Movies, Music, & Computer Software Rights (cont.)

- Motion Pictures & Other Audiovisual Works – §102(a)(6)
  - **'Fixation'** is accomplished both in digital and in analog
  - **'Originality'** is generally met by the act of recording
  - **'Audiovisual works'** includes video games – the arrangement of the graphic elements in a game can be sufficiently creative to be protected by copyright. The onscreen result is what's being protected.



# Movies, Music, & Computer Software Rights (cont.)

- Computer Software – §117
  - *Apple Computer, Inc. v. Franklin Computer Corp.*, - protecting the underlying code of a computer program
  - The purchaser of computer software is allowed to make an "archival" copy
  - A copy may be made in conjunction with the repair or maintenance of a computer
  - Computer programs are protected!



# Questions?

- Questions, concerns, confusion about subject matter.
- Questions about the course.
- THANK YOU

