

The Artist as Entrepreneur

Know Your (copy)Rights

Lesson Description

Among the many innovations found in the U.S. Constitution is the right given to Congress to enact laws designed “to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” (Article I Section 1 Clause 8) This lesson explains how copyright law allows artists to profit economically from their creative endeavors.

Concepts

Copyright
Innocent infringement
Public domain

Related Subject Areas

Creative writing

Objectives

Students will:

Define public domain and provide examples of work in the public domain.

Define innocent infringement

Define copyright, provide examples of copyrighted materials, and state the procedure for securing copyright for their own work

Materials

Handout 1, *What is Copyright?*

Handout 2, *Know Your (copy)Rights*

Handout 3, *TX Form, VA Form* (these forms can be acquired from the U.S. Copyright Office, www.copyright.gov)

Handout 4, *Is it Public or Is it Protected?*

Various copies of printed material, some showing copyright notification and some not
Loose-leaf paper

Lesson Procedures

1. Introduce the concept of copyright protection by asking students to guess the annual revenues from the use of the song, “Happy Birthday to You.”
2. Explain that according to Time Magazine, the song is believed to generate almost \$1 million in royalties each year. Written in 1933 by two Louisville kindergarten

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teachers, “Happy Birthday” was registered with the copyright office in 1935. It will become public domain in 2010.

3. Define **public domain** as public ownership status of works that are not protected by copyright. Some examples of public domain works include Shakespeare’s plays and publications of the federal government.
4. Define **copyright** as the protection of original works of authorship that are fixed in a tangible medium of expression. Explain that this means that no one can reproduce, adapt, distribute, perform, or display works in printed or visual form unless given permission to do so by the author of the work. The author of the work has exclusive rights to his/her work. Distribute Handout 1, *What is Copyright?*, and instruct students to read.
5. Explain that those who want to use “Happy Birthday” must license it from the copyright owner, Warner Communications. In 1988, Warner purchased the rights to the song and other assets from the Birch Tree Group music publishing company for an estimated \$25 million.
6. Explain that Casio Computer pays a one cent fee for each digital watch that it programs to play the song. However, licensing fees can also be very expensive. When the director of Lethal Weapon 2 learned that the fee for using the song would be \$12,500, he decided not to use it in his film.
7. Explain that artists who fail to obtain the copyright to their work cheat themselves out of a future income stream. Consider the heart-breaking case of Agnes de Mille, the choreographer of the musical, Oklahoma! De Mille received a \$1,500 fee and a \$50 per week rehearsal salary for her brilliant choreography. Oklahoma! was first staged in 1943. By 1958, the show had earned an estimated \$60 million in royalties. However, because de Mille failed to retain the rights to her choreography, she received no additional payments. On the other hand, Richard Rodgers, the composer, and Oscar Hammerstein, the lyricist, for the show, received royalties each time a song from the show was recorded, played on the radio, or performed for a live audience.
8. Distribute Handout 2, *Know Your (Copy)rights*, and instruct students to read. Provide students with copies of printed material, some with copyright notation and some with no explicit notice. Instruct students to examine the documents. Ask them what symbols and information are used for copyright notation. (*Each example should have the ©, the author’s name, and the year the document was developed.*)
9. Ask students if each document they have examined is copyrighted. (*Students may state that those without expressed copyright notification are not protected by copyright.*) Explain that although some documents may not bear an explicit

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copyright notation, copyright protection still applies to those works not in the public domain.

10. Explain that the use of the notice is recommended because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, as long as the work carries a proper notice, the court will not allow a defendant to claim “**innocent infringement**” – that is, the defendant cannot say that he or she did not realize that the work is protected.
11. Explain that students will write and obtain copyright protection for an original work. Distribute several sheets of paper to each student. Explain that each student will write a brief poem of four-to-six lines. Students will be asked to follow a procedure for writing the poems. Provide students with the following instructions.
 - a. Name things we talk about all the time which are not made out of matter but, rather, are invisible things such as anger, time, memory, or trust. (*List students’ responses on the board.*)
 - b. Instruct students to write a list of at least ten “invisible things” on the left hand side of their papers.
 - c. Instruct students to write a list of ten colors down the middle of the page. They can name common colors, colors that are unusual, for example, bottle-green, or colors they make up, such as moon-white.
 - d. Instruct students to make a list of ten “visible things” down the right hand side of their papers. These could be objects found around the home, in the sky, on the street, and so on.
 - e. Instruct students to connect one invisible word with one color and one object by drawing a line. They may connect any word from the first column with any word from the second column, and then connect those with any word from the third column. Connections need not be logical but should be surprising or interesting.
12. Instruct students to use the words they connected on their lists to write the first line of their poem. For example, if the word love was in the first column, fire-red was in the second column, and star was in the third column, they might connect these three to make the sentence, “Love is a fire-red star.” This would be the first line of their poem. Have them continue with two or more lines and give their poems titles.
13. Explain that the copyright protection for their work is already in place. Remind students that copyright protection begins when a creative work is set down in

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some tangible form, such as writing a poem on paper. However, to avoid “innocent infringement,” students may want to register the copyright for their poem with the U.S. Copyright Office. Distribute Handout 3, TX Form, to students and have them complete it. Explain the next steps in registering a copyright as follows:

- a. Along with the TX Form or VA Form, a non-refundable filing fee of \$30 must be submitted.
- b. A nonreturnable deposit of the work being registered must be submitted.
- c. The TX Form, the filing fee, and the work must be sent in the same envelope or package to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

OPTIONAL

Students may register a copyright on a work of visual art they have created. For a visual work, they must use the VA form. This can be downloaded by visiting the U.S. Copyright Office and clicking on Visual Arts.

Closure

Make the following points:

1. Once the students’ work is placed in tangible form, they hold the copyright to that work.
2. Once their work holds a copyright, anyone wishing to use the work must seek permission.
3. The conditions for granting the use of the work, such as payment or duration of use, are determined by the author of the work.
4. Registering the copyright better protects the author against “innocent infringement.”
5. Distribute Handout 4, *Is it Public or Is it Protected?* to each student. Instruct students to gather two samples of copyrighted materials and two samples of materials in the public domain (other than government documents or Shakespeare’s work), and, using their samples, respond to the questions on the assessment sheet. Explain that the class will discuss student findings.

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Handout 1

What Is Copyright?

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. The Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the copyrighted work in copies or phonorecords
- To prepare derivative works based upon the copyrighted work
- To distribute copies or phonorecords of the copyrighted work to the public for sale or other transfer of ownership, or by rental, lease, or lending
- To perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- To display the copyrighted work publicly, 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.

Who can claim copyright?

Copyright protection exists from the time the work is created in fixed form. The copyright authorship immediately becomes the property of the author who created it. Only the author or those deriving their rights through the author can rightfully claim copyright.

Who cannot?

A work prepared by an employee within the scope of his or her employment is called a work made for hire. The employer is the owner of the copyright rights in the work unless the employer and employee have agreed otherwise in a written contract.

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Handout 2

Know your (Copy)rights

What works are protected:

Copyright protects “original works of authorship” that are fixed in a tangible form of expression. Copyrightable works include the following categories:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound records
- Architectural works

What works aren't protected:

Several categories of material are generally not eligible for protection. These include among others:

- Works that have not been fixed in a tangible form of expression. For example, choreographic works that have not been notated or recorded, improvisational speeches, or performances that have not been written or recorded.
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation; lettering or coloring; or mere listings of ingredients or contents.
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
- Works consisting entirely of information that is common property and containing no original authorship. For example, standard calendars.

How long does copyright continue?

A work that is created on or after January 1, 1978 is automatically protected from the moment of its creation and is ordinarily given a term enduring for the author's life plus an additional 50 years after the author's death.

For works made for hire, the duration of the copyright is 75 years from publication or 100 years from creation, whichever is shorter.

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Handout 4

Is it Public or Is it Protected?

Using two samples of copyrighted works and two samples of works in the public domain, complete the following.

Do the copyrighted works bear the copyright notation? If yes, write the copyright notation here.

If the samples do not bear the copyright notation, how do you know they hold a copyright?

Define innocent infringement.

How can an author be protected from innocent infringement?

Define copyright.

Describe the procedure for obtaining copyright.

Define public domain.

How do you know your public domain samples are actually in the public domain?

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