Copyright Issues

Ownership

The act of digitizing pictures, sounds, words, and other concrete forms of expression is commonplace. The proliferation of scanners and smart phones makes the acquisition of graphics and audio available to anyone. Yet multimedia producers must be especially careful about how the assets they digitize are used and distributed. A photograph is the property of the camera operator; each song belongs to its composer; text is owned by the writer; a graphic belongs to the artist; a sound is the property of the person who creates or samples it. Original work in any of these forms may not be copied and resold without express permission from the copyright holder, and it is the responsibility of the person who would digitize and use an asset to locate and secure permission from the owner.

A copyright provides ownership of intellectual property in which the author secures certain exclusive rights to an original work for a limited time. Copyright law is authorized by Article 1, Section 8 of the Constitution. The clause gives Congress the power "to promote science . . . by securing for limited times to authors . . . the exclusive right to their writings." Copyright protects the author's original expression only. It does not extend to ideas or facts presented in a copyrighted work. It does not include previously existing material that an author has incorporated into a new work.

Recognized Copyrights in the United States

Copyright should not be confused with personality rights, such as the right of privacy, which are used to protect the name, voice, or persona of an individual. Things that are created by people are referred to as intellectual property since they are products of the mind. A work must be original to be copyrighted, and this means that it was created by the author. The work need not be different from everything preceding it, but it must embody creativity and it must be the "expression of an author." Only nonutilitarian aspects of a work are protected by copyright. If something is both a work of

authorship and a useful article, copyright will not protect the useful aspects. It must exist in a fixed, tangible medium of expression. An idea is not protectable, but the expression of an idea is. In the United States, copyright includes the following rights:

1. *Reproductive Right:* The right to make copies of a work.
2. *Adaptive Right:* The right to produce derivative works based on a copyrighted work.
3. *Distribution Right*: The right to distribute copies of a work. (This includes importation right, the right to prevent unauthorized importation of a work.)
4. Performance Right: The right to perform a copyrighted work in public. (The performance right does not ordinarily apply to sound recordings, but a limited performance right prohibiting only digital performances of sound recordings was added in 1995.)
5. *Display Right:* The right to display a copyrighted work in public. (These rights apply to musical, dramatic, literary, choreographic, film, and video programs only. They do not apply to audio recordings or architectural designs.)

In addition to the rights that are part of copyright, United States law also provides for an author's rights in certain works of visual art such as signed and numbered limited edition paintings, photographs, or sculptures. These rights are technically not part of copyright, because they belong only to the author of the work, do not survive the author, and cannot be bought or sold (although they may be waived by contract). The two rights of an author are the rights of attribution and integrity:

Attribution Right: The right of the author to claim authorship of a work, and the right to prevent being incorrectly identified as the author of a work.

Integrity Right: The right to prevent intentional distortion or destruction of a work and to prevent others from attributing a distorted version of the work to the author.

Not all rights last for the same period of time. Typically, a copyright endures for the life of the author plus 70 years; an author's rights, on the other hand, endure only for the life of the author. A series of restrictions on rights are found in Sections 107 through 120 of the copyright law.

Fair Use

The "fair use" doctrine allows the courts to avoid rigid application of copyright statutes when this would inhibit creativity. Fair use originated "for criticism, comment, news reporting, teaching, . . . scholarship, or research . . . the distinction between 'fair use' and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may be taken safely without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission."

The 1961 Report of the Register of Copyrights on the General Revision of the United States Copyright Law provides the following examples of fair use:

1. Reproduction by a teacher or student of a part of a work to illustrate a lesson.

2. Summary of an address or article with short quotations in a news report.
3. Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
4. Quotation of excerpts in a review or criticism for purposes of illustration or comment.
5. Reproduction by a library of a portion of a work to replace a missing or damaged section.
6. Incidental reproduction in a newsreel or broadcast of a work that appears embedded in the scene of an event being reported.

Assuming that a piece of media (text, audio, graphic, or video) is the exclusive property of its creator, questions arise regarding conditions under which a portion of the piece may be used legally without specific license from the author. Permission is not required to make "fair use" of a copyrighted work. Four factors are used to determine whether a proposed use of a copyrighted work is a fair use:

1. "The purpose and character of the use." A nonprofit educational use is more likely to be deemed a fair use than a commercial use.
2. "The nature of the copyrighted work." Copying factual material is more likely to be considered a fair use than copying the same amount of artistic or fictional material.
3. "The amount and substantiality of the portion used in relation to the work as a whole." A small percentage or a limited amount is more likely to be allowable than a large part.
4. "The effect of the use upon the potential market or upon the value of a copyrighted work." No reduced earning capacity for the copyright holder should result from fair use.

The Consortium of College and University Media Centers (CCUMC) Fair Access Working Committee has made recommendations addressing the extent to which multimedia content may be used by instructors and students in an educational setting. More information may be found online at *https://copyright.columbia.edu/basics/fair-use.html*. The following guidelines are extracted from the Working Committee's recommendations:

1. Educators may use portions of lawfully acquired copyrighted works in producing and using their own multimedia programs as teaching tools in support of an identified curriculum in face-to-face instruction. Similar use is permitted for remote instruction over an institution's electronic network, provided there are technological limitations on access to the network programs (a password or PIN) and on the total number of students enrolled.
2. Related to motion media, up to 10% or three minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of a multimedia program produced by an educator or student for educational purposes.
3. Related to text material, up to 10% or 1000 words may be incorporated; less than 250 words in the case of a poem, but no more than one poem by a single poet or five poems from an anthology may be used.

4. Related to music, up to 10% of an individual composition, or up to 10% of a musical recording, may be used for educational purposes. No more than 30 seconds of an individual copyrighted composition may be used in any case.
5. The reproduction of no more than five photographs and illustrations copyrighted by a single artist may be used in any one program. Not more than 10% or 15 images, whichever is less, may be used from a published collective work.
6. In any case where commercial reproduction and distribution will occur, licenses must be obtained.
7. Educators and students must obtain permission for all copyrighted works incorporated in programs that are distributed over uncontrolled electronic networks, for productions that are replicated beyond one copy, and in cases where institutions collaborate.
8. Citations and credit must be attributed to all sources of copyrighted works incorporated in multimedia programs, including those prepared under fair use. In the case of images used in remote instruction, the copyright notice, date, and name must appear onscreen with the image.

Public Domain

A work in the public domain may be used by anyone for any purpose. Here are some of the ways in which a work may be deemed to be in the public domain:

1. The term of copyright has expired.
2. The work was created by the United States government and cannot be copyrighted.
3. The work is a title, a name, or a short phrase or slogan, and although it could be considered a trademark, it may not be copyrighted.
4. The copyright is forfeited. The copyright is forfeited in works published without notice prior to a change in the law that eliminated the notice requirement (March 1, 1988, the effective date of the Berne Convention Implementation Act).
5. The copyright has been abandoned. A direct statement or overt act dedicating the work to public domain is required by the copyright holder (a statement that anyone may reproduce, perform, or display the work without restrictions). Posting a work on a computer network does not constitute abandonment.

If there are any restrictions declared by the author on the use of a work, it is not public domain. It is copyrighted, and restrictions are essentially limitations. For example, the restriction that a work may only be given away for free is a limitation using the distribution right. Once a work is in the public domain, whether by expiration or dedication by the copyright holder, it cannot be restored except under certain conditions provided by the General Agreement on Tariffs and Trade (GATT) in 1994.

Failure to assert copyright against an infringer does not place a work in the public domain. At most, it might prevent the copyright owner from recovering from that infringer, if, for example, a statute of limitations has expired or if the infringer has relied on the copyright owner's failure to sue.

Replication of Audio Recordings

The Audio Home Recording Act (AHRA) was passed in October 1992. It added 10 sections to the United States Copyright Act, one of which provided an alternative to the fair use analysis for musical recordings. It states:

“No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.”

This means consumers cannot be sued for making analog or digital audio copies for private noncommercial use. It applies to music only, not to recordings of spoken words. The AHRA provided that a royalty payment (the "DAT tax") be paid for each sale of digital audio tape to compensate composers for profits lost due to these copies.

The right to prevent the unauthorized fixation and trafficking in sound recordings and music videos was added to copyright law in 1994. "Rights in Unfixed Works," as they are called, resulted from GATT.

All Rights Reserved

According to the 1911 Buenos Aires Convention on Literary and Artistic Copyrights, once copyright was obtained for a work in one signatory country, the other signatories offered protection without requiring registration, if a notice reserving rights was stated. The notice that complied with Buenos Aires was "All Rights Reserved." The "All Rights Reserved" notice no longer serves a useful purpose since the Buenos Aires Convention is not relevant today, having been superseded by other copyright treaties, such as the Universal Copyright Convention and the Berne Convention.

An official copyright notice includes the letter "C" in a circle or the word "Copyright," the year of initial publication, and the name of the copyright owner. If a copyright notice is included on a work to which the defendant in an infringement suit had access, the offender may not plead "innocent infringement." It is wise to include a notice on all published copies of a work.

Duration of Copyright

The duration of a copyright depends on whether the work was created before or after January 1, 1978, the effective date of the Copyright Act of 1976. This act was amended by the Copyright Term Extension Act, which became law in October 1998. The amended law extends the term of most copyrights by 20 years. The Extension Act includes the following provisions:

1. Extends the duration of copyright in a work created on or after January 1, 1978, to the life of the author and 70 years (previously 50 years) after the author's death and applies the same extension to joint works.
2. Extends the duration of copyright in anonymous works or works made for hire on or after January 1, 1978, to 95 years (previously 75 years) from the year of the first publication, or 120 years (previously 100 years) from the year of creation, whichever expires first
3. Prohibits the annulment or limitation of rights or remedies under state laws with respect to sound recordings fixed before February 15, 1972, until February 15, 2067 (previously 2047).
4. Extends from December 31, 2027, to December 31, 2047, the duration of copyright in works published on or before December 31, 2002.
5. Extends the duration of copyrights in their renewal term at the time of the effective date of this Act to 95 years from the date such copyrights were originally secured.

The law permits an author to terminate a transfer or a license of a renewal (executed before January 1, 1978) of a copyright (other than a work made for hire) subsisting in its renewal term on the effective date of this Act, for which the termination right has not been exercised, and has expired, by such date. Allows termination of a transfer or license grant at any time during the five years beginning at the end of 75 years from the date the copyright was originally secured. Copyrights are not renewable. Attribution and integrity rights endure only for the lifetime of the author.

During the last 20 years of any term of copyright of a published work, the law allows a library or archive to reproduce, distribute, display, or perform in digital form a copy or phonorecord of such work for purposes of preservation, scholarship, or research after determining that none of the following conditions apply:

1. The work is subject to normal commercial exploitation.
2. A copy or phonorecord of the work can be obtained at a reasonable price.
3. The copyright owner or its agent provides notice that either of such conditions applies.

The law declares that the distribution of phonorecords before January 1, 1978, shall not constitute publication of the musical work for purposes of copyright infringement under the Copyright Act of 1909.

Copyright and the Internet

Internet postings and email messages are copyrighted. They are "original works fixed in a tangible medium of expression." Only a clear declaration by the author would place a work into public domain. The two doctrines that allow copying are fair use and implied license. If the use was not commercial in nature, the posting was not an artistic or dramatic work, a short quotation was made for criticism and comment, and there was no impact on any market for the posting, it would probably qualify as fair use. Quoting of private email messages that met such criteria would also qualify. However, disseminating

some email messages could lead to liability unrelated to copyright if the message were defamatory, an invasion of privacy, or a trade secret.

If a clearly visible limitation on the right to copy or quote is stated in the posting or message, it would be difficult to defend against infringement. On the other hand, implied license might be assumed for email messages posted to a public mailing list without stated limitations.

Postings and email messages are not usually registered with the Copyright Office. Registration is a requirement in order for a copyright owner to recover statutory damages and attorney fees. Therefore, if a copyright owner were to sue for infringement of an email or posting, he or she would probably be limited to collecting actual damages caused by the infringement (i.e., an actual monetary loss or a profit to the infringer that resulted from the infringement). Because those damages are so negligible, it would be of little benefit to sue, even if the copying of an email or posting were an infringement.

Digital Millennium Copyright Act

Effective October 1998, this law has numerous provisions for media producers worldwide and impacts those who provide Internet services. The main provisions of the DMCA are:

1. Implements the terms of the World Intellectual Property Organization (WIPO) Copyright Treaties (Title I).
2. Prohibits circumvention of technological measures that control access to copyrighted works (copy protection schemes) (Title I).
3. Limits liability to online service providers (Title II).
4. Provides exemptions for use of diagnostic computer programs (Title III).
5. Makes other miscellaneous changes (Title IV).
6. Provides two years of protection for certain designs for useful articles (Title V).

The WIPO Copyright Treaties Implementation Act (Title I) grants copyright protection to:

1. Sound recordings that were first fixed in a treaty party (a country other than the United States that is a party to international copyright agreements).
2. Pictorial, graphic, or sculptural works incorporated in a building or an architectural work embodied in a building located in the United States or a treaty party.

Section 103 of the Act prohibits two things. The first is circumvention of technological protection measures that control access to protected works. The second is manufacturing or distributing technology designed to circumvent measures that control access to or protect rights of copyright owners. There are two exemptions to these prohibitions. The first is for nonprofit libraries, archives, or educational institutions that gain access to a commercially exploited copyrighted work solely to make a good faith determination of whether to acquire such work, subject to certain conditions. The second exemption is for law enforcement and intelligence activities.

The law defines "copyright management information" as the title and name of author and copyright owner conveyed in connection with copies or phonorecords of a work or performances or displays. The law recognizes digital forms of this information as valid. It prescribes criminal penalties for violations committed for commercial advantage or financial gain. It makes criminal penalties inapplicable to nonprofit libraries, archives, and educational institutions. It also imposes a statute of limitations on criminal proceedings.

The Online Copyright Infringement Liability Limitation Act (Title II) amends federal copyright law to exempt an online material provider from liability for direct infringement, based solely on the intermediate storage and transmission of material through such provider's system or network, if:

1. The transmission was initiated by another person.
2. The storage and transmission is carried out through an automatic process.
3. No copy of such material is maintained in a manner ordinarily accessible to anyone other than the intended recipients and no copy is maintained any longer than necessary.

The law exempts such a provider from liability if the provider is not aware of facts or circumstances from which infringing activity is apparent and if there is no financial benefit directly attributable to the infringing activity. It further exempts a provider from any claim based on disabling online access to material in response to knowledge or information that such material is infringing, whether or not such material is in fact an infringement. The law also makes liable for damages any person who misrepresents that online material is an infringement.

The law provides that it is not a copyright infringement for the owner or lessee of a machine to make a copy of a computer program solely by activating a machine that lawfully contains an authorized copy of the program exclusively for maintenance or repair of that machine, provided:

1. The new copy is used in no other manner and is destroyed immediately after the maintenance or repair.
2. Any program that is not necessary for machine activation is not accessed or used other than to make such new copy by activation of the machine.

Differences Between Copyright and Patent

The primary differences between a copyright and a patent in the United States are as follows:

1. The subject matter protected: A copyright covers "works of authorship" (literary, dramatic, musical, pictorial, graphic, audio-video, sound recordings, and the like). A patent covers an invention or a useful new feature of a product or process.
2. The requirement for protection: To be copyrighted, a work must be original and fixed in a tangible medium of expression. A patented invention must be new and useful. A patent is not automatic; it must be issued by the United States Patent and Trademark Office.
3. When protection begins: Copyright protection currently begins when a work is created. Patent protection begins when a patent is issued.

4. Duration of protection: Copyright protection typically lasts for 50 years beyond the author's death. Patents filed after June 8, 1995, in the United States have a term of 20 years from the filing date. Patents in effect on that date have a term of 20 years, or 17 years from the date of issue, whichever is longer.
5. Infringement: If a person other than the copyright owner independently comes up with a similar work, there is no infringement. A patent confers a monopoly that prevents others from selling the patented invention, although a person may independently reinvent a patented invention.

Another significant difference is the cost. A copyright is free. A patent is costly and the patent application process is much more complex. A copyright protects an author's rights inherent in a work. A patent provides ownership to an inventor in exchange for publicly sharing the details and specifications of an invention.

Copyright and Employment

The company for which an employee works may own the copyrights to his or her work by applying either the assignment or the work-made-for-hire doctrine:

Assignment: Many companies automatically acquire a blanket assignment of copyright for any works created on the job starting at time of hiring.

Work made for hire: A work qualifies as a work made for hire if it was prepared by an employee within the scope of employment or if it was specially commissioned and the parties agreed in writing that it was to be considered a work for hire.

Infringement and Penalties

Infringement is considered a civil matter (a tort). It may also be a federal crime in certain circumstances. If it is willful and committed for commercial advantage or financial gain, it is subject to criminal prosecution. In cases of offending reproduction or distribution rights of 10 or more copies with a value of more than $2500 during any 180-day period, the offense is a felony. The statute of limitation for copyright infringement for both civil suits and criminal prosecutions is three years.

The United States government may be sued for copyright infringement. Whether a state may be sued is unclear. The Eleventh Amendment says that a state cannot be sued in federal court. The Copyright Act expressly states, however, that a state can be sued for copyright infringement. Until 1996, it was generally thought that the clause in the Copyright Act did indeed make a state liable for its infringements. However, a 1996 case involving an Indian tribe suing a state on an issue completely unrelated to copyright put some important restrictions on the ability of Congress to abrogate a state's immunity. As a result, there is considerable uncertainty today as to whether a state may be sued for copyright infringement.

Works of the United States government are generally considered to be in the public domain. For purposes of copyright law, the United States Postal Service, the District of Columbia, Puerto Rico, and

organized territories of the United States are not considered to be part of the United States government.

If an independent contractor working for the government produces a work, it may be copyrighted, and nothing prevents that contractor from assigning the copyright to the government. Unlike federal government works, those credited to state governments are subject to copyright.

Securing Copyright on an Original Story or Song

In the United States and most other countries, a work is automatically copyrighted when it is created. The following statement is from Section 102 of the Copyright Act:

Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

It is not necessary to register a work with the Copyright Office or to provide a copyright notice on the work. However, it is wise to register a work and to include a copyright notice for purposes of defending it against infringement.

How to Register a Copyright with the United States Copyright Office

Forms for registering are available from the Copyright Office at its online address: *https://www.copyright.gov*. They are in the Adobe Acrobat (.pdf) format. A copyright may be registered by filing the appropriate form with a $20 payment for registration and two copies of the work. A Copyright Office Information Package includes the appropriate forms and instructions for filing. For information, contact the United States Copyright Office at (202) 707–3000, or call (202) 707–6737 to order forms. Packages are available for the following types of media:

Computer programs: Form TX, Package 113

Photographs: Form VA, Package 107

Motion pictures and video recordings: Form PA, Package 110

Games: Form TX, Package 108

Drawings, prints, and visual artworks: Form VA, Package 115

Music (sheet or lyrics): Form PA, Package 105

Music (sound recordings): Form SR, Package 121

Dramatic scripts, plays, and screenplays: Form PA, Package 119

Books, manuscripts, and nondramatic literature: Form TX, Package 109

Protecting Rights with Specific Licenses

Creators of media who have ownership in content may need to consider ways to protect their interests. A licensing contract is ambiguous if the rights granted are not specific. A licensee grants an implied negative covenant to the licensor not to use the ungranted portion of the copyright to the detriment of the licensee. There are four steps that parties may take to clarify contractual license agreements:

1. Specify the rights that are granted and those that are not. One right that many multimedia producers may wish to retain is the Right to Reuse Art, or to make a number of copies to show as portfolio samples. The wording in a contract might be as follows: . . . Nothing in this Contract deprives the Licensor of the right to copy or display the Artwork otherwise exclusively licensed hereunder to the extent (1) the Artwork is not sold, (2) it is used solely for the purposes of promoting the Licensor's work in a portfolio, and (3) the Licensee shall have continuing nonexclusive rights to the Artwork.
2. The Reservation of Rights clause may be included in a license contract to avoid granting more rights than intended. It could be stated in the following terms: . . . This Contract is a complete statement of the rights granted related to the Artwork that is licensed. All rights and licenses of any kind, including copyrights and rights that might otherwise be implied that are not expressly granted in this Contract are reserved exclusively by the Licensor.
3. Multimedia producers may wish to include a Merger clause in their licenses. Such a clause is intended to prevent a court from considering previous verbal agreements (or anything else) that may modify the terms of a contract. An example might read as follows: . . . This contract sets forth the entire agreement of the parties relating to its subject matter and merges and supersedes all prior discussions or understandings of any kind, written or oral. The terms of this contract may not be changed, modified, canceled, or terminated except by a written document signed by all parties to this contract that explicitly refers to this contract.
4. Producers and developers may choose to specify that the publisher of their work maintain accurate records related to royalties, and that an accountant be permitted to inspect the books on which royalties are based annually. This is a Standard Audit clause.

As they apply to interactive digital media, copyright laws are being defined and tested on a case-by-case basis. Precedents are being set at a time when new forms of art, and indeed the media and forms of communication by which they are fixed and transmitted, are evolving at an accelerated pace. Still, the age-old concepts of fairness and granting credit where it is due will guide decisions as they always have.

Copyright Law Updates Since 2015

EU Copyright Directive

On April 15, 2019, the Council of the European Union approved a set of reforms intended to update EU copyright rules as part of its Digital Single Market strategy. The Directive came into force on June 7,

and EU Member States were given 24 months to transpose the Directive into their national legislation. The Directive attempts to improve cross-border access to content online; widen opportunities to use copyrighted materials in education, research and cultural heritage; and increase the copyright marketplace. Two articles in the Directive generated quite a bit of controversy. Article 15 (formerly Article 11) grants publishers direct copyright over "online use of their press publications by information society service providers." Article 17 (formerly Article 13) requires certain online platforms to obtain authorization from rights holders to upload works and, in certain instances to provide them fair remuneration. Of course, there are exceptions to this such as where the content is used in a "quotation, criticism, review" or for "the purpose of caricature, parody or pastiche." Perhaps most importantly, is the exception that applies when the platform has "made best efforts to obtain an authorization" to prevent copyright infringement and has demonstrated that they have acted expeditiously to remove a piece of content, after being notified by the owner of the rights.

The CASE Act

The Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2019 was introduced on May 1. The legislation would create a voluntary small claims board within the U.S. Copyright Office that will provide copyright owners with an alternative to the expensive process of bringing copyright claims, including infringement claims and claims of misrepresentation under 512(f) of the Copyright Act/DMCA, in federal court.

The Fourth Estate Case

The issue in this case was whether the registration requirement for initiating an infringement suit in federal court in Section 411 of the Copyright Act is satisfied by the "application approach" (i.e., when the application is filed with the Copyright Office) or "certificate approach" (i.e., when the Office examines and either issues a registration or rejects the application). On March 4, the U.S. Supreme Court issued a unanimous decision holding that registration, under section 411 of the Copyright Act, occurs when the Register acts to either complete a registration or refuse it, i.e., the certificate approach. Thus, copyright owners must wait for Copyright Office action before filing a lawsuit for copyright infringement.

The Music Modernization Act

This combined three previously introduced bills – The Music Modernization Act of 2018, the Classics Protection and Access Act, and the AMP Act. The MMA helps creators across the music industry make a living through their creativity by; (a) improving compensation to songwriters and streamlining how their music is licensed; (b) enabling legacy artists (who recorded music before 1972) to be paid royalties when their music is played on digital radio; and providing a consistent legal process for studio professionals – including record producers and engineers – to receive royalties for their contributions to music that they help to create.

More specifically, the MMA creates a compulsory blanket mechanical license covering activities related to the making of permanent downloads, limited downloads, and interactive streams of musical works embodied in sound recordings. The rates for this new blanket license will be determined through a willing buyer/willing seller standard (a market-based standard). The MMA also creates a Mechanical Licensing Collective (MLC) to issue and administer the new blanket licenses for digital downloads and

reproductions. The Office issued a rule designating Mechanical Licensing Collective, Inc., as the mechanical licensing collective and Digital Licensee Coordinator, Inc. as the digital licensee coordinator

Group Registrations

The Copyright Office has gained efficiency by increasing the number and types of group registrations that are available, and by altering some of the existing group registrations. The Office published final rules relating to group registrations for newspapers and for registration of unpublished works, eliminating the three-month deadline for submitting newspaper issues under the group registration option as well as arranging for special relief arrangement for news publishers seeking to deposit electronically to satisfy mandatory deposit requirements. The Office also established a new group registration option for a limited number of unpublished works, which replaces the prior accommodation for "unpublished collections." The new group registration option "will allow the Office to examine each work for copyrightable authorship, create a more robust record of the claim, and improve the overall efficiency of the registration process." In May, the Office proposed to create a new group registration option for works on an album of music. This registration option would be available in addition to other options for registering multiple sound recordings and musical works, including the group registration for unpublished works, registration as a collective work, and registration as a unit of publication. It created a new group registration option to allow 50 short literary works to be registered with one application, as long as the works meet the following criteria:

- They must contain at least 100 but no more than 17,500 words;
- Created by the same individual, named as the copyright claimant for each work;
- Are all published online within a three-calendar-month period

Review of ASCAP and BMI Consent Decrees

At the time of this writing, the U.S. Department of Justice has begun reviewing the consent decrees it has with ASCAP and BMI. As part of the review, DOJ gave interested parties the opportunity to file comments "relevant to whether the Consent Decrees continue to protect competition." In particular, the DOJ sought public comments on issues such as: Do the Consent Decrees continue to serve important competitive purposes today? Are there provisions that are no longer necessary to protect competition? Are there provisions that are ineffective in protecting competition? What, if any, modifications to the Consent Decrees would enhance competition and efficiency? Would termination of the Consent Decrees serve the public interest? If so, should termination be immediate or should there instead be a sunset period? Do differences between the two Consent Decrees adversely affect competition? The public comments were posted September 12. The DOJ has not taken any further action at this point.

Ongoing Issues

In the *Oracle v. Google* case, the Supreme Court will consider whether copyright protection extends to a software interface, and whether a petitioner's use of a software interface in the context of creating a new computer program constitutes fair use. The Senate Judiciary Committee's Intellectual Property Subcommittee is expected to hold discussions on DMCA issues, which will an important topic for the Internet. Another important topic will be the relationship between artificial intelligence and copyright

law, which will be considered by the U.S. Patent and Trademark Office, the Copyright Office, and the World Intellectual Property Office (WIPO).

Copyright Information on the Internet

The Copyright Act is available on the Web at: *www.law.cornell.edu/usc/17/overview.html*

The 1971 Paris Text of the Berne Convention is also at the Cornell site: *www.law.cornell.edu/treaties/berne/overview.html*