Who owns your work?
OR...

South Park, Gilligan's Island, and the Search for Meaning in Copyright Law

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You have the right to...
Manage your Copyright
Why is Copyright Important?

• Copyright is broad
  – protects “original works” fixed in a “tangible medium of expression”

• Copyright is long
  – lasts “life of the author” plus 70 years

• Copyright is pervasive (intrusive?)
  – governs the dissemination and use of most scholarship and other “creative expression” today and well into the future
The Congress shall have Power 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*... Art. 1, § 8, Cl. 8.
“Getting” copyright...

• original work of authorship
  – “modicum of creativity”
  – “human” author
• fixed in “tangible medium”
  – infinite range of possibilities
• automatic protection
  – no notice, no registration, no record
the Unprotected

- facts
- ideas
  - “merger” doctrine (idea = expression)
- expired works
- statutory defects
  - notice and renewal under the 1909 Act
- U.S. government works
the Exclusive Rights

- reproduction
- distribution
- preparation of derivative works
- public performance
- public display

• PLUS… the Digital Bonus
  - “anti-circumvention” of TPMs sometimes
Yours...Mine...Somebody’s....

• Creator OR
• “W-M-F-H” OR
• “assignee” OR
• inherited
Mine..Mine...Mine....?

- creator of the copyrighted work
  - no other relationships or conditions
  - “operation of law”
  - creator is “author”
- academia and IP Policies
  - enforceability???
  - patent = university
  - copyright = language of policy?
what’s mine isn’t Mine?

• “work-made-for-hire”
  – employee
    • “acting within scope of employment”?  
  – employer is “author” and controls rights

OR

– “specially commissioned works”  
  • 9 statutory categories…
  • must expressly agree in writing !!!
what’s mine isn’t Mine either?

• independent Contractors
  – creator of work
  – Questions to ask. . .
    • who contracts the project?
    • who provides the tools?
    • who provides the work space?
    • payroll taxes deducted?
    • who controls the project?
things you ought to know…

• “I hereby transfer, assign, grant, give…”
  – license give you more control…
• “I represent and warrant that…”
  – work is original
  – otherwise infringing of other works
  – defamatory statements
  – invades individual privacy
• “I hereby indemnify and …”
read what you sign...

• assignment or “license” transfer
  – “assignee” acquires all rights...
  – “licensee “ is exclusive or non-exclusive?
  • exclusive nearly equals “assignment”
  • exclusive requires signed writing
    – nonexclusive (license)

• contracts
  – “publication agreements”
things to think about …

• content and quality
• future teaching and scholarship
• “open access”???
• credit
• money???
• language of the agreement…
things to look for…

• assignment or license???
  – license gives you more control…
• assignment w/reservations
  – copies for teaching
  – institutional repository
  – your web site
  – other colleagues
  – derivative works…
  – preprints/postprints
things you should do…

• strive to avoid transferring copyright
• read your IP policy
• read your publication agreement
• understand your rights
• negotiate for better agreements
• think about long term possibilities
• share widely w/ knowledge
Sec. 107 - the 4 factors

• Purpose and character of the use
• Amount of the portion used
• Nature of the copyrighted work
• Effect on the value or potential market