

Copyright Issues for Computer Programs and Web Sites

Presented by
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Computer Program defined as:

“a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result”



Copyright Extends to

- **Program Code, including**
 - Programs that establish the format of text and graphics on a computer screen (such as a program written in html)
 - Other programs transmitted or accessed online
 - Source code, object code, flow chart, or words
 - Embodied in paper, magnetic disk, tape or semi-conductor chip

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- **Web site Content**
 - **Automated Databases**
 - **Screen Displays/User Interfaces**



NO Protection For:

- Ideas, concepts
- Program Logic
- Algorithms
- Systems
- Methods of operation, processes, procedures
- Public Domain material
- De Minimis Menu Screen
- Blank forms



Copyright Notice:

1) © or Copyright

2) Year of First publication

3) Owner

© 2010 BABC

Copyright 2009, 2010 BABC

or

Copyright 2000-10 BABC

Who Owns the Copyright? Who is the “Author”?

- **Who created the code?**
 - **Independent software developer** owns it (absent written assignment)
 - **Employee** does not have copyright ownership if developed as part of employment; the **employer** is the “**Author**”
 - Joint “authorship” (and thus joint ownership absent assignment) if developed jointly by two or more “authors”
 - If you “purchase” off-the-shelf program or execute a license, you do not own the copyright



Publication

“the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending”

or

Offering to distribute copies to a group of persons for purposes of further distribution

Public display ≠ publication



To Register or Not to Register

Yes, register:

- Registration can secure benefit of statutory damages, attorney fees in event of infringement
- Can help establish proof of existence of code as of filing
- Registration is prerequisite to infringement lawsuit
- Relatively inexpensive
- Useful to enforce rights when others have access to the source code (e.g., the original software developers or licensees)



To Register or Not to Register

No, do not register:

- **If source code is used internally only and not made available to licensees, then infringement is unlikely**
- **Deposit requirement: first and last 25 pages of source code must accompany application**



Scope of Rights

- **Exclusive Right to**
 - Copy
 - Distribute
 - Perform publicly
 - Prepare derivative works

Limitation on Exclusive Rights in Computer Programs

- **Owner of copy may copy or adapt it if:**
 1. The new copy or adaptation is created as an essential step in utilization of the program

or

 2. New copy or adaptation is for archival purposes only (and copies are destroyed if right to possess program ends)
- **Owner or lessee of machine may copy program for maintenance or repair of machine**



Determining Infringement

- **Abstraction**
- **Filtration**
- **Comparison**



Infringement Analysis

- **Abstraction**

- Main purpose
- Program structure or architecture
- Modules
- Algorithms and data structures
- Source code
- Object code



Infringement Analysis

■ Filtration

- Examine each part for ideas, public domain elements to sift out elements not subject to protection
- Sift out expression constraints such as,
 - Computer's mechanical specs
 - Compatibility requirements of other programs
 - Computer manufacturer's design standards
 - Widely accepted programming practices



Infringement Analysis

- **Comparison**

- Compare what's left after filtration with allegedly infringing program



Computer Screen Displays and Web Sites

- **Original text**
- **Original graphics, photos, drawings**
- **Original audiovisual**



Register Web Site or Screen Display?

- Can register screen display with the program or separately
- Who owns the web site content?
- Is it original?



Conclusion – Take Away

- 1. Secure Ownership by assignment of rights**
- 2. Register copyright when warranted by its value and risk of infringement**
- 3. Document revisions, archive previous versions**
- 4. Display copyright notice**



Conclusion – Take Away

5. Do not rely solely on copyright

Combine with

- Confidentiality agreement
- Assignment of rights from developer
- Warranties
- Noncompete agreements
- Trade secret (restrict access to source code)
- Trademarks



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