

Fair Use of Copyrighted Material

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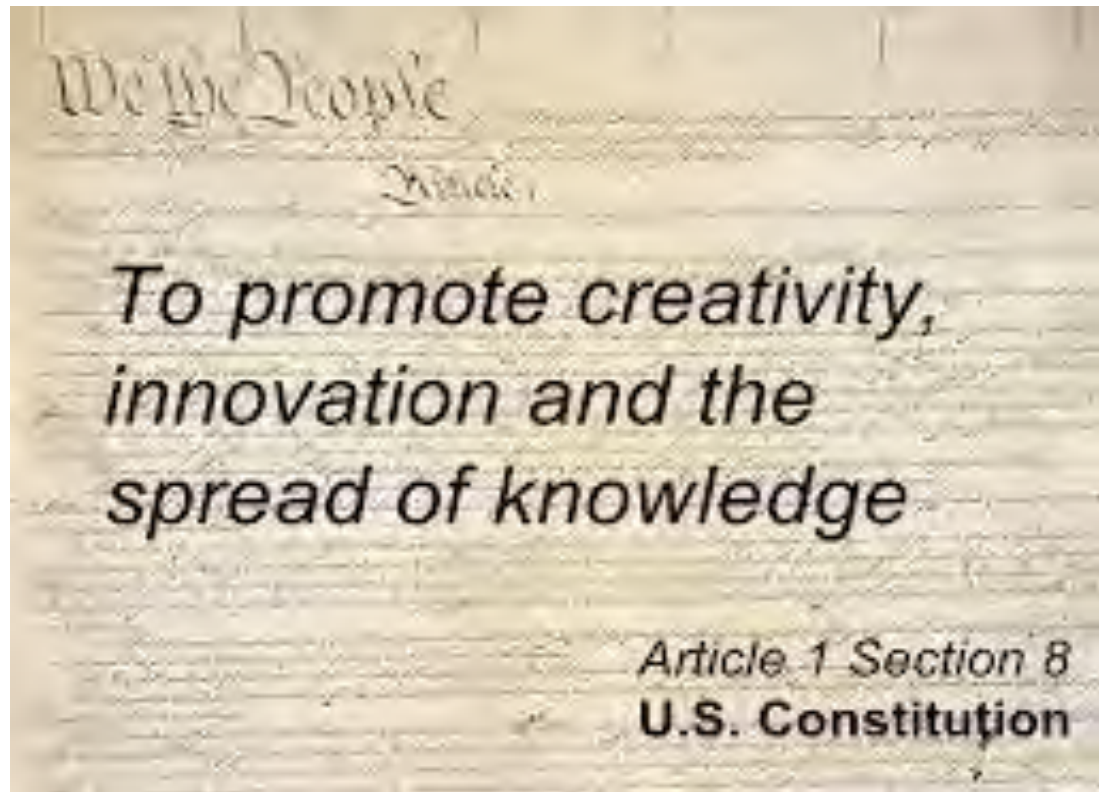


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Intro to Copyright

- It's in the Constitution!



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Copyright principles

- Copyright protects original works of authorship fixed in a tangible medium of expression – music, movies
 - tangible medium of expression = audio recording, video recording, YouTube video etc.



- tangible medium of expression \neq street performance, spontaneous speech, etc.

Copyright principles

- © symbol not required, copyright begins when the idea is fixed in tangible medium
 - If you make a YouTube video, and someone copies it, they may have infringed your copyright



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Copyright protections

- Copyright owners have *exclusive* rights to make copies, create derivative works, distribute, display and perform works publicly
- Generally, if you want to use a protected work, you either need permission or an exemption must apply
 - Fair Use is most common exemption, particularly in educational settings



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Copyright vs. Trademark vs. Patent

- These intellectual property (IP) rights are often confused.
- There are some similarities, but these IP rights are different and serve different purposes.

Patents

- Patent protection is afforded to inventions and industrial designs

Stronger Design Patent
Mostly broken lines

Apple iPhone
Design patent D593087

Samsung Galaxy S4G
Competing product

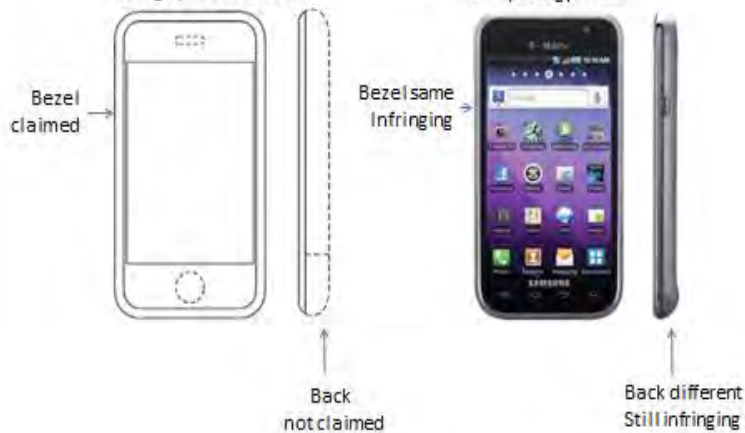
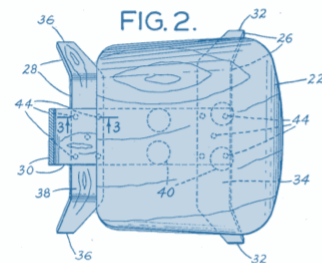
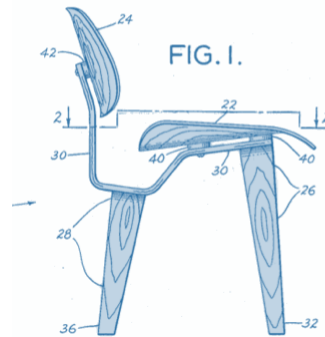


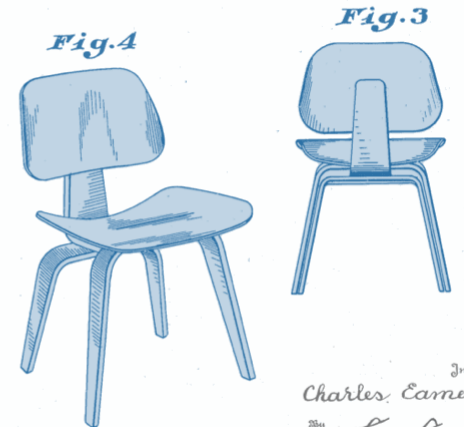
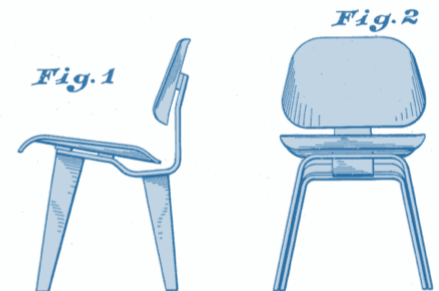
Figure 2

May 29, 1951 C. EAMES 2,554,490
FURNITURE CONSTRUCTION



INVENTOR.
CHARLES EAMES
BY
Blair, Curtis & Hayward
ATTORNEYS.

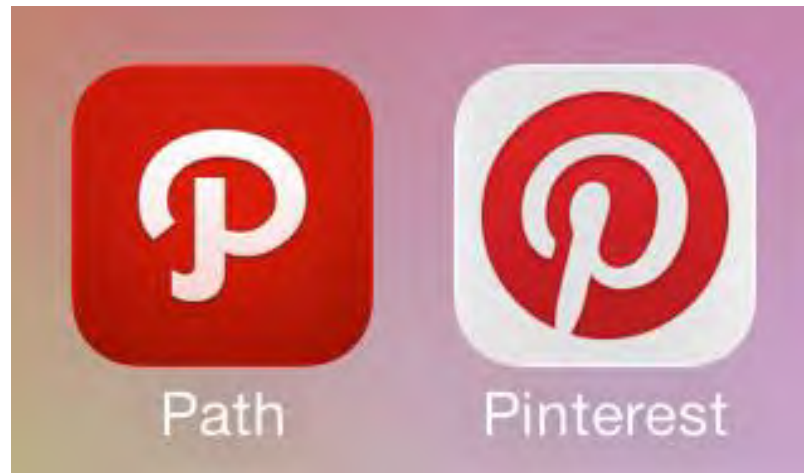
Sept. 20, 1949 C. EAMES Des. 155,272
CHAIR



Inventor
Charles Eames
By
Lyons & Lyons
Attorneys

Trademark

- Trademark is a distinguishing mark or logo -- gives the owner the right to prevent others from using a confusing, similar mark



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Safest route: permission

- Get it in writing
- Email the author/composer/creator
- Resource:

<http://fairuse.stanford.edu/overview/introduction/getting-permission/>

- But what if they say no?



The Fair Use Exemption

- Fair use exemption created by section 107 of the Copyright Law
- Fair use is analyzed using four factors:
 1. Character of the Use
 2. Nature of the material being used
 3. Amount and importance of the part used
 4. Effect on market



Factor #1: character of the use

- Fair use is stronger where a copyrighted work is used for *teaching, research, scholarship, criticism, comment, parody or other nonprofit educational purposes*.
- Weaker argument for fair use where the copyrighted work is used for *commercial or for-profit* purposes.



Factor #2: nature of the copyrighted work

- Copyrighted fictional/creative works such as plays, movies, music and novels receive greater protection.
- Factual works such as biographies receive less protection because dissemination of facts or information benefits the public.

Factor #3: amount and substantiality of the portion taken

- Fair use is stronger if a small/short clip of a copyrighted work (e.g. movie or music) is used, and length of the clip used is related and appropriate for the intended educational purpose of the project.
 - Fair use is diminished where a large portion or whole work is used without modification or without additional transformation.

Factor #4: effect of the use upon the potential market

- Fair use is stronger where use of the copyrighted work would have *no significant effect* on the market or potential market
 - a belt and suspenders approach is to restrict access to the videos based on some established criteria (e.g. log-in or password protection).

Fair Use example

- *Mayor Soglin vs. Sconnie Nation, LLC*



Fair Use example

- Court says: fair use!
 - No reduced marketplace demand for the original work.
 - Defendants changed so much of the original that, “as with the Cheshire Cat, only the smile remains.”
 - “What is left, besides a hint of Soglin’s smile, is the outline of his face, which cannot be copyrighted.”
 - Defendants chose the design as a form of political commentary, not for profit.

Parody

- Type of fair use
 - Parody must comment on the work itself and the humor must come from the meeting of form and content
 - Parody can't destroy the market value for the original

Parody example: "Pretty Woman"

- 2 Live Crew



Vs.

Roy Orbison



Practical points

- Use a disclaimer:
 - “This video was created by students for a class project. It is intended for academic, educational, critical, non-profit and non-commercial purposes. If you feel that this video violates your intellectual property rights, please contact us at [insert email].”
- Use only as much of the work as you need
- Emphasize your parody/editorializing/transformational use of the work

Other exemptions

- Section 108: copying exemptions for libraries and archives
- Section 110(1): face-to-face teaching exemption for display/performance of a work in the classroom
- Section 110(2): limited exemption for transmission and display of still images for classroom instruction



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Infringement penalties

- The law provides a range from \$200 to \$150,000 for each work infringed.
- Infringer pays for all attorneys fees and court costs.
- The Court can issue an injunction to stop the infringing acts.

Caveats

- Few bright lines in copyright law; fact intensive analysis
- Sometimes permission will be necessary
- ***This presentation and the material discussed is for informational purposes; it is NOT to be relied upon as legal advice***



Additional Resources

- U.S. Copyright Office
<http://lcweb.loc.gov/copyright/>
- Stanford University Library Fair Use Page
<http://fairuse.stanford.edu/>
- CU Boulder Libraries copyright resource page
<http://ucblibraries.colorado.edu/copyright/>



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