Transcript: Copyright Law

[upbeat music featuring a mandolin]

This is Learning About Creative Commons. I’m Rachael Nevins.

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In this podcast, I’m going to go over the basics of copyright law.

A Creative Commons license doesn’t replace copyright. Instead, it works with copyright. Remember what I said last time*: Because of Creative Commons, creators are able to retain their copyright while sharing their work and letting other people know how it can be used.*

It’s also important to highlight that I referred to creators as using Creative Commons licenses ”to retain their copyright while sharing their work.” In this podcast, I’ll mostly be talking about authors and creators, but remember that creators don’t always hold the copyright for their work. The copyright for works created for employment, for example, is typically owned by the employer. And copyright can be transferred from a creator to another person or entity, such as a publisher.

But with all that said, understand that in order to claim copyright over a work, a creator doesn’t actually have to do anything more than make the work. Copyright is automatic. In the United States the creator of a work owns the copyright to that work from the moment it is manifested or fixed—set on paper, or canvas, or film, and so on.

But what is copyright? So far I’ve been referring to copyright without really unpacking what it is and what it’s for.

The most basic meaning of the word *copyright* is in its name: copyright laws have to do with the right to make, distribute, perform, or adapt copies of a work. Copyright does not apply to facts or ideas. It does apply to original literary and artistic works, including

* Translations, adaptations, and arrangements of literary and artistic works
* Collections of literary and artistic works
* Musical works
* Dramatic, cinematographic, and audiovisual works
* And other things you might not think of as literary or artistic works, such as databases and computer software.

England’s 1710 Statute of Anne was the first copyright law. It granted 14 years of copyright protection only to the authors of books. Obviously a lot has changed in the three centuries since then. Not only does copyright protect more than just written works, but it lasts much longer. In many parts of the world, copyright protections last at least 50 years beyond the death of the creator.

So, what is the purpose of these protections? There are two lines of thinking on the purpose of copyright.

* One line of thinking is utilitarian. The idea is to protect such benefits as potential economic gain for copyright holders, so that creators are incentivized to create.
* Another line of thinking is grounded in protecting author’s rights. The idea is that authors have a deep connection with their creative works that merits legal protection.

Copyright is only one form of intellectual property. Others include trademarks and patents. These have different purposes than copyright. The purpose of trademarks and trademark law is to clearly identify the source of goods and services and distinguish between similar goods and services. The purpose of patents and patent law is to give inventors a monopoly on their inventions that is bounded in time.

There are bounds to copyright, too.

For example, copyright protections may be in tension with and therefore limited for public interests, such as the needs of people with disabilities. So there are limitations and exceptions, enabling critics to quote from works and comics to make parodies of works, for example.

And here in the United States the fair use doctrine offers some flexibility, though the parameters of what does and does not constitute fair use can seem murky. Courts apply a four-factor test to clarify whether or not the use of a copyrighted work is fair. This four-factor test covers such questions as: Is the use transformative? Is the copyrighted work mostly creative or mostly factual? How much of the copyrighted work was used? And how does the use of the copyrighted work affect its potential market?

And though copyright may last a long time, it does eventually come to an end. Works that are not under copyright are said to be in the public domain. The public domain includes works whose copyright has expired, works whose creators granted them to the public domain, and works whose copyright was not properly acquired or maintained. The public domain also includes works to which copyright never applies, such as the text of laws and, in the United States, a vast repository of works created by federal employees.

[upbeat music fades in]

So these are the basics of copyright. You’ve heard how copyright restricts the ability to make, distribute, perform, or adapt original literary and artistic works. You’ve also heard about the purposes of copyright and limitations and exceptions to copyright.

Check out the show notes for more information, and take care until next time!

[music concludes]