3. Copyright

Key Terms

**actual damages:** Either (1) lost profits the copyright owner would have earned had copyright infringement not occurred or (2) profits of the infringer that are attributable to the infringement.

**American Society of Composers, Authors, and Publishers (ASCAP):** One of three major performing rights societies in the United States that licenses public performance rights on behalf of the copyright owners of musical works.

**anti-circumvention:** Provisions of the DMCA that make it illegal to circumvent (get around) digital rights management systems by hacking or similar means.

**anti-trafficking:** Provisions of the DMCA that make it illegal to manufacture or distribute devicesthat enablethe circumvention of digital rights management systems.

**caching:** The intermediate and temporary storage of recently accessed digital content.

**composition copyright:** The copyright covering the musical notes and lyrics created by a composer or songwriter.

**Copyright Act 1976:** The principal federal enactment of copyright law.

**Creative Commons:** A nonprofit organization that has developed a way for creators to mark their works to let others know what uses are permitted by the copyright owner.

**damages:** Monetary payment.

**deep linking:** Linkingto a subsidiary page of the trademark owner’s site rather than to its homepage.

**derivative works:** Works of expression that are derived from other works, such as adaptations or translations.

**digital first sale doctrine:** A proposed expansion of the first sale doctrine that would allow the doctrine to apply to digital works.

**Digital Millennium Copyright Act (DMCA):** A 1998 law thatcreated safe harbors from liability for online service providers, while also prohibiting the circumvention of digital rights management systems and also the trafficking in circumvention devices.

**Digital Performance Right in Sound Recordings Act (DPRA):** A 1995 law that gave sound recording copyright owners the exclusive right to publicly perform the sound recording by means of a digital audio transmission.

**digital rights management (DRM):** Encryption or other technological means to limit the ability of users to access, copy, or otherwise use a copyrighted work.

**digital** **watermarks:** A type of standard technical measure that can be embedded in digital works and used to trace the origin of the work.

**enjoin:** To prohibit.

**exhaustion doctrine:** The term used outside the United States to refer to the first sale doctrine.

**fair use:** A provision in the copyright law that permits unauthorized copyingwhen the use is “fair,” as determined by a flexible four-factor test.

**first sale doctrine:** An exception to the exclusive rights of a patent or copyright owner, by which the owner of a particular copy of a copyrighted work or patented invention may resell or otherwise dispose of that copy or invention without the permission of the copyright or patent owner.

**indemnification clauses:** Promises by one party to reimburse another party for liability costs.

**injunction, permanent:** An order of a court prohibiting a party from engaging in some action, after a final judgment.

**injunction, preliminary:** An order of a court prohibiting a party from engaging in some action, prior to a final judgment.

**Intellectual Property Clause:** The provision within the U.S. Constitution that provides the basis for federal patent and copyright laws.

**natural rights:** The natural rightsjustification of intellectual property emphasizes a person’s inherent connection with the fruits of that person’s creative labor and views it as unfair to allow others to copy the creator’s works without compensation.

**No Electronic Theft Act (NET) 1997:** A federal law that authorizescriminal penalties for willful copyright infringement.

**orphan works:** Works still under copyright for which the copyright owner cannot be easily identified or located.

**payola:** Money that was once paid by record companies to radio stations to play the record companies’ songs.

**piracy:** The copying of a work with little or no pretense that the copying is lawful.

**prima facie:** An initial showing made by one litigant that shifts the burden of moving forward to the other litigant.

**public domain:** Once a copyright on a work expires, that work is said to have fallen into the public domainand may be used freely by anyone.

**Recording Industry Association of America (RIAA):** An association of record labelsthat opposes the unauthorized sharing of its members’ music.

***remittitur*:** Reduction by a judge of an excessive jury award.

**safe harbor:** A provision in the law that provides protection from liability for certain activities so long as the required conditions are met.

**secondary liability:** The imposition of liability on one party based on the direct infringement of another party.

**Sonny Bono Copyright Term Extension Act (CTEA):** A 1998 law that extendedthe copyright term by 20 years.

**sound recording copyright:** Thecopyright covering the recorded performance of a musical composition (as distinct from the composition itself).

**standard technical measures:** Technological measures used by copyright owners to identify copyrighted works and protect them from infringement.

**statutory damages:** Damagesprovided in the copyright act of $750 to not more than $30,000 per infringed work.

**utilitarian:** The utilitarian justification of intellectual property views copyright primarily as a means to promote overall public welfare through the stimulation and dissemination of creative works.

**webcasting:** Thestreaming of digital music over the Internet.

**work made for hire:** A work prepared by an employee within the scope of employment.