



**Tannenbaum Helpern
Syracuse & Hirschtritt** LLP

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Protect Your Intellectual Property: What You Need to Know

November 17, 2011

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Providing Solutions®



Only Your Expression of an Idea Is Protectible

Rogers v. Koons



Distinction Between the Idea and Its Expression

- From the 2d Circuit opinion:
 - “What is protected is the original or unique way that an author expresses those ideas, concepts, principles or processes.”
 - “It is not therefore the idea of a couple with eight small puppies seated on a bench that is protected, but rather Roger’s expression of this idea—as caught in the placement, in the particular light and in the expressions of the subjects—that gives the photograph its charming and unique character, that is to say, makes it original and copyrightable.”

Unprotected Ideas Include Standard Elements Naturally Occurring With the Subject Matter

- Walker v. Time Life:
 - Elements such as drunks, prostitutes, vermin and derelict cars would appear in any realistic work about the work of policemen in the South Bronx and are commonplace and inevitable



What Forms of Expression Are Copyrightable?

- Copyright protects “original works of authorship fixed in any tangible medium”
- Protected works include:
Music, Books, Magazines,
Photographs, Movies, Paintings,
Sculpture, Records, and Maps



Copyright Requires Only Minimal Level Creativity

Originality means independent creation, not novelty. Courts will protect your work even though it is only slightly different from an earlier work so long as it reflects some minimal level of creativity.



A Work Is Protected As Soon As It Is Fixed In a Tangible Medium

- Fixation of the work is all that is required for protection, even if fixed on a monitor for only a few seconds
- But you may want to take additional steps to protect your work



Your Publishing Agreement

- Grant of rights will almost always include print and e-book rights
- Other rights include foreign, paperback, book club, web, film, reprint, audio, video, drama, rental, pay-per-view and derivative.
- You should ask: which party is in a better position to monetize these rights?



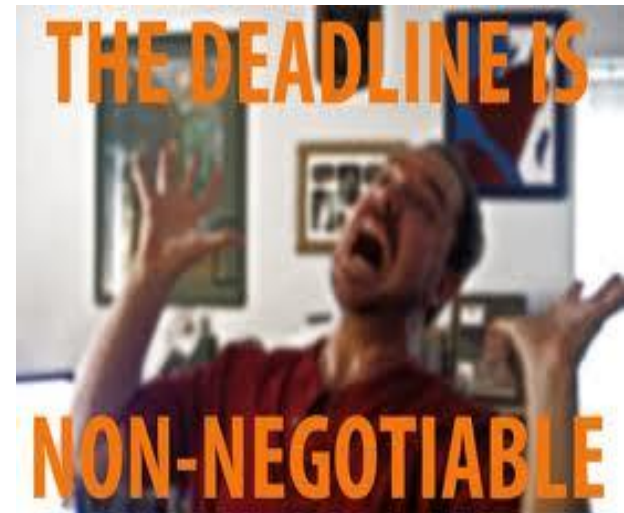
Term of Grant

- Publishers will want rights for full term of copyright plus any extensions
- Term of copyright is life of author + 70 years after the author's death
- You may want negotiate a shorter term



Author's Responsibilities and Publication Date

- The contract should spell out what you, as author, have to do and by when
- The contract should also contain a publication date so that your book does not sit on the publisher's shelf



Royalties and the Advance

- Royalties vary depending on rights sold with e-book royalties higher
- The advance depends on a number of factors, is usually paid in installments and is recouped from the 1st royalties earned



Warranties and Indemnities

- You will need to warrant that the work is your own and does not infringe anyone else's rights.
- You will need permission to incorporate another's copyrighted material if you are not making fair use of it
- An example of fair use: The Barbie Doll photos



Protecting Your Work

- Add a copyright notice
- Register your work with the Copyright Office; go to www.copyright.gov; and for help call (202) 707-5959
- Benefits of registration
- Try to convince your publisher to sue the infringers

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Monitoring Your Work to Avoid Infringement

- Periodically visit sites that welcome pirate material
- Create Google alerts for book titles
- Take advantage of a site's terms of service:
 - See http://www.facebook.com/legal/copyright.php?howto_report.
- Create a form take down notice



People who check the "I have read the Terms of Services" box...



What Your Take Down Notice Should Contain

- The name of the sender and, if different, the name of the copyright holder
- The URL where the work may be found
- Your statement that the use of the work on the url is not authorized
- A description of the work (photo, book)
- Your signed statement that you believe this information is accurate
- The site who receives this notice must take down the work expeditiously

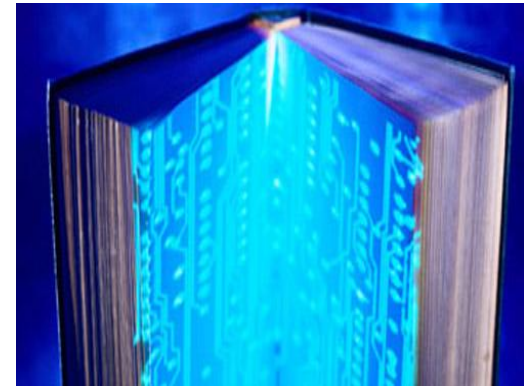
Cautionary Note

- Pick your fights carefully
- If you are seen as overreacting, the Internet may turn the attack against you
- Once the genie is out of the bottle, it's impossible to put it back



The Ease of E-Book Piracy

- As e-book publishing increases so will e-book piracy
- E-book piracy is easy and, among some, well accepted
- Digital rights management is one answer



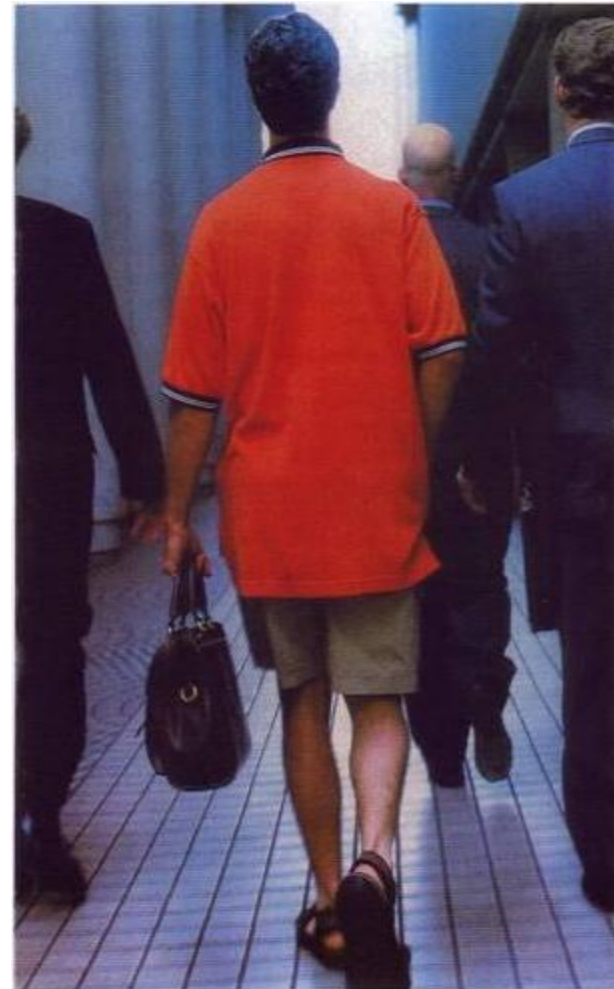
Has Your Work Been Infringed?

- The infringing work must be substantially similar to your work
- Most important elements courts will examine
 - Plot/sequence
 - Dialogue
 - Characters
- But similar plot lines do not make the works substantially similar



An Example of Substantial Similarity

Fournier v. McCann Erickson



Why Substantially Similar?

- Photos use a background bordered by structures with imposing columns on one side and buildings on the other
- The poses of the models are similar
- The models carry similar leather bags that are variants of the traditional briefcase
- The models are tightly flanked, although in varying degrees, by businessmen in traditional suits.
- A balding, well-dressed businessman appears in both pictures directly to the right of the model
- The angles, although not identical, are also similar

Questions

- Questions: Contact Andrew Berger
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