

**Copyrights:
Creation, Ownership and Rights**

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U.H. CLE: IP for the General Practitioner

August 7, 2008

Houston, Texas

YW&C

Scenarios We'll Examine

Chris, in-house attorney for DiversiTech.

- **“Look what Susan wrote”**
 - Computer program written by employee speeds up manufacturing
- **“Tell us how we’re doing”**
 - Customer testimonials uploaded to company website
- **“How long have we been using that?”**
 - New employee “helps out” by contributing past “expertise”

What We'll Cover

- How a copyright arises
- What type works are copyrightable
- The requirements for a copyright
- Who owns a copyright
 - Including “work made for hire” doctrine
- Formal registration with the Copyright Office
- What rights a copyright provides

Look What Susan Wrote

Susan (IT Dep't) wrote software program:

- **Simplified critical part of manufacturing process**
- **Spare, efficient program—little wasted code**
- **Highly creative and user-friendly interface**

Susan's manager asks: Should we "get a copyright"?

Look What Susan Wrote

Questions for legal:

- (1) What type works can be copyrighted? Software?
- (2) What requirements for copyrightability?
- (3) How do we “get a copyright”?
- (4) Who owns the copyright in Susan’s program?
- (5) What rights does the copyright provide?

Look What Susan Wrote

What works can be copyrighted?

“Original works of authorship” (17 USC 102a)

- **Literary works**
 - Articles, books
 - Software
 - Compilations of facts (e.g., surveys, databases)
- **Pictorial and graphical works**
- **Musical works, including words**
- **Dramatic works, including music used therein**
- **Architectural works, maps, sculptures**

Look What Susan Wrote

Requirements for copyright:

- **Originality**
- **Creativity**
- **Fixation in tangible medium of expression**
 - Burned onto CD
 - Written on paper
 - Captured on film, etc.

Look What Susan Wrote

How to “get a copyright”:

- Arises at moment of creation of work
- Optionally, formal registration via Copyright Office
 - Submit copy of work
 - Complete required forms
 - Filing fee

Look What Susan Wrote

Benefits of copyright registration:

- Copyright Office certificate is *prima facie* evidence of valid copyright
- Can't sue for infringement until registered
- Opens up remedies for infringement
 - Statutory damages
 - Attorney's fees

Look What Susan Wrote

Who owns the copyright in Susan's program?

- Generally, the author (Susan) owns the copyright
- Here, Susan created it in scope of employment
 - Important that she's an employee, not contractor
- Thus, it's a "work made for hire" (17 USC 101) and Diversitech owns it
- Useful—have new employees assign inventions and copyrights in all works created after employment

Look What Susan Wrote

What rights does copyright provide?

A bundle of rights:

Copyright holder has exclusive right to do, or authorize, the following:

- reproduce the work
- make a derivative work based on original work
- publicly distribute copies (e.g., by sale)
- publicly perform the work
- publicly display the work

Tell Us How We're Doing

For six months, DiversiTech's website has featured "Tell Us How We're Doing"

- **Customers email about great results**
- **Some customers submit videos telling their story**
- **Top 40 music playing in background of one video**
- **Another customer parodied a well-known rap song**

Tell Us How We're Doing

DiversiTech has releases from video-submitters

- **Customers are sole authors of videos**
- **Permit DiversiTech to post on website**
- **Permit DiversiTech to use in marketing materials**

Chris's concern:

- **Customers don't own copyrights to background music, or rap song that was parodied**

Tell Us How We're Doing

Background music:

- **Have customer re-submit, with background music off**

Rap parody:

- **Customer's "derivative work" requires authorization by original artist**
- **Decline to post video unless customer provides license to parody**

How Long Have We Been Doing That?

Dwight, new IT Dep't employee, receives award

- Time-keeping program he wrote is winning raves
- Simpler, easier to use
- More report options than the old system

Dwight's acceptance speech:

- “Since I left Competico six weeks ago, I've felt at home here”
- “I've been working for a year to get ‘Time-Saver’ right”
- “I'm honored it's been rolled out to all our facilities”
- “I hope that other ideas I was tinkering with at Competico will prove similarly fruitful here, at my new home”
- “Thank you all very much”

How Long Have We Been Using That?

- Dwight worked on Time-Saver while at Competico
- Competico may have rights
- Diversitech's use of Time-Saver could constitute copyright infringement
 - even though neither DiversiTech nor Dwight had improper motives

How Long Have We Been Using That?

- Was Time-Saver a “work made for hire” while at Compatico?
- The test for a work made for hire:
 - Author must be an employee
 - Work must be prepared within scope of employment
 - Dwight’s job description will determine whether the scope of his employment included tasks such as writing this program
 - Even if the job description doesn’t specify “writing computer programs,” it may be enough that it specifies, for example, “organizing, administering, and directing an IT department”

How Long Have We Been Using That?

- What if Dwight came up with TimeSaver on his own, exclusively at home, on his own time?
 - Under the test for a work made for hire, the result still depends on his job description
 - Case law: Cannot avoid work for hire doctrine by performing work at a different location, during off hours

Wrap-up

Look What Susan Wrote

Copyright arises upon creation

Registration through Copyright Office provides useful benefits

“Work for hire” doctrine

Tell Us How We’re Doing

Need release from customer for user-submitted video

Review the video for songs, artwork

How Long Have We Been Using That?

“Work for hire” in a different light

Be mindful of copyright rights of past employers

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