



Protecting IP and Managing Modern Contract Risks

ARM Executive Forum
March 25, 2025

Christina M. Pannos
Pannos Law LLC
christina@pannos-law.com





Intellectual Property

– WHAT IS IT?

- Patents
- Copyrights
- Trademarks
- Trade Secrets
- More than just an idea

COMMON INTELLECTUAL PROPERTY PITFALLS ON THE WEB

Swooping	Swooping images/content from the Internet <ul style="list-style-type: none">• If it's on YouTube, I can use it
Framing	Linking v. Framing
Reposting	Reposting someone else's content on your social media
Fair Use	Relying on "Fair Use" <ul style="list-style-type: none">• Creating presentations for ARM (a nonprofit)
Using logos	Using logos without permission



Patents

What are they:

A form of intellectual property that gives its owner the legal right to exclude others from making, using, selling and importing an invention for a limited period of years, in exchange for publishing an enabling public disclosure of the invention

How to protect them:
NDA's



What they apply to:



Processes



Machines



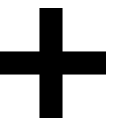
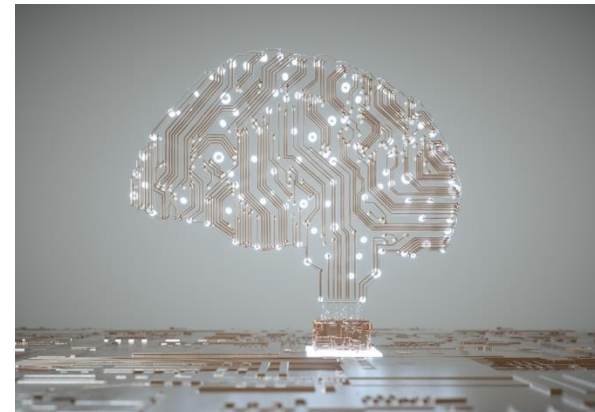
Articles of manufacture



Composition of matter

Copyright: What is it?

- Ownership of a bundle of rights to the use and distribution of works of creative expression
- Protects original works of original authorship as soon as an author fixes the work in a tangible form of expression
 - Independently created by a human author (no monkeys and AI is likely out too) and has a minimal degree of creativity



Copyrights: Bundle of Rights

To **REPRODUCE** the work;

To prepare **DERIVATIVE WORKS**;

To **DISTRIBUTE COPIES** of the work to the public;

To **PUBLICLY PERFORM** the work;

To **PUBLICLY DISPLAY** the work;



Copyrights



Rights accrue automatically upon creation - No formal action is required.



BEWARE: Ownership issues are difficult to resolve after the fact.



Problems frequently arise when volunteers are involved – or no contracts.

Examples:

Wedding photographs

Website development



Copyrights – Mitigating Risk



Licenses and Assignments

- A transfer of rights (Exclusive License)
- Promise not to sue someone for using their exclusive rights (Nonexclusive License)
- Transfer of all rights associated with the copyright (Assignments)
- Nonexclusive licenses can be oral, but an assignment must be in writing and signed

Work Made for Hire

- Applies where an employee creates work within the scope of his or her employment or if a written agreement specifies work for hire classification



Examples:

Website
Development and
Maintenance

Software License
Agreements



Most
important
question to
consider...



What do you want to do with it?

- Ownership is not always necessary.
- Figure out the endgame and work backwards.

Who Owns What?

In a perfect world...



- Proprietary Rights. Developer acknowledges that any work provided in connection with this Agreement is deemed a **work made for hire** and that Customer is the owner of such Work. Customer shall own all Deliverables (as defined in Section 4,3 below), data, information, documents, reports, and other materials ("the Work") specifically developed by Developer for Customer under this Agreement. Developer assigns and transfers to Customer all rights, title and interest in the Work, including but not limited to copyright and ownership thereof, and all rights subsumed thereunder, under the copyright laws of the United States and all foreign countries, and retains no rights of any sort to the Work. Any use of the Work by Developer other than in furtherance of this Agreement will require the written consent of Customer. Immediately upon termination of this Agreement for any reason, all hardware, equipment, data, information, website login information, administrative access credentials, documents, reports, and other work, in whatever form, shall be turned over to Customer. Developer agrees to execute any further transfers, assignments or other documents, as may be requested by Customer or its designees from time to time, necessary to facilitate the transfer of copyright or any other rights in the Work from Developer to Customer. Developer warrants that (i) Developer is the sole creator of the Work; and (ii) the Work does not violate or infringe upon any existing copyright or other intellectual property right.

August 16, 2010,

Re: Claim Number [REDACTED] FRE 408 Settlement Communication

Dear Sir or Madam,

The Law Firm of Higbee & Associates represents Associated Press. After making several unsuccessful efforts to resolve a copyright matter (PicRights Claim Number [REDACTED]) [REDACTED], Associated Press have now hired our law firm to pursue this claim. We hope that we will resolve this matter without going to court. You may wish to hire an attorney and forward this matter to them.

Please see the attached exhibits that show the use of the copyrighted works and the alleged infringing use. If [REDACTED] has a license to use the image, please let us know so that we can close this case and apologize for the inconvenience. You can email me at claims@higbeeassociates.com.

Also, if you are a non-commercial entity or if you do not conduct business in the US, please let us know as you are probably receiving this letter in error. In general, we define commercial entities as any individual or entity that derives revenue from the website on which an image(s) owned by our client is displayed through selling advertising, promoting or selling goods or services, or solicits donations.

If [REDACTED] does not have a license, we believe the use of the work is a violation of The Copyright Act, Title 17 of the United States Code. If forced to go to court to resolve the matter, our client will ask for the maximum justifiable damages. Our client may also ask the court to order [REDACTED] to pay their attorneys fees and court costs. Copyright lawsuits can result in judgments and liens on property. In some instances, the business owner can be held individually liable. We have enclosed relevant sections with this letter so that you can see the potential damages.

Our client is now asking that [REDACTED] pay \$1428 to settle this matter. This amount takes into account the normal licensing fee, the costs incurred in detecting and pursuing the unauthorized use, and the nature of the use. If you believe there are factors that should make this amount lower, or justify withdrawal of this claim, please let us know by calling us or sending us an email. We welcome the opportunity to have a discussion about the matter.

If you wish to quickly and efficiently resolve this matter without any discussion, return the attached release agreement along with your payment of \$1428 made payable to "Higbee & Associates Client Trust Account". This can be returned to us via US Mail. You can also pay with a check or credit card over the phone or online at <http://copyright.higbeeassociates.com/resolution>. Your [REDACTED] Your password is [REDACTED]. If you choose to make your payment online, you can return the enclosed release agreement via email. Please include the case number [REDACTED] in the subject line.



Copyright Infringement

The using or distributing of a product **without** the express permission by the owner

Suit for copyright infringement can be brought by the owner of the copyright or an exclusive licensee

Remedies

Damages (actual vs. statutory)

Injunctive Relief

How exactly
does Social
Media work?



YouTube Terms and Conditions

Facebook Terms and Conditions

Vetted content?

Endorsements

YouTube Terms (excerpt)

- The following restrictions apply to your use of the Service. You are not allowed to:
 1. access, reproduce, download, distribute, transmit, broadcast, display, sell, license, alter, modify or otherwise use any part of the Service or any Content except: (a) as expressly authorized by the Service; or (b) with prior written permission from YouTube and, if applicable, the respective rights holders;
 2. circumvent, disable, fraudulently engage with, or otherwise interfere with any part of the Service (or attempt to do any of these things), including security-related features or features that (a) prevent or restrict the copying or other use of Content or (b) limit the use of the Service or Content;
 3. access the Service using any automated means (such as robots, botnets or scrapers) except (a) in the case of public search engines, in accordance with YouTube's robots.txt file; or (b) with YouTube's prior written permission;
 4. collect or harvest any information that might identify a person (for example, usernames or faces), unless permitted by that person or allowed under section (3) above;
 5. use the Service to distribute unsolicited promotional or commercial content or other unwanted or mass solicitations;

Facebook Terms (excerpt)

– What you can share and do on Meta Products

1. We want people to use Meta Products to express themselves and to share content that is important to them, but not at the expense of the safety and well-being of others or the integrity of our community. You therefore agree not to engage in the conduct described below (or to facilitate or support others in doing so): You may not use our Products to do or share anything:
 1. That violates these Terms, the [Community Standards](#), or other terms and policies that apply to your use of our Products.
 2. That is unlawful, misleading, discriminatory or fraudulent (or assists someone else in using our Products in such a way).
 3. That you do not own or have the necessary rights to share.
 4. That infringes or violates someone else's rights, including their intellectual property rights (such as by infringing another's copyright or trademark, or distributing or selling counterfeit or pirated goods), unless an exception or limitation applies under applicable law.



BUT – YouTube License you give...

- Rights you Grant
- You retain ownership rights in your Content. However, we do require you to grant certain rights to YouTube and other users of the Service, as described below.
- License to YouTube
- By providing Content to the Service, you grant to YouTube a worldwide, non-exclusive, royalty-free, **sublicensable and transferable license** to use that Content (including to **reproduce, distribute, prepare derivative works, display and perform it**) in connection with the Service and YouTube's (and its successors' and Affiliates') business, including for the purpose of promoting and redistributing part or all of the Service.
- License to Other Users
- You also grant each other user of the Service a worldwide, non-exclusive, royalty-free license to access your Content through the Service, and **to use that Content, including to reproduce, distribute, prepare derivative works, display, and perform it, only as enabled by a feature of the Service (such as video playback or embeds)**. For clarity, this license does not grant any rights or permissions for a user to make use of your Content independent of the Service.
- Duration of License
- The licenses granted by you continue for a commercially reasonable period of time after you remove or delete your Content from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted.
- Right to Monetize
- You grant to YouTube the right to monetize your Content on the Service (and such monetization may include displaying ads on or within Content or charging users a fee for access). This Agreement does not entitle you to any payments. Starting November 18, 2020, any payments you may be entitled to receive from YouTube under any other agreement between you and YouTube (including for example payments under the YouTube Partner Program, Channel memberships or Super Chat) will be treated as royalties. If required by law, Google will withhold taxes from such payments.

Linking v. Framing – Which is less risky?



Linking: Allows visitors to go directly to a page to see content in situ.



Framing: Web development technique that allows a website to be shown within a smaller window on another website. If someone was to frame a website without obtaining permission from the website owner, then that person/company could be liable for copyright infringement when they publish the work

Copyright Infringement - Common Myths



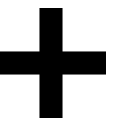
A claim for copyright infringement arises where there is “substantial similarity” between the works in question, meaning that the works are similar enough to support the inference that the work was copied

MYTH: There is a threshold percentage of a work that can be used without infringement

MYTH: **Nonprofit** uses of copyrighted material is considered “**fair use**” such that no infringement arises

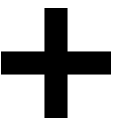
Copyrights: Fair Use

- Multifactor Balancing Test
 - Purpose and Character of the Use
 - Nature of the Copyrighted Work
 - How much original expression was involved?
 - Amount or Substantiality of the Portion Used
 - Substantial or “heart” of the work
 - Effect of the Use on the Potential Market for or Value of the Work
 - Displaced sales

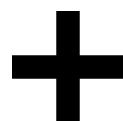


I am presenting at the ARM Fall Meeting...

- Can I show a video made by someone at my company?
- Can I show a video I found on YouTube?
- Can I use quotes?
- What images can I use?
- Can I share company confidential information?
- Can I include other companies' logos?



Questions



Christina Pannos, Esq.

CHRISTINA PANNOS is the owner and founder of Pannos Law LLC. The firm specializes in representing nonprofit trade associations, professional societies, charitable foundations, as well as individuals and organizations in the travel, tourism, hospitality, incentive and meetings industry.

Christina has advised and represented clients in contract negotiation, corporate and not-for-profit structure, intellectual property protection and registration, commercial real estate leasing, employment, antitrust and data privacy. She has managed and represented an international art gallery and has worked for major international auction houses and museums in London and Chicago. Christina has presented to groups on issues including effective contract negotiation; licensing intellectual property; risk management; and data privacy, social media and security.

Christina is an adjunct professor at DePaul University College of Law teaching legal drafting courses: *Art Market Transactions* and *Intellectual Property Licensing*.

This presentation is provided with the understanding that the publisher is not engaged in rendering legal services through its distribution. If legal advice or other expert assistance is required, the services of a competent professional should be sought. The information in this presentation was current as of the date of the presentation, but it could since have changed.